

# DEBT

## Law guide – European small claims procedure

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## Purpose of the European Small Claims Procedure

### Introduction

The European Small Claims Procedure (ESCP) is an alternative method of dealing with a small claim in cross-border cases. It is provided for in Regulation (EC) No. 861/2007 – referred to hereafter as ‘the Regulation’. The key aim of using the EU small claims procedure is to simplify and speed up litigation across borders within the EU in claims of low value, reducing the costs involved.

To achieve this the procedure places emphasis on the need for simplicity. Notably that it should largely be a written process, i.e. with no need for either party to attend a court hearing.

In particular the aim is that the role of the court is strengthened significantly with regard to managing the progress of the case and in determining the issues between the parties without the need for either party to be legally represented, thus saving on costs.

### Who can use the procedure?

The procedure is available to be used not only by individuals or groups of consumers, for whom it may be particularly appropriate, but also by small businesses.

Speed is achieved by the observance of specific time limits set in respect of various stages of the procedure. Restriction of costs is also an important aim and the duty is placed on the court to ensure that any costs awarded are not disproportionate to the value of the claim.

Many Member States of the EU have devised special procedures to reduce the expense and accelerate the resolution of small claims by individuals or small businesses. In many of these procedures a number of common features are restriction of costs awarded, absence of lawyers, simplification of rules of evidence and generally the placing on the courts of more responsibility to manage cases and to achieve speedy resolution by decision or agreement of the parties.

## Types of claim

The Regulation provides for a financial limit and the subject matter of the claims themselves. In general, claims whose subject matter falls within the general description of 'civil and commercial' matters are within the scope but this is subject to a number of restrictions and exclusions.

### **The financial limit of a European small claim**

#### *The upper limit*

There is currently an upper limit to the value of a claim within the scope of the ESCP of €2,000. Claims above that sum are excluded.

#### *The basis of the value*

The value is taken at the date on which the claim is received by the court or tribunal. Secondly the value is computed excluding all interest sought on the principal claim itself, and any expenses and disbursements which might be added to the claim.

This exclusion also does not exclude a principal claim, for example, which relates only to outstanding interest payments on a debt which has already been paid.

#### *Non-monetary claims*

Non-monetary claims can be the subject of a claim under the ESCP. In a non-monetary claim a claimant might, for example, seek an order to prevent a legal wrong - say trespass or damage to property - or seek to secure the performance of an obligation such as delivery of goods already paid for or other performance of a contract.

If the claim is non-monetary it must still be given a value which falls within the financial limit of the ESCP if it is to qualify.

### **Excluded subjects**

#### *General exclusions*

Certain matters are generally excluded which might otherwise be considered to be included within 'civil and commercial matters'. These are revenue, customs and administrative matters as well as the liability of a State for acts or omissions in the exercise of State authority.

#### *Subjects excluded specifically by the regulation*

In addition the Regulation does not apply to certain other specific matters which would be considered to fall within the notion of civil and commercial matters. These exclusions are:

- the status or legal capacity of natural persons

- family law and succession matters
- bankruptcy and related proceedings
- social security
- arbitration
- employment law
- tenancies of property (with the exception of property-related money claims)
- violations of privacy rights including defamation

### **Included subjects**

#### *Civil and commercial — general*

The subject matter which falls within the material scope of the ESCP relates principally to what are considered to be civil and commercial matters. For the purposes of the Regulation the meaning of this expression does not depend on which court or tribunal is involved in considering the claim or on the national law of any Member State. It is also to be understood as being in line with the words as used in other EU regulations.

#### *The meaning of civil and commercial matters*

The expression is not defined in the Regulation but it is generally understood that there is a distinction between civil matters on the one hand and public law matters on the other and the European Court of Justice has issued a number of judgments determining the extent and effect of this distinction in the context of the various instruments. Despite the distinction, the ECJ has also held that there are certain public law matters which would, nevertheless, be considered as falling within the meaning of civil and commercial matters.

## Geographical scope of the procedure

### **Geographical scope**

The ESCP Regulation applies in all the Member States of the EU except Denmark.

### **Cross-border cases — general**

The ESCP only applies to cases defined as ‘cross-border’. That is cases in which at least one of the parties is domiciled, i.e. habitually resident, in a Member State other than that of the court or tribunal dealing with the claim.

### **Non-EU claimants**

In certain circumstances a claimant domiciled or habitually resident in a non-EU Member State may be able to make use of the ESCP against a defendant who is domiciled or habitually resident within the EU. This would be the case where the defendant is domiciled or habitually resident in a Member State other than that of the competent court.

### **Non-EU defendants**

Also, a claimant domiciled or habitually resident in an EU Member State other than that of the court may be able to make a claim under the ESCP against a defendant domiciled or habitually resident outside the EU.

### **Applicability — time**

The ESCP Regulation has applied in all the EU Member States, except Denmark, since 1st January 2009. However a claim can be made under the procedure even though it pre-dates that date provided that any period of limitation applicable in respect of the claim has not elapsed under the relevant applicable law, e.g. a statute of limitations restriction.

## How to present the details of your claim

As noted earlier the intention of the ESCP is that it should essentially be a written procedure. Therefore the procedure is started by completing the claim form. This can be done by using the '[European small claims procedure \(DR015\)](#)' document process on LawOnline which also provides extensive guidance to the user on how to make their claim.

### Choosing the court

The claimant must decide in which Member State they will make their small claim. The basic rule is that a defendant is sued in their own Member State, i.e. where they are habitually located or resident. Special rules apply, however, to consumer-related claims (see below).

Within each Member State local national rules then determine to which specific court or courts a European small claim should be sent. A claimant will need to contact the relevant courts service to determine the appropriate court. For example, in the Republic of Ireland the District Court deals with small claims.

### Choosing the court in cases involving consumers

There are special rules in relation to which courts can be used which apply to cases involving consumers. A consumer is defined as a person who is not acting for business purposes. To know which rules apply is of particular importance to establish which Member State's courts the claim can be sent to.

If a contract or transaction:

- is for sale of goods on instalment credit
- is a loan or other credit repayable in instalments, or
- was concluded by the consumer with a business which pursues business activities in or directs such activities by any means, such as advertising or online, in the Member State where the consumer is domiciled, i.e. habitually resident

the consumer may bring a claim either:

- in the courts of the Member State where the business is domiciled, or
- in the courts of the place where the consumer is domiciled

A business may bring a claim in relation to a consumer matter against the consumer *only* in the courts of the Member State where the consumer is located.

The special consumer rules do not apply generally in the case of transport-related matters; however they *do* apply where the contract or transaction related to the purchase of a travel package which included accommodation as, for example, is the case with package holidays.

### Stating the claim

It is very important that the details of the claim are stated as clearly as possible bearing in mind that the defendant may seek to deny the claim.

The factual basis of the claim given in the claim form needs to be supported by as much written evidence as is necessary to enable the court which receives the claim to determine the value of the claim, the basis of the claim and the evidence which supports the claim. If this is not done there is a risk that the court may reject the claim as unfounded or, at the very least, require further information from the claimant which will cost time and delay the procedure.

### **The value of the claim**

As regards the value of the claim it should be borne in mind that the financial limit applies before including all expenses, disbursements and interest which can also be added to the principal claim.

If there are several elements in the principal claim then these should be stated separately but if the value of all the principal elements taken together exceeds the financial limit then the claim will not be within the scope of the ESCP.

Two types of claims can be made – monetary and non-monetary.

#### *Monetary*

A monetary claim is where a specific and defined amount of money is being claimed as outstanding – for example in relation to an invoice, a loan or, say, compensation due under EU flight compensation regulations.

#### *Non-monetary*

Non-monetary claims can be the subject of a claim under the ESCP. In a non-monetary claim a claimant might, for example, seek an order to prevent a legal wrong - say trespass or damage to property - or seek to secure the performance of an obligation such as delivery of goods already paid for or other performance of a contract. If the claim is non-monetary it must be given a value which falls within the financial limit of the ESCP.

### **Claiming interest**

Although the claim is assessed without taking interest claimed into account the interest figure or rate still has to be stated, as well as the basis on which interest has accrued or is accruing on the principal claim.

However if the principal claim itself is for interest owed then that will have to be stated in the claim form and the value of the claim will be assessed on the basis of that the principal claim although it is for interest. An example of such a situation might be if the principal claim is for interest on a loan, the capital of which has been repaid by the defendant.

### **Language**

The claim paperwork must be submitted in an official language of the chosen court. Some Member State courts operate in multiple languages and the claimant should contact the



relevant courts service to ensure that a correct language is used. It may be necessary to have the claim form and supporting documents translated. The costs of translation can be reclaimed, and recouped if successful, as part of the claim application.

### **Currency**

Of the 28 Member States, 19 are in the euro area and the remainder use their own national currencies. The value of the claim including other amounts such as interest and costs should be stated in the official currency of the chosen court.

## Procedure after the court receives the claim

### **The court checks the claim form**

The first thing the court has to do on receipt of the claim form and the supporting materials, and before it serves the documents on the defendant, is to check that the form has been completed properly in accordance with the requirements of the Regulation. If that is not the case and unless the court takes the view from the outset that the claim is unfounded or completely inadmissible, in which case it can dismiss the claim, the court can request the claimant to complete or rectify the claim form or to supply supplementary information or documents.

### **The court informs the claimant if the claim is outside the scope of the ESCP**

If the court takes the view that the claim, though properly stated, is nevertheless outside the scope of the Regulation it must notify the claimant of this.

### **Sending the claim form to the defendant**

Once the court has decided that the claim can proceed, whether in its original form as submitted by the claimant or after rectification or the provision of supplementary information or documents by the claimant, the court sends to the defendant a copy and the supporting documents along with a response form.

### **Time limit**

The court is required to send these to the defendant within 14 days of having received the claim properly completed for the purpose of the ESCP. That time limit will run either from the original date of receipt of the claim when no rectification or supplementary information was required, or from such later date as is appropriate having regard to the time limit set for the request to the claimant to rectify or complete the form or to provide supplementary information.

## Oral hearing

It is for the court to decide whether to have a hearing to determine the facts. The ESCP is essentially a written procedure and the court is expected to decide whether to hold an oral hearing only if it considers that it is necessary to do so to decide any disputed questions of fact which it cannot resolve by other means, say by requesting additional information from either or both of the parties, or if there is a request from a party.

It follows from this that the decision of the court, as to whether to hold a hearing or not, is to be taken in relation to each individual case taking into account the specific facts in dispute as well as the information available to the court without holding a hearing. In general terms the holding of an oral hearing is intended to be exceptional.

### **Court can refuse to hold a hearing**

If a request for a hearing is made by a party the court can refuse to hold a hearing if it takes the view, having regard to the circumstances of the case, that a hearing is not necessary to resolve the issues and for a fair conduct of the case. In deciding whether or not to hold a hearing, as well as in the conduct of the hearing, the court has to respect the right to a fair trial and the adversarial process. If the court refuses a request for an oral hearing it must give its reasons in writing but a decision on refusal cannot be the subject of a separate appeal or review.

### **Admissibility of evidence**

It is for the court to decide by what means evidence will be taken and also the extent of the evidence necessary for it to reach a judgment. Decisions on these matters have to be taken under the rules applicable to the admissibility of evidence which are part of the law applicable to the procedures in the court concerned and so of its national procedural law. The court must, however, bear in mind the aims of the procedure to be as speedy and least expensive as possible.

### **The role of the court**

The central aims of the ESCP are to speed up, simplify and reduce the costs of litigation concerning small claims in cross-border cases within the EU and in so doing to facilitate access to justice. In fulfilling these aims the courts are given a key role to take the initiative to control and determine the procedure to be followed in the ESCP and to apply national procedure law accordingly. Apart from determining the extent of the evidence and the means by which it is to be taken, the court has generally to manage the procedure in accordance with the principles of adversarial process and the right to a fair trial of the case. Furthermore, the court is placed under a duty, wherever appropriate, to seek a settlement between the parties and this duty is not confined to the oral hearing but extends throughout the proceedings on claim and counter-claim.

### **Time limits**

Within 30 days of the receipt of the answer from the defendant to the claim, or from the claimant to the counter-claim, the court has to decide whether to take evidence, or to summon the parties to an oral hearing once it decides that one is to be held. Bearing in mind that speed is important the court has to hold the hearing within 30 days of summoning the parties

## What happens if the debtor defends?

On receipt of the claim form the defendant may respond:

- within 30 days of service by completing the response form and returning it to the court with any relevant supporting documents
- without using the answer form in any other appropriate way
- not respond, in which case the court will give judgment on the claim after 30 days from the date of service, i.e. the date on which the defendant received the claim form

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

- admit the claim or dispute it in whole or in part
- challenge the ground of jurisdiction on which the claim is based
- challenge the claim by, for example, arguing:
  - a) that it is outside the material scope of the ESCP with regard to the subject matter
  - b) that it is not a cross-border case within the meaning of the Regulation
  - c) state that the value of a claim, if non-monetary, exceeds the limit set for the ESCP
  - d) dispute the claim based on its substance or on the amount claimed

Alternatively the defendant may make a counter-claim, i.e. where the defendant may decide that not only have they done nothing wrong and the claim should not have been brought against them, but that they have a claim against the claimant. In those circumstances, they may include a counterclaim with their defence.

### **The counter-claim**

If the defendant states a counter-claim, then all the provisions of the Regulation will apply to the counter-claim in the same way as to the principal claim. This means that the counter-claim must be within the scope of the Regulation, and the provisions about the commencement of the procedure also apply to the counter-claim.

The following additional points apply as regards the counter-claim:

- the court has to serve the counter-claim and supporting documents on the claimant within 14 days of receipt
- the claimant must respond within 30 days of service
- if the counter-claim is in value above the financial limit for the ESCP, the whole case, that is both claim and counter-claim, comes out of the ESCP and will be dealt with in accordance with the relevant procedures in the Member State of the court seized whether in that court or another court which is competent under national law

The claim and counter-claim are to be treated as separate claims for the purpose of their valuation. It also follows that it is not the case that the cumulative value of the claim and counter-claim should be within the financial limit for the case to continue under the ESCP; so the court is not entitled to look beyond the respective values of the claim and counter-claim in taking that decision.

### **Claim or counter-claim exceeds the limit**

If the defendant states that the value of a non-monetary claim exceeds the ESCP financial limit the court has to take a decision on the matter within 30 days of despatching the response to the claimant. Where the defendant states a counterclaim the claimant will have a similar right to state that the counter-claim exceeds the financial limit. The claimant and defendant respectively will have an opportunity to contest each other's positions on this point within the procedure. The decision of the court on this matter is not a decision on the merits of the claim or counterclaim but a decision as to whether the claim is within the scope of the procedure.

### **Timescales**

It should be noted that there are fixed timescales applied to all of the stages of the ESCP and it is especially important that these are followed at the commencement and when the court starts to consider the issues. In particular the timescales set out in the Regulation are critical in achieving a speedy procedure notably those in relation to the service of the documents and for the responses from the defendant and the claimant depending on how the claim is developing. It should be noted that the court has power to relax the time limits set for the defendant to submit an answer to the claim, and for the claimant to submit a response to the counter-claim but only in exceptional circumstances.

## Issuing a judgment

A judgment in a claim under the ESCP is issued at one of the following points:

### *Judgment in default — general*

If the defendant does not answer the claim within the period of 30 days from service of the claim form and answer form, the court will issue the judgment. Also if the court has requested a rectification of the claim, additional information or further details, and the party to whom the request has been made does not respond within the time limit set, then the court can grant judgment in favour of the other party. If the court has itself set a time limit for any of these purposes then it has to inform the party concerned of the consequences of not complying with it including the possibility that a judgment might be granted against that party in the circumstances.

### *Judgment in default — counter-claim*

As with the principal claim if the claimant does not respond within the period of 30 days from service of the counter-claim the court can give a judgment on the counter-claim. In such a situation it is to be presumed that the claimant will wish to pursue the principal claim so in that situation the court cannot dismiss the claim unless it has requested further information from the claimant following receipt of the response (i.e. counter-claim) to the claim from the defendant. The court will then have to determine, as between the parties, what is the fairest method of proceeding including deciding to seek additional information or evidence or organise a hearing.

### **Judgment after receiving all information including after taking evidence**

#### *Where no hearing is held*

If the court decides to reach a decision on the substance of the case without holding a hearing either after receiving the defendant's answer to the claim, if any, or having requested further information within a specific time limit and it has received that information, the court should issue the judgment within 30 days of receipt of that information. In addition if the court has taken evidence as necessary for giving the judgment but without holding a hearing it must issue the judgment within the period of 30 days of having done so.

#### *After a hearing*

If the court holds an oral hearing it must issue the judgment within 30 days of the date of the hearing. It is implicit that the court will have received all the necessary information and evidence to reach a decision on the substance of the claim or, if there is one, counter-claim by the close of the hearing and there is no provision for the court to seek any further information from the parties once the hearing is completed.

## *Costs*

The judgment will contain an order for payment of costs. One of the key aims of the ESCP is to keep costs to the minimum, and ultimately costs should not be awarded if they are unnecessarily incurred or are disproportionate to the claim. This is particularly important if the successful party is represented by a lawyer or other legal professional since the costs of such representation should be awarded in the judgment only if they are proportionate to the value of the claim and were necessarily incurred. The Regulation states that the unsuccessful party should be ordered in the judgment to meet the costs of the proceedings and these are to be determined under the relevant national law.



## Review of judgment

The Regulation also provides for a review of a judgment issued under the ESCP. This is available either where the judgment is given against the defendant in favour of the claimant or where, the defendant having stated a counter-claim, the court has granted a judgment against the claimant.

### Grounds for a review

The defendant or, where a counter-claim has resulted in a judgment being made in favour of the defendant, the claimant shall be entitled to apply for a review of a judgment issued under the ESCP before the competent court in the Member State where the judgment was given:

- where the claim form or the summons to an oral hearing order was served without proof of receipt by the intended recipient personally and service was not effected in sufficient time to enable the defendant or, as the case may be, the claimant to arrange for a defence, without any fault on their part, or
- the defendant or the claimant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on their part

provided in either case that the defendant or, where applicable, the claimant acts promptly.

### Outcome of a review

If the review is upheld on the basis of one of the grounds set out in the Regulation the judgment reviewed shall be null and void. Where the review is rejected the judgment remains in force.

### Appeal

The question of whether or not an appeal against the judgment is available in the Member State where the judgment is issued is a matter regulated under the national law of the Member States. If there is an appeal available the same rules as to costs apply to the appeal as apply to the original proceedings in the claim.

## Certificate of judgment

This certificate is required if any judgment in favour of the claimant, or the defendant in relation to a counter-claim, needs to be enforced.

This certificate has to be issued by the court which gave the judgment under the ESCP at the request of one of the parties. Such a request can be made at the outset of the procedure and at any stage after the judgment has been issued. It is desirable for the person who seeks to enforce a judgment under the ESCP to anticipate the need for the certificate and so to request the court as early as possible to issue it.

Furthermore care needs to be taken by the court in the completion of the certificate because that is the document on which execution will be based. In particular it is important that all relevant information is inserted to enable the enforcement officers charged with the actual execution and others who may be involved such as bank staff, say where a bank account is attached, to see and understand the terms of the order, the details of the person against whom it is made and the amounts awarded in the judgment.

It may also be necessary for the certificate to be translated into the language which is the appropriate language in the Member State of enforcement, which will be one of the following:

- the official language of that Member State
- if there is more than one official language, that or one of those which, in conformity with the law of the Member State of enforcement, is the language of proceedings in the court of the place where enforcement is to be sought; or
- another language which the Member State of enforcement has indicated that it is prepared to accept

Any translation of a certificate must be done by a person qualified in one of the Member States to make translations.

Each Member State may indicate the official language or languages of the institutions of the European Union, other than its own, which it can accept for the ESCP. It is for the person seeking enforcement to pay for the translation of the certificate. In principle there is no reason why the court should not be able to issue a version of the certificate in a language appropriate to the Member State of enforcement when requested provided that it is known in which State enforcement is to take place.

### **Refusal and limitation of enforcement**

#### *Refusal of enforcement in exceptional circumstances*

The court in the Member State of enforcement can refuse enforcement of the judgment on the ground that it is irreconcilable with an earlier judgment given in any Member State or in a third country provided that:

- the earlier judgment involved the same cause of action and was between the same parties and fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- the fact of the irreconcilability of the judgment with the earlier judgment was not and could not have been raised as an objection in the ESCP proceedings in the Member State where it was given

#### *Procedure to challenge enforcement*

The Regulation does not provide a procedure for an application to the court to challenge the enforcement of the judgment on the grounds of irreconcilability and this is a matter regulated under the procedural law of the Member State concerned. Similarly it is normally also possible for the court in that Member State under the national law to refuse or stop enforcement if and to the extent that the sums awarded in the ESCP judgment have been paid or the judgment has otherwise been satisfied.