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6. TEN-POINT INTRODUCTORY GUIDE TO THE ESCP

6.1. Introduction

Based on the interviews, questionnaires and other materials collected on the European Small Claims Procedure, the partners of the SCAN Consortium propose the following “Ten-point introductory guide on the ESCP” to increase awareness, facilitate the access and encourage the use of the ESCP.

This Ten-Point Guide summarizes the main characteristics and essential rules of the ESCP. Thence, this short guide on the ESCP could become a useful informative tool for users to have a better understanding of the ESCP.

6.2. Ten-point introductory guide TO the ESCP

1. The European Small Claims Procedure - ESCP (European Regulation No. 861/2007, as amended by the European Regulation 2015/2421) applies to every European Member State, except for Denmark, which is not bound to apply the regulation.

The ESCP is an alternative procedure to the domestic civil procedure applicable in each of the Member States. Therefore, the ESCP is a potential avenue for citizens to resolve cross-border disputes in a short time and with low costs. It is part of the judicial cooperation sector in the European context, as an instrument aiming to establish a uniform procedure for small claims disputes, necessary for the proper working of the EU internal market.

The small claims procedure has significant strengths, such as speed, simplicity, the possibility of employing modern technologies to eliminate the geographical distance between the parties, the enforceability of the decision across different Member States and cost reduction.

2. The ESCP procedure applies to **cross-border civil and commercial disputes of a value not exceeding € 5,000.**

A dispute is “**cross-border**” when at least one of the parties (plaintiff or defendant) has its residence or domicile in an EU Member State different from the one of the competent court. The



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maximum **value** of a dispute to which the regulation is applicable (**€ 5,000**) must be calculated without adding interest, expenses and damages to the value of the claim.

The expression “**civil and commercial matters**” is not defined in the ESCP and cannot be determined by the meaning established in any specific legal system. Instead, it must be given an autonomous meaning derived from the objectives and scheme of the EU legislation. It is generally understood that there is a distinction between civil matters, on one side, and public law matters, on the other; therefore, according to the European Court of Justice, a matter is not to be considered ‘civil or commercial’ when it concerns a dispute between a public authority and a private person when the former is acting in the exercise of a public power (*acta iure imperii*).

However, some disputes cannot be decided under the ESCP regulation. In particular, the disputes concerning the following matters are excluded from the scope of the regulation: status and capacity of natural persons; marriage and family relationships; successions; bankruptcies and other insolvency proceedings; social security; arbitration; labour law; personality rights; leases.

3. The legal procedure established in the ESCP is conducted in **written form**. This ensures the simplification and the celerity of the procedure, with a hearing taking place only exceptionally.

In fact, a **hearing** is set exclusively in the event that the court is unable to issue a judgment based on the written evidence or if the hearing is requested by one of the parties; the parties’ request, however, is subject to the review of the judicial court, which may reject it if the hearing is found to be unnecessary for the purposes of the case.

In the residual cases where it may be necessary or appropriate to carry out the hearing, it is possible to use remote communication technologies such as video conference or teleconference in order to ensure full accessibility to the procedure.

4. The Claim Form has to be sent to the courts of the Member State having **international jurisdiction over the case under EU law. The domestic rules of each Member State will then determine the specific court within its territory with jurisdiction to hear the case.**

The rules to identify the Member States having international jurisdiction are those set out, mainly, in the EU Regulation No. 1215/2012. This means that, in order to establish to which



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court a claim should be sent, it is necessary to establish if the claim arises from a contractual obligation or a non-contractual obligation – such as an obligation arising through the fault or negligence of the defendant which has given rise to loss, injury or damage to the claimant.

Once the Member State with international jurisdiction has been identified, it is necessary to identify the court that has local jurisdiction. Each Member State has indicated the internal court competent to decide the small claims and this is easily found on the European e-Justice portal.

5. The procedure takes place **without establishing the need for the parties to have the assistance of a lawyer**. Thus, the claimant and the defendant could participate in the judgment alone, without a lawyer. The non-mandatory nature of legal assistance entails a significant reduction in the costs that the parties could potentially incur to resolve the dispute.

The information on the ESCP and the practical assistance in fulfilling the forms is to be ensured by the Member States and through the EU e-Justice portal, which contains all the essential information to initiate the procedure.

6. The first step to initiate a small claim procedure is to fill the online version of “**FORM A**”, available in the e-Justice portal. The standard form should be filled in the language of the judge competent to hear the dispute. Forms are drawn up in a clear and easily understandable way, allowing them to be completed without the assistance of a lawyer. The claimant should attach to the Form A any relevant supporting documents and send it to the competent court.

Within 14 days of receiving the application form, the court should serve a copy of it, along with the Answer Form, to the defendant. The defendant has 30 days to reply, by filling the Answer Form (“**Form C**”). The Court must send a copy of any reply to the plaintiff within 14 days of the court receiving it.

Both the Claim Form and the Answer Form must be submitted in the language of the court competent to hear the case, and this also applies to the description of the supporting documents.

7. The ESCP it is a **fast procedure** that usually ends in a few months. In fact, within 30 days of receiving the defendant's answer (if any), the competent court must either issue a judgment on the small claim, request further details in writing from each party, or summon the parties to an



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oral hearing.

8. The cost of lodging the claim is regulated by the domestic law of the competent court. In most of the Member States, the courts charge a fee for accepting a claim under the ESCP and will not process a claim unless and until the fee is paid. This information is available in local websites and through the e-Justice Portal. However, in accordance to Article 15 (a) of the ESCP, court fees must be proportional and not higher than those charged in the context of comparable domestic procedures.

9. On request of one of the parties, the judge, in addition to the judgment, must issue a certificate (**"FORM D"**). The judgment, with this certificate, is recognized and can be executed immediately in any of the Member States without the need for further formalities. The only reason to refuse enforcement, in another Member State, is when that judgment is irreconcilable with another existing judgment between the same parties. Enforcement takes place in accordance with the domestic rules and procedures of the Member State where the execution of the judgment is being sought.

10. The judgment, according to Article 18 of the ESCP, could be **reviewed** by the court where the decision was given in exceptional cases. This is possible either where the outcome of the decision is against the defendant and in favour of the claimant, or where the defendant has initiated a counterclaim, and the court has granted a judgment against the claimant.

The possibility of **appeal** against the judgment depends on the national law of the Member State where the judgment is issued. If there is an appeal available, the same rules applicable to the original proceedings extend to the appeal. The information on whether an appeal is available and, if so, which court is competent, is shown on the e-Justice Portal.

The provisions of Article 10 on legal representation apply to the proceedings for judgment review, but not to all appeal procedures, which are governed by the national law of every Member State, which in some cases may require the assistance of a lawyer.