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Deliverable 4.1

HARMONISED GUIDELINES



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¹ **Types. R:** Document, report (excluding the periodic and final reports); **DEM:** Demonstrator, pilot, prototype, plan designs; **DEC:** Websites, patents filing, press & media actions, videos, etc.; **OTHER:** Software, technical diagram, etc.

² **Dissemination levels. PU:** Public, fully open, e.g. web; **CO:** Confidential, restricted under conditions set out in Model Grant Agreement; **CI:** Classified, information as referred to in Commission Decision 2001/844/EC.



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ACRONYMS AND ABBREVIATIONS

Acronym/Abbreviation	Description
SCAN	Small Claims Analysis Net
ESCP	European Small Claims Procedure
VUB	Vrije Universiteit Brussel
HEC	Hautes Etudes Commerciales de Paris
UNINA	Universita degli Studi di Napoli Federico II
LUISS	Libera Universita Internazionale degli Studi Sociali Guido Carli
COA	Consiglio dell'ordine degli Avvocati Di Roma
UL	Univerza V Ljubljani
VU	Vilniaus Universitetas
UAE	Union des Avocats Europeens
ADICONSUM	Associazione Italiana Difesa Consumatori ed Ambiente

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9	UNION DES AVOCATS EUROPEENS	UAE	LU

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ANNEX

- A) National Report on Policymakers Guidelines
- B) National Report on Guidelines for Judicial Authorities and Users
- C) Harmonised Guidelines translated in the different languages of the SCAN partner countries
- D) Webinars

⁴ **Dissemination levels.** PU: Public, fully open, e.g. web; CO: Confidential, restricted under conditions set out in Model Grant Agreement; CI: Classified, information as referred to in Commission Decision 2001/844/EC.



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1. BACKGROUND TO THE SCAN PROJECT

The SCAN project (Small Claims Analysis Net) was created in order to ensure the efficient implementation of the European Regulation No. 861/2007, as amended by the Regulation 2015/2421, introducing the European Small Claims Procedure (hereinafter ESCP) framework.

The main goal of this Regulation is to safeguard the right to have access to justice for consumers and SMEs in civil and commercial cross-border⁵ small claims (currently up to 5,000 euros) through a more expedited, simplified and cost-efficient procedure.

Despite of this, the ESCP is not widely used which is mainly due to the lack of awareness about the procedure. The main reason for such lack of knowledge refers to the fact that either consumers are rarely introduced to the ESCP mechanism or they are unable to obtain accurate information about this Procedure and seek legal aid in this regard. Although, the ESCP is intended to function as a simplified procedural instrument, however, there are still some issues in using this Procedure such as language, cost related and enforcement obstacles that hamper the effective application of this Regulation. These issues are mainly deriving from the vast diversity in the Member States' national laws and the lack of harmonization in this aspect.

Accordingly, due to these significant issues, the SCAN project aims to analyse the implementation of this Regulation in the Member States as well as disseminating the knowledge of the European Small Claims Procedure among consumers to raise their awareness concerning this procedural tool.

Besides being focused on disseminating information about the ESCP among consumers, this project also evaluates the level of awareness among the practitioners who dealt or deal with the ESCP in some way. These practitioners include lawyers, judges, academics and the experts. The consumer associations (due to their significant role in guiding and supporting consumers in being informed about their rights) about the Small Claims Procedure have been also taken into consideration within this project.

To this end, the SCAN Consortium conducted interviews on the use and application of the ESCP among various categories of Stakeholders, including judges, lawyers, academics and experts who provide legal advice; EU citizens/consumers/entrepreneurs; and representatives of consumer associations.

The interviews provided an opportunity for the interviewed Stakeholders to freely express their views, concerns, and issues related to the ESCP. Thus, based on the data derived from the

⁵ Articles 2 and 3 of the ESCP Regulation No. 861/2007.



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interviews, the SCAN project partners were able to analyse the implementation of this procedural tool.

The data acquired from conducting the interviews enabled the Consortium to identify the best practices for the implementation of the ESCP in the partners' jurisdictions. The primary objective of the Consortium behind determining the best practices was to gather data on the better solutions adopted by the Member States in order to increase the efficiency of the ESCP Regulation, boosting protection of consumers and creditors in low-value cross-border disputes – with a fixed threshold – and address problematic issues that hinder or discourage consumer access to the ESCP. Having identified national best practices from the SCAN Project partners, a database of national guidelines has been created.

At the present stage of the Project, the guidelines identified by the partners at national level are being harmonised, in order to implement two categories of guidelines: one addressed to Policymakers, with the aim of suggesting possible changes to the current legislation; the other addressed to Judicial Authorities and Users, with the aim of allowing greater knowledge of the ESCP and to facilitate and increase its application.

2. EXECUTIVE SUMMARY

This deliverable is the result of the work carried out during conducting the SCAN Project. The formulation of harmonised guidelines is one of the main objectives of the Project.

The questionnaires and interviews completed by the targeted stakeholders, including academics, judges, lawyers, consumers and EU citizens⁶ have allowed us to investigate and understand the major reasons behind the underuse of the European Small Claims Procedure on the one hand and to reflect on the solutions that can allow a greater dissemination and implementation of this Procedure, on the other.

On the basis of the constructive suggestions – for further improvement of the ESCP – that derived from the in-depth interviews, the SCAN Consortium partners have developed a set of guidelines at national level that have been collected and examined in the Deliverable 3.2.

The results achieved in WP2 and WP3 were compared with the views and opinions of the ESCP experts expressed in the series of webinars held by HEC PARIS, LUISS, VU and VUB⁷ as foreseen in WP5 (see Annex D).

⁶ The results of these investigations were reported in the Deliverables 2.2 and 2.3.

⁷ For more information on the webinars please visit: <http://www.scanproject.eu/>



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This deliverable represents the final product of the investigation and research work carried out in the SCAN Project through the steps that have been illustrated. The content of this deliverable has been organised in the following way:

- **Policymakers Guidelines:** this section contains the indications addressed to the Commission with the aim of suggesting changes or additions to be made to the discipline outlined by Regulation No. 861/2007, as amended by Regulation 2015/2421, which could make the ESCP more effective and attractive for potential users;
- **Guidelines for Judicial Authorities and Users:** this chapter includes the indications addressed to judicial authorities and users and intends to explain the Procedure while clarifying the most critical points with the aim of making the ESCP more usable;
- **Ten points on the ESCP:** this final part is an introductory guide explaining the essential features of the ESCP and the step-by-step instructions on how to use this Procedure. This guide will be made publicly available to users on the SCAN Project website at: <http://www.scanproject.eu/>

3. METHODOLOGY

The guidelines proposed in this Deliverable have been developed using the following methodology.

Taking the national guidelines identified by the partners of the SCAN Consortium and collected in Deliverable 3.2 as a starting point, LUISS has drawn the following two forms.

1. Policymakers Guidelines Form

A. About the scope and nature of the ESCP
1) Do you think it might be useful to make further increase of the limit referred to in Article 2(1)?
2) Do you think it might be useful to extend the application of the ESCP to new matters previously excluded from Article 2(2)? If so, which ones? If not, why do you think the scope of applications should not be extended to new matters?
3) In particular, what do you think about extending the procedure to claims for remuneration?
4) Do you think it would be appropriate to make ESCP not an alternative but mandatory mean of resolving intra-EU small claims?



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B. About the Procedure

- 1) Do you think it is appropriate that the Regulation provides that the ESCP should be entrusted to Specialised Sections of the national courts working in coordination with each other?
- 2) Do you think it should be mandatory that in case of a physical hearing, this is done by videoconference? Do you think it is necessary that the Regulation prohibits the Judges from requesting the physical hearing of the parties?
- 3) What do you think about simplification of the forms and making them more user-friendly?
- 4) What are your suggestions as to increase digitalisation and use of electronic means of communication in the course of ESCP proceedings?
- 5) What are your suggestions as to solving translation issues?
- 6) Do you think that the use of the ESCP could be encouraged by the provision of an enforceable privilege for judgments rendered in the procedure?

C. About amendments to the ESCP that would allow for a more uniform application across the EU territory

- 1) Is credit fragmentation allowed in your country? Do you think it is useful to put a limit for the number of times the ESCP can be used for the same claim?
- 2) Article 17 of Regulation No. 861/2007 requires Member States to communicate whether their procedural law provides for the possibility to appeal against a judgment given in the ESCP. Do you think it is appropriate to provide for a rule common to all Member States with regard to the possibility of appeal?
- 3) Article 9 of Regulation (EU) 2015/2421 provides that the court or tribunal shall determine the means of taking evidence, and the extent of the evidence necessary for its judgment, under the rules applicable to the admissibility of evidence. Given the differences between the legal systems of the Member States, do you think it would be appropriate for the Regulation to specify which means of taking evidence are permitted?
- 4) Article 15-a of Regulation (EU) 2015/2421 provides that the court or tribunal shall determine the costs of the procedure. Given the differences between the legal systems of the Member States, do you think it would be appropriate for the Regulation to indicate a reference range to which the Member States must conform to?

D. About the information provided by States pursuant to Article 25

- 1) Do you think that the information provided by States pursuant to Article 25 is appropriate? With regard to:
 - a. the courts or tribunals competent to give a judgment in the European Small Claims Procedure;
 - b. the means of communication accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1);
 - c. the authorities or organisations competent to provide practical assistance in accordance with Article 11;
 - d. the means of electronic service and communication technically available and admissible under their procedural rules in accordance with Article 13(1), (2) and (3), and the means, if any, for expressing acceptance in advance of the use of electronic means as required by Article 13(1) and (2) available under their national law;
 - e. the persons or types of professions, if any, under a legal obligation to accept service of documents or other written communications by electronic means in accordance with Article



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- 13(1) and (2);
- f. the court fees of the European Small Claims Procedure or how they are calculated, as well as the methods of payment accepted for the payment of court fees in accordance with Article 15a;
- g. any appeal available under their procedural law in accordance with Article 17, the time period within which such an appeal is to be lodged, and the court or tribunal with which such an appeal may be lodged;
- h. the procedures for applying for a review as provided for in Article 18 and the competent courts or tribunals for such a review;
- i. the languages they accept pursuant to Article 21a (1);
- j. the authorities competent with respect to enforcement and the authorities competent for the purposes of the application of Article 23.
- 2) Do you think it would be appropriate to restrict the discretion of the Member States in indicating the information pursuant to Article 25? (For example, languages that must necessarily be accepted, compulsory use of electronic means of communication in order to submit the application, etc.).
- 3) Do you think it would be appropriate to encourage the member states to collect and provide transparent data and adequate statistics about the ESCP practice at national courts?

E. About the European e-Justice Portal

- 1) Do you think the wizard offered by the Portal is adequate for the purpose? Do you think it really allows a citizen to bring the legal question independently, without the help of a lawyer?
- 2) If you think it is appropriate to make changes to the wizard offered by the Portal, what advice would you give to the policymakers?

F. Other suggestions

2. Guidelines for Judicial Authorities and Users

Knowledge of the procedure by the competent judicial authorities to apply it.

- Every partner should indicate the current state/degree of knowledge by the competent authorities.
- Every partner should suggest remedies or to indicate instruments to increase the knowledge and the use of the procedure.

Application of the Article 11 of EU Regulation No. 861/2007: organization of help desk and guarantee of assistance for the users.



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- Every partner should indicate the current state of application of Article 11. In particular, we should describe the form of assistance and help for the users.
- Every partner should suggest remedies or should indicate instruments to increase the assistance for the users.

Use of digital means of communication.

- Every partner should describe the digital instruments available to the judicial authorities.
- Every partner should suggest remedies or should indicate instruments to increase the use of digital means of communication.

Cost transparency for the small claims procedure.

- Every partner should describe if the costs of procedure are clear and easily known by users.
- Every partner should suggest remedies or to indicate instruments to guarantee cost transparency.

Criteria for calculating the value of 5,000 Euros provided for in Article 2 of the EU Regulation No. 861/2007.

- Every partner should describe if there are discrepancies between the criteria dictated by the EU regulation for the calculation of the maximum value of small claims (Art. 2 Regulation No. 861/2007) and those dictated by the internal system for the calculation of the value of ordinary cases.

Use of videoconference or resort to physical hearing.

- Every partner should describe if the judicial authorities use the videoconference or still order for a physical hearing.
- Every partner could indicate some suggestions to increase the use of videoconference and to reduce the use of physical hearing.

Concentration of the small claims procedure in only one, or in few, national headquarters.

- Every partner should describe if, according to the internal law, is possible to concentrate the competence to apply the small claims procedure in only one or in few national courts.
- Every partner could indicate the effectiveness of this suggestion.

Connection between ADR/ODR in the small claims procedure.

- Every partner should describe if there is a good connection between ADR/ODR in the small claims procedure and if the internal authorities or the consumer association shall suggest the parties the use of conciliation procedure disciplined by art. 23 bis of EU Regulation No. 861/2007.
- Every partner could indicate some suggestions to improve the use of ADR/ODR in the small



claims procedure.

Use of e-filing and e-evidence

- Every partner should describe if the internal judicial authorities use e-filing and e-evidence in the small claims procedure.
- Every partner could indicate some suggestions to improve the use of this kind of evidence.

Establishment or identification of a translation center

- Every partner should describe if there is a translation centre, or a help desk, that can help users to start the small claims procedure.

Appeal

- Every partner should describe available appeal procedures for the ESCP in the respective member state. Suggestions as to possible improvements are welcomed.

Other suggestions as to improvement of national procedures and practices in relation to the ESCP

- Every partner can present other suggestions as to improvement of national procedures and practices in relation to the ESCP.

Consumer protection legislation and class action

- Every partner should describe if the consumer protection legislation, envisaged by the internal regulations, provides for class action and if this instrument is compatible with the ESCP.

The forms were circulated among the Consortium partners asking them to precisely answer the questions based on the data collected – at national level – from the questionnaires and interviews (as reflected in D2.2 and D2.3 in WP2) and the List of Guidelines (D3.2 in WP3) and highlight any other aspects that have not been included in the previous reports.

The results of the completed and returned forms by all Consortium partners (reproduced in Annex A and B) now converge into this Deliverable document on the Harmonised Guidelines to



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contribute towards the further development of the SCAN project objectives.

3. POLICYMAKERS GUIDELINES

4.1. Introduction

Article 28 of Regulation No. 861/2007, as amended by Regulation 2015/2421, allows for the possibility of reviewing the ESCP by 15 July 2022.

Examination of the questionnaires and interviews submitted to the Stakeholders in the course of the SCAN Project revealed the need to intervene on the current discipline in order to make the ESCP more accessible, easier to use, and more uniform throughout Europe.

With this Deliverable, the SCAN Consortium aims to provide the Commission with a contribution for evaluating the changes or additions to be brought to the existing framework in order to increase and facilitate use of the ESCP by EU consumers and citizens.

For this purpose, and working with the partners involved (UNINA, HEC PARIS, VUB, UL, VU, ADICONSUM), LUISS and the VUB teams have formulated guidelines for Policymakers to present to the Commission.

4.2. Harmonised Policymakers Guidelines

The following guidelines are meant to support policymakers, in particular the EU Commission, in assessing possible changes to the current framework of European Small Claims Procedures. These guidelines consist of two sections, dedicated, respectively, to the proposed amendments to Regulation No. 861/2007 and the suggestions to make the European e-Justice portal more user-friendly.

A. Proposed Amendments to Regulation No. 861/2007

1. Increasing the financial limit of the ESCP's scope referred to in Article 2(1) of the Regulation from EUR 5,000 to EUR 10,000.

Although the results collected during the SCAN Project show that the poor application of the ESCP is not attributable to the currently imposed value limit (EUR 5,000) but to the lack of awareness of the ESCP itself, an increase of the threshold to EUR 10,000 may foster and facilitate the use of the ESCP, especially for small and medium-sized enterprises. Furthermore, the threshold of EUR 10,000 is deemed appropriate, given the growing consumer confidence in the single market, which is increasingly leading them to also make higher value purchases.



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2. Extending the material scope of the Regulation to new areas previously excluded from Article 2(2) of the Regulation, such as property rights and maintenance obligations arising from family relationships, parentage, marriage or relationships producing effects comparable to marriage, wills and successions, administrative claims and the protection of privacy and rights relating to personality.

It should be pointed out that there is no consensus of opinion among the partners of the SCAN Consortium either in terms of the appropriateness of extending the scope of the procedure or regarding the specific areas that would likely need to be included. In the interests of fairness and transparency, it was decided to simply report to the Commission all the matters identified by the SCAN Project partners who considered it appropriate to extend the material range of application of the ESCP.

3. Extending the material scope of the ESCP to compensation disputes relating to cross-border labour relationships.

The increasing work-driven mobility of European citizens in the EU single market requires opening a genuine discussion at the legislative level regarding the possibility of extending the ESCP to claims relating to the employee's compensation, leading to a greater use of the procedure. However, the special nature of employment law disputes, which requires the judge to ascertain the facts of the case in detail and to carefully examine the evidence, must not be overlooked. It is therefore suggested that provision be made for compulsory remote hearings for such matters.

4. The ESCP should be made compulsory for the resolution of cross-border small claims.

Almost all the partners of the SCAN Consortium consider that the success of the ESCP would certainly be improved if Regulation No. 861/2007 becomes the only permissible instrument for the resolution of cross-border small claims within the EU. The experience of a number of states within the United States concerning the introduction of online dispute resolution (ODR) into the judicial system and that of some EU Member States such as Lithuania show that the mandatory nature of a new regulation would make it easier and quicker for users to become familiar with and apply the ESCP.



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5. Reserving the use of ESCP to functionally-specialised sections of domestic courts working in coordination.

Assigning the ESCP to functionally-specialised sections or chambers within domestic courts would improve the training the judges assigned to these sections easier and more effective (the training in all the European States studied in the SCAN Project is very poor) and would enable an EU-wide coordination among the Judges concerned, which would allow a more uniform application of the ESCP throughout the EU. On the other hand, by reducing the number of Judicial Offices potentially involved in the procedure, it would certainly be easier for the States to provide the computer and videoconferencing equipment necessary for the correct running of the ESCP.

6. Amending Article 8 of the Regulation, relating to the way hearings are held, introducing the obligation for national courts to offer the parties the opportunity to participate by teleconference or videoconference.

There is a lack of uniformity between the positions expressed by the partners of the SCAN Consortium with regard to the way hearings are held. Whereas some partners argue that, given that the hallmark of the ESCP is the written form of negotiation, the hearings should be limited to a pre-established mandatory number of cases, other partners maintain that holding actual hearings gives the parties a greater feeling of their involvement in the judicial proceedings, although only through a virtual courtroom. What is shared by all partners, however, is the need for Member States to provide national courts with the teleconferencing or videoconferencing tools required to hold remote hearings.

7. Simplifying the forms attached to the Regulation (A, B, C and D) in order to ensure an easier access to justice through the ESCP.

The SCAN Consortium partners unanimously consider that the forms currently in use for the ESCP (A, B, C and D) do not effectively allow European citizens to use the ESCP without the help of a lawyer. In particular:

- The terminology used in these forms is technical and not easily understandable by citizens with no legal background, starting from the impossibility of easily identifying the “plaintiff” and the “defendant”;
- These forms presuppose the knowledge of legal rules which citizens are normally not



familiar with if they lack legal training, for example the criteria to identify the competent court;

- These forms do not provide the clear information, which is indispensable for presenting the application, for example by indicating the costs of the procedure.

If the objective of the standardised forms attached to the Regulation is to allow citizens to gain access to the ESCP without the assistance of a lawyer, they must be redrafted in a way that includes possible users with no legal training. It is also suggested that this redrafting process is accompanied by an easily readable guide to the complete and intuitive filling of these forms.

8. Within matters pertaining to the ESCP, obliging national courts to accept forms and documents by electronic means and foster the digital handling of the procedure.

The reports made by the Member States under Article 25 of the Regulation show that too many of them still do not allow forms and documents to be presented in digital format, obliging the parties to rely on the postal service and/or hand delivery. This strongly discourages the use of the ESCP and runs counter to the objectives of the procedure, increasing costs and time requirements. Domestic courts and the related offices still seem to suffer a serious lack of adequate IT tools. As a result, if national courts do not adapt to the digital means of communication in use at the present time, the ESCP cannot aspire to greater dissemination and application. One possibility in that direction would therefore be for all Member States to allow the parties to the ESCP to select the means of communication – digital or printed – that they prefer to adopt for the entire procedure and adapt to their choice.

9. Amending the Regulation with regard to the translation of forms and documents. Three solutions are proposed: a) to provide and set up an automatic translation system to be offered by the e-Justice Portal; b) to set up a translation assistance service at EU level to be made available by the European Commission, or to require Member States to offer one; c) to require Member States to include English and French (the two official languages of the EU) among the languages accepted and to provide for the possibility of submitting forms and documents also in one of these two languages and not only in the official language of the seized national court.

The research carried out during the SCAN Project shows that one of the main reasons for the limited use of the ESCP is the difficulty that citizens experience in translating the relevant forms



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and documents into the official language of the seized national court and in understanding a final court decision written in a language other than their own. Once the forms have been completed, the guided procedure provided on the e-Justice Portal provides an automatic translation of the “fixed” parts of the form into all EU languages but leaves the “mobile” parts of the form unchanged. The problem does not arise so much in relation to the data of the parties and the identifying elements of the claim made as in the explanation of the “details of the dispute” (see point 8 of Form A) and the attached basic documents, which must be translated pursuant to Article 6 of the Regulation.

10. Providing for a privileged treatment in the stage of enforcement in relation to the ESCP's [final] decisions in order to ease and speed up their enforcement in all Member States.

It should be pointed out that there is no uniform position within the partners of the SCAN Consortium regarding the possibility of granting a privileged treatment in the stage of enforcement for decisions rendered under the ESCP. Some partners consider that granting such a treatment to decisions handed down under the ESCP is unnecessary or even harmful as it would encourage the misuse of the procedure in relation to preposterous claims. All partners agree, however, that difficulties in enforcing the judgment in another State, as well as regulatory and procedural disparities regarding enforcement among Member States' legal systems are among the main causes of the limited use of the ESCP. Therefore, it is deemed necessary to intervene on this issue, either by imposing a uniform enforcement procedure or by giving the judgment enforceable privilege.

11. Providing clarifications about the eligibility/admissibility of credit fragmentation under the ESCP.

There is no uniformity among the legal systems of the States of the European Union as regards the possibility of fractioning credit through different and multiple legal actions relating to credit rights arising from the same relationship or based on the same constitutive event. The fractioning of claims, which is permitted in some European systems, is prohibited in others. This leads to clear confusion regarding the use of the ESCP in the European Union: is the limit of value in Article 2 paragraph 1 of Regulation No. 861/2007 to be understood as a whole with respect to the claim arising from the same relationship or constitutive event, or is it to be understood as referring to the individual legal action, meaning that fractioning the claim is



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permitted? Clarifications on this point are required.

12. Restricting the possibility to appeal against a final decision rendered under the ESCP.

Ascribing the choice of whether or not to guarantee the possibility to appeal a judgment to the discretion of the Member States leads to unequal treatment and protection, which is clearly contrary to the aims of the ESCP and discourages its use.

13. Clarifying and providing a uniform standard regarding the means of gathering evidence to be considered admissible under the ESCP.

Article 9 of Regulation No. 861/2007, as amended by Regulation 2015/2421, requires national courts to determine the admissibility of the means of gathering evidence and the extent of the necessary evidence in compliance with national rules on the admissibility of evidence.

The lack of uniformity among Member States' legal systems with regard to the admissibility and evaluation of evidence leads to confusion and discourages the use of the ESCP. Harmonising this point would ensure greater transparency and predictability regarding the outcome of the procedure and thus encourage citizens to use it.

14. Establishing fixed court fees equal for all Member States or indicating a reference range to be adopted by all Member States.

The diversity of the Member States' legal systems in relation to court fees is a source of confusion and mistrust among citizens regarding the ESCP. It would be therefore be appropriate for the Commission to also harmonise Article 15a, introduced by Regulation 2015/2421, which currently leaves to national courts to establish court fees in accordance with national laws.

15. In line with the previous points, it is suggested that Member States be requested to review and reformulate the statements made in accordance with Article 25:

- i. calling for a clearer indication of which national courts have jurisdiction and a practical and intuitive guide to help European citizens identify the court to which they should apply;
- ii. requiring that electronic means of communication be accepted in addition to, and as an alternative to, those currently accepted;



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- iii. requiring the precise identification of the authorities and organisations deputed to provide practical assistance under Article 11, providing the relevant contact details so that the parties can get in touch with them easily;
- iv. requiring court fees to be established in accordance with the fixed amount or reference range indicated in the Regulation;
- v. provide for a harmonised appeal procedure applicable to all Member States;
- vi. requiring the inclusion of English and French among the languages accepted.

As already explained, limiting Member States' discretion for the sake of greater harmonisation and uniformity of application of the ESCP across the European Union could be a strong encouragement to use the procedure.

16. Collecting and regularly providing transparent data and adequate statistics on the use of the ESCP in national courts.

Collecting data and statistics on the use of the procedure would allow the Commission to monitor the application of the Procedure, to gain immediate knowledge of the problems that arise and, therefore, intervene to solve them. The data and statistics could be collected in annual reports published on the e-Justice Portal to make them accessible to all.

17. Extending the use of the ESCP to national disputes.

Fostering the dissemination and use of the ESCP also for national disputes would lead to a greater familiarity of citizens and judges with this procedure, which would certainly encourage its wider use also at transnational level.

18. Strengthening the link between the ESCP and alternative or online dispute resolution (ADR, ORD) mechanisms.

Proceedings should be created at institutional level establishing that the execution of the ESCP be either preceded by an attempt to resolve the dispute via ADR/ODR or that it be proposed by the court during the proceedings.

The research carried out by the SCAN Consortium showed although Article 12(3) of the ESCP Regulation No. 861/2007 indicates that the court shall make efforts in encouraging the



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disputants to reach a settlement, however the Regulation does not clearly indicate how the court is supposed to encourage or refer the parties to ADR/ODR – as extrajudicial means of dispute resolution – to settle the incurred dispute. In addition, Article 23a of Regulation 2015/2421 stipulates that a settlement which is approved by [a court] shall be accordingly recognised and enforced in other Member States, provided that such settlement is enforceable in the State where the procedure was conducted. These provisions may reflect the EU Commission's intent about encouraging the use of out-of-court redress mechanisms, namely ADR/ODR within national practices of the ESCP. In spite of this, the Regulation has not provided more clarification on how the courts should exercise the ADR/ODR processes when dealing with the ESCP cases.

The SCAN Consortium partners firmly believe that the link between the ESCP and out-of-court models of dispute resolution, in particular via mandating the pre-trial ADR/ODR for the parties, should be strengthened.

In view of this, the Belgian practice of ADR for small claims at national level – that despite being non-mandatory has provided consumers with inexpensive, expedited, and more efficient means of access to justice for their low-value claims – can be considered as an example with the potential to be integrated into the ESCP proceedings. Belgium was one of the first EU countries to implement the Consumer Alternative Dispute Resolution Directive of 2013⁸ within its national legislation. Accordingly, within the Act of 4 April 2014⁹, in compliance with the ADR Directive, the Belgian legislature established the minimum quality standards for the ADR bodies in the national laws and introduced a list of consumer ombudsman service providers in Belgium.¹⁰ The role of these entities¹¹ is to act as a competent ADR entity in order to deal with consumer disputes across a wide range of sectors from energy to insurance and financial disputes. The principal purpose of this establishment is to promote the use of out-of-court dispute resolution mechanisms for small consumer claims in Belgium and encourage citizens to use it.

Additionally, prior to establishing the general ombudsman services for consumer disputes, the

⁸ 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 (Directive on consumer ADR). See Gina Gioia, 'L'Uniforme Regolamentazione Della Risoluzione Alternativa Delle Controversie Con I Consumatori' (2016) 2 Contratto e impresa/Europa.

⁹ Royal Decree of 10 April 2014 on the entry into force of the Act of 4 April 2014 inserting Book XVI "Alternative dispute resolution for consumer disputes" into the Code of Economic Law.

¹⁰ As of 18 June 2020, 11 ombudsman service providers have been listed in the Belgian Federal Public Service Portal at <<https://economie.fgov.be/en/themes/online/belmed-online-mediation/alternative-dispute-resolution/continue/alternative-settlement-options/ombudsman>> accessed 18 June 2020.

¹¹ 'Consumer Mediation Service' (Consumer Mediation Service, 2020) <<https://consumerombudsman.be/en>> accessed 10 June 2020.



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Federal Public Service Economy (*FPS economie*) of Belgium launched a digital multilingual platform on ADR and ODR called Belmed (the abbreviated form of Belgian Mediation).¹² The Belmed is structured on the basis of two main pillars, namely offering information on ADR and providing ODR services for consumers and traders to settle their disputes more quickly and at a lower cost compared to ordinary judicial proceedings. The key aim of the Belmed is to promote the use of out-of-court redress mechanisms in energy, travel, financial services, second-hand cars, furniture and construction sectors.

The SCAN Consortium strongly believes that the similar establishments of ADR/ODR platforms in all the EU Member States and linking these extrajudicial mechanisms to the ESCP proceedings can greatly promote the efficiency of the cross-border small claims procedures in national courts.

19. A provision should be made for a centralised online platform to be set up to allow Judicial Authorities to share information regarding the ESCP, as well as case files and judgments in order to coordinate and facilitate uniform and harmonised application of the Procedure across the European Union.

B. Remarks to make the European e-Justice Portal more user-friendly

1. Implementing measures making it easier for European citizens to be aware of the services provided by the European e-Justice Portal.

The research carried out during the SCAN Project showed that European citizens are largely unfamiliar with the e-Justice Portal and the services provided by it. For this purpose, it is suggested that targeted advertising be created and disseminated across the EU through the widest spectrum of media such as websites, social networks, and television channels. Additionally, a set of identifying keywords should be employed to index the e-Justice Portal.

2. Making the European e-Justice Portal accessible to EU citizens without the help of a lawyer.

¹²Belmed: Online Mediation | FPS Economy' (*Economie.fgov.be*, 2020) <https://economie.fgov.be/en/themes/online/belmed_online-mediation> accessed 10 June 2020. For more information see Cortés, Pablo, & Cortés, P. (2016). *The New Regulatory Framework for Consumer Dispute Resolution*. Oxford University Press.



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The guided procedure currently offered by the e-Justice Portal implicitly requires knowledge of legal concepts that are unfamiliar to citizens with no legal background. In order to make the guided procedure more user-friendly, it is recommended that:

- Sentences and questions be rephrased using everyday non-legal terms;
- Questions may be answered by identifying the solution from a multiple choice of pre-established answers;
- A mechanism be created to automatically identify the court having jurisdiction over the user's claim on the basis of the data entered by the user relating to the place of residence or domicile of the parties, the type of claim and other relevant information;

Precise instructions and detailed explanations be provided to help the user identify the competent court, including the domestic court which is competent over the user's claim;

- An automatic translation system be provided also for the "mobile" parts of the attached forms and documents;
- Citizens be provided with remote assistance in filling in the forms, whether by phone or chat or by both means.

5. GUIDELINES FOR JUDICIAL AUTHORITIES AND USERS

5.1. Introduction

The examination of the questionnaires and interviews submitted to the Stakeholders in the course of the SCAN Project revealed the need to increase the awareness and knowledge of the ESCP and to disseminate guidelines for the uniform application of the procedure by the competent judicial authorities in each Member State.

With this Deliverable, the SCAN Consortium proposes best practices and suggestions to increase the use of the ESCP; in order to make the procedure more accessible to consumers and users; and to ensure uniform application of the rules contained in the Regulation No. 861/2007.

For this purpose, and working with the partners involved (UNINA, HEC PARIS, VUB, UL, VU, ADICONSUM), LUISS has drafted guidelines for Judicial Authorities and Users to be presented to the Commission.



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5.2. Harmonised guidelines for Judicial Authorities and Users

After examining the responses from the other partners in the SCAN Project, LUISS, working with the partners involved (UNINA, HEC PARIS, VUB, UL, VU, ADICONSUM), proposes the following Guidelines for Judicial Authorities and Users in order to promote the use and an uniform application of the ESCP in the competent courts of the different Member States.

A. Initiatives to promote the awareness, use and knowledge of the European Small Claims Procedure

1. Organising training events for judges, lawyers and consumers, not only specifically about the small claims' procedure created by the ESCP, but also regarding digitisation, the use of electronic means of communication and translation services for different foreign language(s).

The results collected during the SCAN Project clearly indicate that the underutilisation of the ESCP is largely due to the lack of knowledge of the procedure. The judges, lawyers and consumer associations are not well aware of the applicability and scope of the Regulation. Thus, few courts are familiar with the procedure and the parties often prefer to apply domestic law.

2. Inserting the study of the Regulation No. 861/2007 in the curriculum of law schools, in the context of courses on civil procedural law, EU law, consumer rights' protection, private law or commercial law.

Some SCAN Partners consider necessary to introduce the study of the ESCP in the curriculum of law schools. This measure could increase the awareness and knowledge about the ESCP without the additional costs that would be necessary for the organization of a seminar or dissemination event. Moreover, law students themselves (potentially including in this category economic and political science students taking in consumer law or civil procedure) are consumers and potential users of the ESCP, who would thus benefit from the study of the ESCP.

3. Promoting interorganisational workshops and training within the courts competent to apply the ESCP.

Some SCAN Partners suggest that it would be useful to organise seminars and dissemination events on the ESCP not only for users, consumers and lawyers, but also for judges and the



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administrative staff working in the judicial courts competent to apply the ESCP. These events should become part of the ordinary training that is prescribed for lawyers, judges and the administrative staff, and an appropriate number of credits should be assigned for the participation to these events in an equal fashion as other subjects.

4. Serious efforts should be undertaken in the judicial systems of each Member State to promote the digitisation of the communication services in the court(s) competent to apply the Regulation No. 861/2007.

Almost all of the partners of the SCAN Consortium suggest to create an obligation for courts to accept electronic forms and to create the technical infrastructure to ensure that courts have the technological capacity to process them. Each Member State should allocate the necessary resources to the respective courts to efficiently apply the ESCP. This would allow to equip the courts with the technological tools and the specialised staff necessary to execute the ESCP through web-based secured IT platforms and video conferences.

5. The court competent under the ESCP Regulation should ensure the necessary equipment and staff training needed to promote digitisation.

The SCAN Consortium partners consider that the lack of electronic equipment and connection infrastructure in courts represents a significant hindrance for the use of the ESCP. They suggest that the national authorities should take seriously the need to promote a digitisation program of the courtroom to avoid the immense cost and time – consuming process of a physical hearing in small claims litigation. They also suggest modifying the Regulation by establishing a more explicit obligation for courts to make use of electronic instruments.

6. The rules about the e-filing and e-evidence should be harmonised under the ESCP. The judges should be equipped with the necessary tools to accept e-evidence and e-filing (instead of being able to accept only documents and files sent by ordinary post or delivered in person, as it happens in some countries).

The applicable legal rules in each Member State and the experience of the each of the partners of the SCAN Consortium about the use of e-filing and e-evidence differ significantly. In some countries, the courts, despite their reluctance, have to accept e-evidence; in other countries, the use of e-evidence or e-filing is excluded for claims under the ESCP, because the competent court



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does not have the necessary tools.

7. Every Member State should upload the judgments rendered under the ESCP Regulation in a public online portal, to disseminate models of best practices regarding small claims' disputes.

The partners of the SCAN Consortium propose the creation of an online portal making available the judgments applying the ESCP Regulation issued by the courts of every Member State. This portal could facilitate the access by judicial authorities to decisions applying the ESCP, facilitating the access to information regarding potential solutions to procedural and substantive law issues.

8. Creating a specific website to centralize useful information about the ESCP Regulation or to increase the knowledge regarding the European e-Justice Portal.

The research shows that users, consumers and lawyers do not know very well the European e-Justice Portal and still believe that it is not easy to read and to understand it. For this reason, it is proposed to the Commission that the e-Justice Portal should be made more accessible to its users.

B. About the application of the EU Regulation No. 861/2007: assistance to users: transparency of the procedure and role of the judge

1. Ensuring the effective implementation of Article 11 of the ESCP Regulation and providing or increasing (in the countries where there are already forms of assistance for citizens in place) the role of an information desk providing assistance to users.

Even though some of the countries represented in the SCAN Consortium provide for some form of free assistance for citizens under Article 11 of the ESCP, all partners consider necessary to give effective implementation to this Article. The partners, on the one hand, suggest to involve the notaries in the development and implementation of assistance for users, by collecting and processing the requests for justice characterized by the guided use of the forms laid down in the Regulation; and, on the other side, they suggest to set up an interactive and multilingual website to guide users (including judges) step by step and to provide them with an advice service able to answer to general and case-related users' queries.



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2. Increase cost transparency for the small claims procedure through the development of a standard table of costs for each kind of expense and by making available an electronic calculator on the European e-Justice Portal.

Almost all of the partners of the SCAN Consortium consider necessary to provide transparency and easy access to information regarding the ESCP's costs. Despite the publication of the "Court fees concerning European Payment Order Procedure" on the e-Justice Portal, the Portal still lacks the necessary information about the procedural costs of the ESCP cases in Member States.

This ambiguity could be resolved by developing a standard table of costs for all countries and through the creation of an electronic calculator, to be made available throughout the e-Justice Portal, where the claimant could enter the name of the Member State and the amount of the claim and would right away be able to verify the amount of the stamp duty and how it should be paid.

3. Clarifying that the criteria determining the maximum value of small claims under the ESCP Regulation do not include interests, expenses and disbursements, despite the potential provisions of domestic law stating otherwise.

The criteria to determine the maximum value of small claims under the ESCP Regulation are quite different from the criteria provided by the domestic law of many countries. Therefore, it is important to clarify that, despite potential diverging domestic criteria, the value of the claims under the ESCP must be calculated excluding interests, expenses and disbursements.

4. Establishing a specific translation center at the EU level available for all Member States or a common online translation platform shared by all Member States.

Based on the opinion of the partners of the SCAN Consortium, one of the main obstacles to the use of the ESCP is the need to translate both answers to the respective ESCP forms and the evidence presented by the parties. Thus, it is necessary to establish or identify a translation center for the parties. It should also be taken into account that the creation of a translation center in every Member State is too expensive and therefore it would be better to establish only one translation center at the European level for all Member States or a common online translation platform shared by all Member States.



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5. Authorising the parties to provide answers to the ESCP forms and evidence in several languages.

Alternatively, if it is difficult to create a common translation center, the Member States should increase the number of languages accepted to fill the form used to initiate a claim under the ESCP and for filing evidence.

6. Judicial authorities should encourage the use of ADR or ODR in ESCP cases by inviting the parties to use them.

All the partners of SCAN Consortium confirm that there is not any connection between ADR or ODR in the Small Claims Procedure. Despite the intention of the EU Commission in encouraging the courts to make efforts in reaching a settlement between the parties¹³, there is no specific indication of how this settlement should be reached and through what means. Considering the ADR and/or ODR as well-established means of extrajudicial redress mechanisms in order to assist the parties to settle the dispute; integrating ADR/ODR into the process of the ESCP can greatly promote the efficiency of this Procedure. Therefore, the competent courts have an important role to play in encouraging the parties to use ADR/ODR.

Finally, to increase the use of ADR or/and ODR in the ESCP proceedings, the Regulation could provide (as established in Article 91 (1), of the Italian Code of Civil Procedure; and, although with some differences, in England in the Rule 44.3 (4) of Civil Procedure Rules) that if the judge decides to accept the request of one of the parties to an extent not greater than possible conciliation proposal, the judge condemns the party, who has refused the proposal, to pay the cost of the judgment.

C. Further Suggestions

1. Setting a specific and simplified appeal procedure under the ESCP, because the appeal procedures provided by the domestic laws of the Member State are significantly different.

As previously explained in the Policymakers' Guidelines, the decision about the possibility of appealing against an ESC P judgment depends on the availability of this procedure under the

¹³ In accordance with Art. 12 (3) of Regulation No. 861/2007 and Art. 23 of Regulation 2015/2421.



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national laws. Thus, the simplification and specification of the procedural rules of appeal against ESCP judgments are highly recommended.

2. Appointing one or a few national courts as competent to apply the ESCP in each Member State, provided that teleconferencing tools are available, dispensing with the need for the parties to physically go to the court.

As explained in the Policymakers' Guidelines, the partners of the SCAN Consortium suggest to appoint only one or a few national Courts as competent to apply the ESCP Regulation in each Member State, provided that there is a high level of digitisation. For this reason, the partners of SCAN Consortium propose an amendment to the Regulation No. 861/2007 for the entrusting functionally-specialized sections of domestic courts with jurisdiction over the application of the ESCP.

3. Introducing an express provision in the ESCP allowing for class actions.

The consumer protection legislation in each Member State is different. Thus, in some States, the class action can be used as an efficient legislative tool to improve access to justice for consumers in cross-border small claims. In other countries, this possibility is excluded because the competent courts to examine class actions and for judging claims under the ESCP are different; in addition, in some cases, the use of class actions in small claims disputes is hindered by the complexity of the national procedure governing class actions.

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 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;



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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 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.



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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 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



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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.

ANNEX A

NATIONAL REPORT ON POLICYMAKERS GUIDELINES

In this annex we report the answers to the form illustrated in paragraph 3 of the Deliverable 4.1 dedicated to the Methodology that have been formulated by the partners involved (VUB, VU, HEC, LU, ADICONSUM, UNINA).

For an easier reading we have decided to present them in a synoptic table that allows you to compare, one question at a time, the answers given by the various partners.

A. ABOUT THE SCOPE AND NATURE OF THE ESCP

1) Do you think it might be useful to make further increase of the limit referred to in Article 2(1)?

UNINA: We do not think that the increase of the limit of the economic value - established by Article 2(1) - can improve the use of the European Small Claims procedure. Indeed, we observe that - in Italy as well as in other countries of the European Union - the ESCP is an instrument that is not used independently from the economic value of the dispute. That is to say that we do not observe a significant utilization of this procedure even for disputes amounting about € 1000, which would economically justify the starting of a procedure and which are far below the limit value (even considering additional expenses).

At the same time, we think that the lack of diffusion of ESPC is mainly due to the unfamiliarity with this instrument. This is probably also due to the limitation in the use of this instrument only for cross-border disputes, therefore there is no corresponding instrument at the internal level. At the same time, we know that the extension of its scope to the domestic disputes cannot fall within the competence of the EU.

LIUBLJANA: We have found out that the majority of stakeholders has no experience with the Procedure. The reason is not the limit but the fact that especially lawyers prefer national procedure(s) to the Procedure (based on the ESCP Regulation), because they are more familiar with national procedures. Since they have not mentioned us that the limit would be the issue, we suppose that the increase of limit would not make them use the procedure more frequently.

On the other hand, the main reason why consumers do not use the procedure is according to the interviews the lack of awareness about the ESCP possibility. Therefore, it cannot be concluded that the biggest issue is the limit but the lack of information about the procedure. Nevertheless, we believe that the increase of the limit would be useful. Due to the fact that the current value of the litigation is limited to 5000 Euros, the costs (e.g. costs of translations, lawyer) can be (especially in cross-border matters) too high barrier for the creditor to decide to claim repayment of debts.

VILNIUS: Yes, the threshold should be increased up to EUR 10 000 due to the rapid growth in value of provided goods and services for consumers in the EU. This way more claims in civil and commercial matters within the EU would be covered. However, in respect to the most recent developments in Europe and in the world related to the COVID-19 virus and their impact on the global economy and to the fact the standard of living in some of the Member States is lower, the threshold could be set differently in the respective Member States In which EUR 10 000 is not considered a relatively small amount (this suggestion risk increasing unclarity of the proceedings and distorting uniformity).

VUB: Yes. This is highly recommended to increase the fixed threshold within the ESCP Regulation from 5,000 euros to 10,000 euros. This way more claims in civil and commercial matters within the EU will be covered. Specifically, the Small and Medium Enterprises (SMEs) can benefit the most from such increase in the threshold of the claims. The reason behind this recommendation lies within the rapid growth in value of provided goods and services for consumers in the EU. Thus, the existing 5,000 euros threshold is not sufficient to properly contribute towards the aims of the ESCP to be widely used, in particular when it comes to the claims of the SMEs.¹

HEC: Our interviewees did not particularly point out to the need to increase the current limit referred to in Article 2(1). The fact that the ESCP has raised the limit of the claims accepted under the procedure up to the value of 5.000 EUROS has been positively regarded by legal scholars in France.² Nonetheless, further raising the limit in Article 2(1) to 10.000 Euros would indeed facilitate the inclusion of more matters involving small and medium companies in the scope of the ESCP Regulation. That would be also coherent with the organization of the French judiciary, where a ‘tribunal d’instance’ in civil matters has competence to hear

¹ SCAN Deliverable 3.2. on the List of Guidelines, 2019, p. 11.

² E Guinchard, *Réforme législative adoptée pour le règlement RPL et réforme jurisprudentielle à venir pour le règlement IPE?*, RTDEur, avril-juin 2016, p. 436.

domestic claims up to 10.000 Euros.

ADICONSUM: It would be advisable to increase the limit. Indeed, consumer's trust in the EU single market is growing and this leads consumers to make valuable purchases such as buying a car online. The need to have increased the limit under Art. 2 becomes a necessity for enterprises whose transactions are by far significant in terms of value.

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2) Do you think it might be useful to extend the application of the ESCP to new matters previously excluded from Article 2(2)? If so, which ones? If not, why do you think the scope of applications should not be extended to new matters?

UNINA: We think that it is not actually feasible an extension of the scope of application to the matters actually excluded by art 2(2). That also considering the limitation established by art. 81 TFEU.

LIUBLJANA: We believe that new matters would not increase the use of ESCP Regulation dramatically. The main issue of current regulation is the lack of awareness among consumers and not the fact that some matters are excluded from the Regulation.

VILNIUS: Yes, the application of the ESCP might be useful to extend to the following matters (the letter in the brackets refer to the part of Article 2(2):

- (b) rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
- (c) maintenance obligations arising from a family relationship, parentage, marriage or affinity;
- (d) wills and succession, including maintenance obligations arising by reason of death.

VUB: Article 2 of the ESCP Regulation clearly enumerates civil and commercial matters as the only eligible claims to be proceeded through the ESCP. On the contrary, disputes related to administrative issues, revenues, customs, the states' liability for implementing their authority (*acta jure imperii*), disputes deriving from the status or legal capacity of natural persons, family law matters, social security, arbitration, bankruptcy, employment laws, violations of privacy and personality relevant rights are all excluded from the scope of the Regulation. Despite this exclusion, administrative, labour, and revenue-related individual cross-border claims can be also considered as appropriate candidates – due to the need for very quick resolution of these disputes for vulnerable creditors namely labour force - to benefit from a

fast-track and simplified judicial proceeding like the European Small Claims Procedure.

HEC: We believe that the material scope of the ESCP should be extended particularly to claims regarding privacy rights and rights of personality, as well as for employment matters. The extension of the ESCP to cover these matters would facilitate the access of justice to weaker parties. As pointed out by Ontanu, “[a]n extension of the material scope of the ESCP would have been particularly beneficial for weaker parties (e.g. violation of privacy and rights related to personality, or for employees bound by cross-border employment agreements), but no political agreement in this regard could be reached.”³ In addition, it makes sense to extend the Regulation to any matters where it can facilitate the circulation of the judgments – provided subjecting it to the ESCP does not distort the subject matter, as it would do, for instance, in arbitration matters. In the latter case, the parties voluntarily decide to submit their dispute to a non-state court; to submit it to the ESCP would contradict the logic of arbitration.

ADICONSUM: Yes, we support a revision of the scope of the ESCP Regulation but it is worth to say that this extension would request a greater homogeneity of the civil rules amongst member states.

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3) In particular, what do you think about extending the procedure to claims for remuneration?

UNINA: In our opinion, the extension of the scope of application to remuneration could be not really useful. In any case, it should be important to limit this extension only for some employment cases, such as only in monetary cases.

LIUBLJANA: As mentioned above, we believe that extending the procedure to other matters would not make the procedure more frequently used per se. The main focus should be on the dissemination of the ESCP procedure possibility among consumers, to rise their awareness. However, we would like to stress out that we do not see any cogent argument why the Regulation shall not apply to some matters (which are listed in the Article 2 of the Regulation).

VILNIUS: Although the nature of such claim is pecuniary obligation and might be widely used in cross-border dispute, claims regarding remuneration demand a detailed analysis of the facts. Finding of the preconditions which are mandatory in cases for remuneration often

³ Alina Elena Ontanu, *Cross-Border Debt Recovery in the EU* 26 (Intersentia, 2017).

might require oral hearing and expert opinions. Therefore, in our opinion, claims for remuneration shall not be included as an area falling into the scope of the ESCP, at least for now. Once all EU courts provide possibilities for the remote hearings, this issue could be reconsidered.

VUB: Extending the scope of application of the ESCP Regulation to claims for remuneration specially related to labour disputes can be used efficiently for providing the work force (as a vulnerable party vis-a-vis the employer) to benefit from a more expedited, simplified and cost-efficient dispute resolution mechanism, in particular for cross-border individual remuneration cases within the EU.

HEC: We favour the extension of the procedure to claims for remuneration, for the reasons presented in the previous question. The facilitation of access to justice in cross-border employment disputes would be beneficial for weaker parties and would not distort the logic of the subject matter of employment law.

ADICONSUM: A possible extension of the scope should take into account that the majority of citizens starting the ESCP are not well equipped in terms of legal background and are not able to reply to the defendant's rebutter especially if the latter is introduced by a lawyer.

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4) Do you think it would be appropriate to make ESCP not an alternative but mandatory mean of resolving intra-EU small claims?

UNINA: We think that making mandatory the use of the ESCP may lead to a greater awareness of the instrument and, in this way, to a greater use also in comparison with domestic procedures.

LIUBLJANA: It is not entirely clear what would be the benefits of changing it from alternative to mandatory.

VILNIUS: Yes. The practices of other countries, in particular, some states in the USA (e.g. Utah) related to introducing of ODR in the court system show that the mandatory nature of new regulation helps to overcome the transition period in order for the new Regulation to be accepted faster. We believe that if people have an option not to use new regulation it could significantly stall the reception of the new means available. The experience of Lithuania in introducing electronic case management system showed that making new means mandatory helps to make the transition faster and smoother. Therefore, the status as an alternative of the

ESCP should be eliminated.

VUB: Yes, although the European Small Claims Procedure was introduced by the Regulation No. 861/2007 as an optional instrument besides the existing ordinary national procedures for small claims, in Member States, however, this non-obligatory feature is in contrast with one of the most remarkable aims of the Regulation in question to establish a consumer-friendly Procedure that is particularly designed to privilege consumers for their cross-border civil and commercial low-value claims. Therefore, the application of the ESCP should be obligatory to be used by both judiciary systems and creditors. To reach that goal, the EU Commission should reconsider the optional essence of the ESCP in order to mandate the Member States to value this instrument by obligatory use of it in eligible cases of supranational small claims.⁴

HEC: During the study, several practitioners regretted that the success of this procedure depends on the wish of the opponent to cooperate and to participate in the ESCP. Indeed, many practitioners prefer using national procedures than the ESCP. This is an obstacle to the good implementation of the ESCP. This dependence on the will of the parties does not ensure the protection of consumers and most of the times companies could refuse the use of this procedure. We believe that a rule according to which, when applicable, lawyers should use the ESCP or, at least, propose this procedure, could contribute to the development of the ESCP. Another possibility, instead of establishing the ESCP as a mandatory regulation for intra-EU small claims, would be to require the use of the ESCP before using common proceedings.

ADICONSUM: We do not have strong opinion about it, but this could prevent judges from converting the ESCP into an ordinary judicial procedure. It happened some times in Italy before some local courts where there are not enough resources (both financial and human) to fulfil performances generally in charge of the claimant such as the notification of the claim to the defendant or the translations of documents.

B. ABOUT THE PROCEDURE

1) Do you think it is appropriate that the Regulation provides that the ESCP should be

⁴ *Ibid.*, p. 17.

entrusted to Specialised Sections of the national courts working in coordination with each other?

UNINA: In our opinion, the entrustment to Specialised Sections could be a good innovation both to ensure proper preparation by national judges - also on the practical use of the platform -, and to facilitate contact and coordination between competent national judges.

LIUBLJANA: Due to the fact there are only few cases in Slovenia a year, it is questionable whether it would be appropriate to form specialised section for ESCP only. More important would be to train judges about the ESCP than forming new specialised section.

VILNIUS: Yes. ESCP differs from ordinary national procedure, therefore, it seems appropriate that the court officials who handle it would be trained respectively and would share know-how among themselves.

VUB: Yes. Indeed, one of the essential elements in improving the efficiency of the ESCP can be achieved by centralising the ESCP at specific courts/the court sections at national level. Thus, the Member States should act upon centralising the implementation of the ESCP within their courts. In order to do so, the relevant national authorities must allocate some particular courts within their jurisdiction to handle the ESCP referred cases. The judges in these courts should be specifically trained about this Procedure. Moreover, these court rooms should be fully equipped with digital means of communication to facilitate conducting the necessary hearings through video conferences or teleconferences.⁵ This way not only is time-efficient, but it also prevents from travel costs to be imposed on the disputants. Centralisation will have an immense positive impact on improving the efficiency also convenient and widespread application of this tool.

HEC: As argued in the HEC Guidelines, we suggest that, at the French national level, specialized sections in the different competent courts should be appointed to focus on European disputes. In France, claims are submitted either to the civil courts or to the

⁵ *Ibid.*, pp. 15-16.

commercial courts (which have jurisdiction if the claim concerns traders, commercial companies or finance companies). These courts are based throughout all the territory. Therefore, the ESCP proceedings in France are decentralized. There are competent courts throughout the territory, depending on the domicile of the defendant as it is the case in common procedural law for civil disputes. It might be useful to have a specialized section in these different courts so that the competent judges are familiar with this procedure. There may even be English-speaking judges in these specialized sections so that the forms do not have to be translated into all languages.

ADICONSUM: Indeed, there is no need to entrust specialised section of national courts, but it is necessary to train on the procedure judges and chancellery's staff.

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2) Do you think it should be mandatory that in case of a physical hearing, this is done by video conference? Do you think it is necessary that the Regulation prohibits the Judges from requesting the physical hearing of the parties?

UNINA: In our opinion, the regulation should not prevent the Judges from requesting physical hearing of the parties, but it should be mandatory for the hearing, if requested by the parties, to be done by video conference. In addition, the regulation should specify the exceptional cases where the Judges can request physical hearing, but only in well justified circumstances.

LIUBLJANA: We believe that parties should decide independently whether they prefer video conference to physical hearing. The main problem of mandatory physical hearing is related to expenses and time.

VILNIUS: Yes, in case there is a need of a physical hearing, video conferences should enable litigants, especially in cross-border cases, to attend such hearing thus increasing the accessibility of justice. The latest experience with COVID-19 virus showed that video conference might be the only solution to be able to have oral hearing at all for a long period of time. If videoconferences can be applied in standard national civil cases, it can no doubt be applied in ESCP cases. No, we do not believe in prohibiting physical oral

hearings in ESCP cases and suggest switching to remote-hearings via videoconferences instead. After all there might be issues that a judge feels more comfortable in discussing with the parties. On the other hand, the possibility to speak your complaints to another human being, even if it is done via video conferences, increase the feeling of being heard, access of justice and provide additional relief to the litigant.

VUB: The main objectives of the ESCP Regulation is to simplify and accelerate the fluid of transnational small claims in civil and commercial matters within the EU. This procedure is substantially designed to be conducted completely in a written format which does not necessitate the physical presence of the parties in the court. However, the judge can still order for the physical hearing of disputants at the tribunal, if necessary, upon the discretion of the court.⁶ This provision is in contradiction with one of the major objectives of the Procedure to be conducted in a completely written format.⁷ Therefore, it is recommended for the Commission to immensely narrow down the order for oral hearing only to stipulated cases in the Regulation. Additionally, to prevent the physical hearings, even in necessary cases, the court should be facilitated with digital means of communication such as tele-conference or a videoconference to avoid imposing travel and time costs on disputants. This should be taken into account seriously, as the majority of the ESCP cases are low in value.

HEC: First of all, we believe that the ESCP Regulation should establish an obligation for the Member States to make available the technical means for video conference (or a similar means of communication) to be undertaken by courts, within a certain timeframe. Art. 8 ESCP, in that sense, should be redrafted to establish that Members have an obligation to provide such technical means and to establish as a default rule in the ESCP Regulation that hearings should be undertaken through videoconferences. However, it should remain possible for judges to justify and require in-person physical hearings when that may be necessary under the particular circumstances.

ADICONSUM: The Regulation could provide a list of cases for which a physical hearing

⁶D'Alessandro, Elena, Regolamento 11 luglio 2007 n. 8612 istitutivo di un procedimento europeo per le controversie di modesta entità, *Judicium*, p. 8.

⁷ SCAN (2019) p. 12.

is needed but, in this case, they should in videoconference in order to maintain the low-cost nature of the procedure.

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3) What do you think about simplification of the forms and making them more user-friendly?

UNINA: We consider that the form is sufficiently user-friendly. However, it could be improved an interactive form in which there are explaining windows.

LIUBLJANA: The interviewees have stressed out that in order to make the ESCP more effective the current forms should be simplified. They have mentioned that it would be much easier and user friendly if the forms would contain enclosed instructions how to complete the forms at the end of the document. It would be necessary to solve problems that arise when PDF forms are being completed too (the current forms do not allow customization of data entry space).

VILNIUS: The existing Forms should be re-designed in a more simplified and user-friendly manner that the consumer would be capable of filling them without any necessity for seeking legal aid.

VUB: The ESCP was established to be principally used as a DIY procedure, by consumers even those without any legal knowledge. However, the existing complexities in all the ESCP Forms (A, B, C and D) are still troubling lay citizens while trying to fill in the Forms. Therefore, these Forms should be re-designed in a more simplified and user-friendly manner that the consumer would be capable of filling them without any necessity for seeking legal aid.

One of the major difficulties that consumers face in the Claim Form A, is to identify the competent court for sending their claim. To tackle this issue, it is recommended that, every EU jurisdiction should provide a list of competent courts to deal with cross-border small claims, within their judiciary systems and broadcast it on their national judiciary websites, as well as on the EU e-Justice Portal (in the latter case, available in all the EU official languages). This list should include the necessary details of the competent courts

including names, addresses, phone numbers, e-mails etc. It can be remarkably helpful for consumers to have access to such information – saving them time and energy- by only referring to these websites instead of spending hours on searching the Internet for these details (highly likely in another language). Nevertheless, there are also some other complexities within other sections of the ESCP Forms including lack of enough blank space in Form C (Answer Form) to enter all the required information. Besides, the court fees are rather unclear in the Forms. All these issues should be tackled by altering and improving the proficiency of the Forms. Above all, it is strongly recommended to provide consumers with a comprehensible user guideline (highly recommended to present them with visual instructions) enabling them to simply understand how to correctly fill the form on their own.⁸

HEC: Some best practices have been identified in France. One of them refers to simplified access to forms.

The French official websites refer to the webpage of the EC on which are all the forms, translated in all EU languages. For the French form, it is specified that the request for the institution of legal proceedings can be submitted by post. The Form A, to be fulfilled by the claimants, is composed of 8 steps and is the same for French people than all the other EU citizens. Two official French websites are useful for citizens to use the ESCP: the public service webpage and the Justice webpage.

On the other side, there are issues that can still be improved.

To access the ESCP forms, the citizens must follow the links that refer to the e-Justice portal, then select France, read the guidelines and fulfil the form by following steps. The existing guidelines are still too abstract for non-legal people.

One proposed guideline by HEC refers to the general need for information, particularly for the claimant who needs to follow foreign procedures. A good way to provide practical information could be to share examples of fulfilled forms in French and other languages and to create templates for written-proof submissions (witnesses).

⁸ *Ibid.*, p. 13.

Additionally, judges could contribute to developing of the ESCP by accepting forms and/or proofs that may be badly translated and sending it to the dedicated service in charge of the review of these documents.

ADICONSUM: We agree on the simplification of the forms in terms of terminology since private citizens do not have legal background to such an extent that sometimes they are not able to identify if they are the claimant or the defendant.

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4) What are your suggestions as to increase digitalisation and use of electronic means of communication in the course of ESCP proceedings?

UNINA: In our opinion, it should be considered as mandatory the electronic lodging, the managing and the progress of dispute. It could be interesting combine the study in legal visualization in order to offer a better and easier product for every stakeholder. In particular, an explanation of every single part of the procedure could give a stronger support step by step.

LIUBLJANA: Since not everyone (especially older people) is capable of using electronic means of communication, we believe that both means of communication should be available to the consumers (digital and physical). The users of the proceeding should have the right to choose which way they want to communicate with the court.

VILNIUS: The Member States should dedicate efforts in digitalizing their national courts. A first step could be to make it mandatory to accept the sending of electronic forms. Later on, the courts should be equipped with necessary electronic means of communication such as video conference, teleconference etc. to enable (also encourage) creditors to favour the ESCP over the ordinary national civil proceedings.

Currently information on the ESCP is provided in complicated structure and difficult language on the EU e-Justice portal. It is recommended to modify this part to be more understandable and user-friendly to non-lawyers.

It is also suggested to analyse possibilities to create an online platform for ESCP similar as

the EU consumer ODR platform. One of the options for consideration - upgrade of the current EU consumer ODR platform integrating the ESCP procedures into the same platform in order to save costs, ensure better awareness and higher success rates for both these EU level procedures.

VUB: As there is a serious lack of using digital means of communication in conducting the ESCP proceedings at national courts, it is highly recommended that the Member States should dedicate serious efforts in digitalizing their national courts. Accordingly, the court should be equipped with necessary electronic means of communication such as video conference, teleconference and VoIP facilities to enable (also encourage) creditors to favor the ESCP over the ordinary national civil proceedings. One of the most significant advantages of digitalizing courts is the considerable cost-reduction that is in total conformity with the objectives of adopting the ESCP Regulation.

HEC: As there is no digitalization or automation of ESCP, and as this procedure is underdeveloped, no ADR or ODR systems have been implemented to encourage the use of this procedure in France. The French government didn't create any ADR or ODR in the service of the ESCP. Furthermore, private companies, lawyers and citizen organizations are not familiar with the ESCP and there is no private initiative to support its development in France. A first step could be to make it mandatory to accept the sending of electronic forms.

ADICONSUM: Digitalisation ought to be part of training courses to be provided to judges and the court staff. Moreover, competent courts should be equipped with adequate means for electronic communication. In Italy, for instance, the Justice of Peace, as competent court to deal with the ESCP cases, do not have tools allowing them to hold video conference.

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5) What are your suggestions as to solving translation issues?

UNINA: We consider that free response spaces could be further reduced and replaced by a list of multiple-choice hypotheses. The free compilation could be only residual and, if

necessary, the text should be translated also in English or in another common language chosen by the Member states. In addition, a translation service support could be set up by the translation office already operating in one of the European institutions.

LIUBLJANA: Everyone (each party) should be entitled to lodge the application in his or her national language (EU). The court could request the court of the other member state to prepare the translation of the claim. The costs of the translation would bear the party that loses the case.

VILNIUS: There should be a unified additional language(-s) in all the Member States in which the national courts could alternatively accept the claim and its supporting documents to be submitted in that language. Or there may be English-speaking judges in courts dealing with ESCP so that the forms do not have to be translated into all languages.

Alternatively, the EU Commission could invest and employ more technological advancements in assisting the consumers to use some automatic translation tools (i.e. incorporating these services at the EU e-Justice Portal). This way the consumers won't have to bear the unnecessary costs of translation.

The ECC-Nets entities should be facilitated and equipped with appropriate sources enabling them to assist consumers with some basic translation services.

VUB: In the current implications of the ESCP at EU national courts, the Forms, evidence and other supporting documents to the claim must be rendered into the official language of the court seized. This provision has created some difficulties and complexities in terms of translation costs imposed on consumers, which is in contradiction with one of the main objectives of the ESCP Regulation in establishing a cost-efficient procedure for cross-border small claims. Thus, it is suggested that the Commission deal with the existing translation issues by taking into consideration the following measures:

- Establishing a unified additional language in all the Member States in which the national courts -alternatively- accept the claim and its supporting documents to be submitted in that language.
- The EU Commission should advance the EU Portal by adding more technological

facilities in assisting the consumers to use some automatic translation tools. This way the consumers won't have to bear the unnecessary costs of translation.

The consumer protection centres at national level should be facilitated and equipped with appropriate sources enabling them to assist consumers with some basic translation services.⁹

HEC:

1) **Create a dedicated service for translation** Based on the interviews, one of the main obstacles to the use of the ESCP is the translation of both forms' answers and proofs. French government approach consists in accepting several languages but there are no public services of translation that are dedicated to European litigations. The accepted languages by French government are: French, English, German, Italian, Spanish. The acceptance of several languages by French court supports the use of ESCP by non-French claimant. This best practice should be taken over for future guidelines in other Member states.

Nonetheless, there is no specific assistance for translation in France. The forms are translated in French in the EC webpage, but if the claimant wants to resort to the ESCP with a Croatian defendant, for example, it has to pay for a translator or to translate the content of his claim and the proof by itself. The only indication toward the language that shall be used on the Justice webpage is the following: 'The request must be made in the language of the country of the court seised, using Form A, accompanied by the necessary supporting documents (invoices, estimates in particular).' We suggest to create a translation service for French claimants, within an appointed French court if possible, or at the European center for consumers.

2) **Make it mandatory to translate form in English or French (the two official languages of the EU) to reduce translation's costs.** The best way to avoid problems of translation could be to impose the use of English or French to every ESCP. In such a case, there is no need for high-level translators in every country.

⁹ *Ibid.*, p. 14.

ADICONSUM: The competent court where the defendant is based should be in charge for the translation of the judgement. In this regards It would be advisable to foresee that the judgment is issued in the national language as well as in English.

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6) Do you think that the use of the ESCP could be encouraged by the provision of an enforceable privilege for judgments rendered in the procedure?

UNINA: Privilege could be useful only if enforcement it's easy and cheap in every member Country: without this condition, any right of pre-emption could be not sufficient.

LIUBLJANA: According to the Article 20 of the Regulation 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. Therefore, we believe that there is no need to add the extra provision regarding the enforceability to the existing regulation.

VILNIUS: No. Such privileges might motivate litigants to misuse the ESCP, e.g. to split a claim for a larger sum into separate smaller ones in order to obtain judgements with privileged enforcement and get ahead other creditors.

We believe other measures could be used instead: for example, a discount for a stamp duty, faster procedure, mandatory means of solving disputes.

VUB: Yes, as there are some existing difficulties (i.e. language obstacles, legal complexities, time-consuming enforcement processes) for the creditors to enforce their ESCP judgments in a foreign jurisdiction, they are forced to hire a lawyer for enforcement procedure. Hence, any enforceable privilege (i.e. reducing the time-limits of the ESCP enforcement procedures through fast-track execution processes) for simplifying the enforcement procedure of an ESCP judgment shall be seriously taken into account by the Commission and the national authorities. This way, the creditors will not be in need of hiring lawyers in the country of enforcement which is notably cost and timesaving for consumers.

HEC: As indicated by the interviews undertaken by the different partners in the project, cross-border enforcement of a judgment under the ESCP remains difficult. In the same vein, it has been claimed in the legal scholarship that “[t]he regulatory and procedural diversity among the national systems can lead to an ‘enforcement deficit’ within the internal market.¹⁰ It would be thus important to create an enforceable privilege for judgments rendered under the ESCP to effectively facilitate the circulation of decisions in the EU.

ADICONSUM: Totally agree. The difficulty to enforce the judgement due to the diversity of the procedures applies in each member state make the ESCP a “blunt tool”. A common minimum standard of civil procedure in the European Union for the enforcement of the judgement in another Member States would be desirable.

C. ABOUT AMENDMENTS TO THE ESCP THAT WOULD ALLOW FOR A MORE UNIFORM APPLICATION ACROSS THE EU TERRITORY

1) Is credit fragmentation allowed in your country? Do you think it is useful to put a limit for the number of times the ESCP can be used for the same claim?

UNINA: No, in Italy credit fragmentation is not allowed. It could be not useful to put a limit for the number of times the ESPC can be used for the same claim, because the purpose of credit fragmentation’s prohibition is (even) to avoid excessive and unnecessary fees for the defendant. If in the ESPC legal assistance is not necessary, and there are no legal costs to cover, credit fragmentation could be admitted without limit.

LIUBLJANA: Credit fragmentation is not allowed in Slovenia.

VILNIUS: There is no specific regulation on that, but it is also not clearly forbidden: a claimant chooses the relief he seeks and the grounds of the claim, therefore, a claimant is free to choose whether he wants to initiate one or five cases. However, the claimant is expected to act in good-faith. On the other hand, if the courts notice that several cases could be analysed faster and in a more thorough manner, such cases can be joined into one.

We believe there is no need to limit the number of times the ESCP can be used, after all, if the

¹⁰ Alina Elena Ontanu, *Cross-Border Debt Recovery in the EU* 26 (Intersentia, 2017).

case is fragmented (for example debt is fragmented into several different periods), in theory it is not considered to be "the same claim" because formally the grounds differ. If the ESCP does not provide any means for a claimant to override other creditors, its multiple use of ESCP should not be deemed to be inappropriate.

VUB: No. In case of Belgium, under the Belgian Judicial Code, the court does not admit a case in which the creditor of an ESCP claim has split up the claim to take advantage of the small claims procedure,¹¹ as such a partition is contrary to the general rule of fairness and good faith and it is perceived as an abuse of the process. However, one should note that, in some Member States such as Germany where the possibility of splitting the claim (*Teilklage*)¹² is commonly admitted, the existing doctrine also admits this division in the amount of the ESCP claims.¹³ Although, the possibility of fragmenting the ESCP claim can reduce litigation costs for claimants¹⁴, nevertheless, credit fragmentation for the ESCP claim is not recommended as considering the low threshold of the small claim, it is not worth it to create several cases from them and overburden the courts with very low value claims.

HEC: In principle, we have not identified any obstacle for credit fragmentation under French law. This seems to be a secondary issue not very much discussed in the legal literature. We believe that credit fragmentation should not be, as a matter of principle, legally forbidden. At the same time, judges should have discretion, in particular cases, to judge whether the initiation of the plurality of claims has been abusive.

ADICONSUM: There are no legal provisions about the credit fragmentation. A recent judgment of the Italian Supreme Court (4090/2017) declared that it is permitted under certain conditions.

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2) Article 17 of Regulation No. 861/2007 requires Member States to communicate whether their procedural law provides for the possibility to appeal against a judgment given in the ESCP. Do you think it is appropriate to provide for a rule common to all Member States with regard to the possibility of appeal?

¹¹ Van G M, 'Orders for Payment Under Belgian Law', *Orders for Payment in the European Union* (Kluwer International Law 2001), p. 97.

¹² Trommler, S. *Die Teilklage Im Zivilprozess, Eine Untersuchung Im Lichte Der Prozesstaktik Und Der Verhaltensanforderungen In Prozesskostenhilfe Und Rechtsschutzversicherung* (Publications on procedural law 149, Mohr Siebeck 2018), p. 26.

¹³ Kramer X, 'The Structure of Civil Proceedings and Why it Matters: Exploratory Observations on Future ELI-UNIDROIT European Rules of Civil Procedure' (2014) 19 *Uniform Law Review - Revue de droit uniforme*, p. 226.

¹⁴ Hess B, *Europäisches Zivilprozessrecht: Ein Lehrbuch* (CF Müller GmbH 2010), p. 576.

UNINA: In our opinion, a mandatory common rule regarding the possibility to appeal could increase the use of ESCP. This because it could better guarantee the respect of the principle of the jurisdiction and could reassure the applicants about the possibility of appealing against a negative decision.

LIUBLJANA: In order to ensure better harmonisation, the common rule would be appropriate.

VILNIUS: It is not only appropriate but rather essential to take some measures in harmonizing the rules on appealing from the ESCP decisions across the EU to eradicate the existing lack of consistency.

VUB: Yes. The current inconsistencies among the laws of the Member States (i.e. while German courts accept such an appeal, in contrast under the Belgian jurisdiction the appealing request for the ESCP judgment is generally not admissible) in admitting the appealing from an ESCP judgment is ambiguous and lacks unification. Accordingly, it is highly recommended for the Commission to clearly determine the possibility (or even non-possibility) of appealing from the ESCP judgments, within the Regulation, taking some measures in harmonizing the rules on appealing from the ESCP decisions across the EU to eradicate the existing lack of consistency.¹⁵

HEC: Yes. As pointed out in the proposed HEC guidelines, the appeal follows national procedure law's common rules. It would be important to create a dedicated appeal to the ESCP to ensure the accessibility of the procedure and the harmonization between Member states.

ADICONSUM: Indeed, it's appropriate and fair to give the same possibility to appeal the judgement regardless the State where it is issued in order to avoid possible discriminations and forum shopping.

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3) Article 9 of Regulation 2015/2421 provides that the court or tribunal shall determine the means of taking evidence, and the extent of the evidence necessary for its judgment, under the rules applicable to the admissibility of evidence. Given the differences between the legal systems of the Member States, do you think it would be appropriate for the Regulation to specify which means of taking evidence are permitted?

¹⁵ SCAN (2019), p. 14.

UNINA: We consider that actually art. 9 of Regulation 861/2007 is sufficiently structured. More specific provisions could be restrictive if the latter were to be imperative. E.g. the different evaluation of atypical evidence in the member States.

LIUBLJANA: We believe, it would be appropriate and helpful for the parties to include the list of examples of means of taking evidences in the Regulation, however, the list of examples should not limit parties to only those examples of evidences that are stipulated in the regulation. Parties should have the right to propose other means of evidences that are not listed in the regulation too.

VILNIUS: The rules enabling courts to determine the means of taking evidence is too discretionary and makes the procedure unclear. It is therefore suggested specifying modalities and admissibility of taking the evidences.

VUB: Regarding the various means of taking evidence within the course of ESCP the Regulation does not have any particular indication. For instance, in Belgium, taking evidence in ESCP cases is similar to the ordinary procedures in the Belgian civil courts. Accordingly, the courts generally admit written statement of witnesses or experts in the proceedings, pursuant to Article 961 (1), (2) and (3) of the Belgian Judicial Code. Concerning the ESCP cases, the court accepts the written testimony from the witness. However, for the expert's opinion in a written format, although there is no specific legal prohibition on admission of such evidence, the courts are reluctant to accept the expert's statement in the written format, during the ESCP civil proceedings.¹⁶ This approach towards the accepted means of evidence taking differs from one Member State to another. Therefore, it is necessary for the Regulation 2015/2421 to precisely specify all the admissible means of taking evidence related to the ESCP cases and ensure the maximum harmonisation in this scope of the Procedure.

HEC: Yes. It has been raised during our interviews that the fact that there is no harmonization regarding the admission of evidence creates difficulties for the parties willing to using the ESCP. Art. 9 ESCP provides a too wide discretion for national courts to determine which evidence shall be accepted. The creation of harmonized rules may provide more transparency and predictability regarding the procedure.

ADICONSUM: We are not in favour of a rigidity regarding this matter. The possibility to evaluate if proves provided fit for the purpose should remain a prerogative of the judge.

¹⁶ For more information on the admission of evidence in Belgium see Joe Sepulchre and Frederic Van den Bergh, Obtaining Evidence in Belgium (Internationaal Privaat Recht 2005), pp. 66-76.

4) Article 15-a of Regulation (EU) 2015/2421 provides that the court or tribunal shall determine the costs of the procedure. Given the differences between the legal systems of the Member States, do you think it would be appropriate for the Regulation to indicate a reference range to which the Member States must conform to?

UNINA: In our opinion, establishing a common “cost table” for each kind of expense, with ranges for each one, may be useful for the predictability of expenses.

LIUBLJANA: Since the differences between costs in different countries can be huge, the Regulation should indicate the minimum amount (depending to the value of the claim) to which the winning party would be entitled to regardless national standards.

VILNIUS: The Member States should reduce the procedural costs for the ESCP claims. Moreover, it is recommended to fix the costs. Rules on costs should be clearly established.

VUB: One of the major issues with the ESCP is rooted in the current ambiguity and diverse procedural costs in different Member States. Therefore, it is strongly recommended for the Commission to seriously consider harmonizing the ESCP procedural costs at national level. This aim can be achieved by establishing a fixed-cost reference guide for all the EU Member States on the basis of their GDP per capita. For instance, in Belgium, the ESCP procedural costs are determined at the fixed rate of 50 euros to be covered at the end of the proceedings by the losing party. This method will provide more transparency and prevent situations in which consumers faced challenges due to encountering high and unexpected procedural costs during the course of the Procedure.

HEC: Yes, it would be important to provide more practical information on the costs. The uncertainty about costs creates an obstacle for the successful implementation of the ESCP.

In France, the costs of the procedure may vary a lot depending on the complexity of the dispute, the status of the parties and the need for representation/assistance.

For example, in French civil courts, there are no court costs. However, the court may order the losing party to pay the costs, including the costs of enforcing the decision. The court of first instance may also order the losing party to pay unrecoverable costs, i.e. any representation and assistance costs incurred by the opposing party.

On the other hand, in French commercial court (if there is a professional in the dispute), in

the absence of a hearing, the court costs amount to 17.80 euros (cost of an 'ordonnance sur requête' which is a particular type of decision); whereas in the event of a hearing, the court costs amount to around 67 euros. These amounts do not include other costs, i.e any representation costs, which will be added to them if necessary.

The uncertainty of costs is an obstacle to the access to this procedure for consumers; if the amount expected is very small, a consumer may not use the ESCP to not risk a loss of money in case of failure.

ADICONSUM: We support the provision of a reference range to which the Member States must conform to but we are also in favour of a free of charge procedure in case of low claim value. Indeed, legal fees still represent a deterrent, so it needs to find a right balance between the cost of the procedure and claim value.

D. ABOUT THE INFORMATION PROVIDED BY STATES PURSUANT TO ARTICLE 25

1) Do you think that the information provided by States pursuant to Article 25 is appropriate? With regard to:

- a. the courts or tribunals competent to give a judgment in the European Small Claims Procedure;
- b. the means of communication accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1);
- c. the authorities or organisations competent to provide practical assistance in accordance with Article 11;
- d. the means of electronic service and communication technically available and admissible under their procedural rules in accordance with Article 13(1), (2) and (3), and the means, if any, for expressing acceptance in advance of the use of electronic means as required by Article 13(1) and (2) available under their national law;
- e. the persons or types of professions, if any, under a legal obligation to accept service of documents or other written communications by electronic means in accordance with Article 13(1) and (2);
- f. the court fees of the European Small Claims Procedure or how they are calculated, as well as the methods of payment accepted for the payment of court fees in accordance with Article 15a;
- g. any appeal available under their procedural law in accordance with Article 17, the time period within which such an appeal is to be lodged, and the court or tribunal with which such an appeal may be lodged;
- h. the procedures for applying for a review as provided for in Article 18 and the competent courts or tribunals for such a review;

- i. the languages they accept pursuant to Article 21a(1);
- j. the authorities competent with respect to enforcement and the authorities competent for the purposes of the application of Article 23.

UNINA: In our opinion, the information provided by the States pursuant to Article 25 is appropriate. Nonetheless, it could be important to establish, under lett. c, that it should be communicated not only the authorities or organisations competent, but also the specific list of these authorities or organisations and their contact details. Moreover, this list should be published in EU and national relevant websites.

LIUBLJANA: The aforementioned information (regarding the small claim procedure) should be accessible also from the national court web page and not only from the e-justice portal. Among important information regarding the ESCP, we believe that the info about obtaining the help (for consumers) should be included as well. There are also some other questions that need to be answered. Who is supposed to help potential users of the procedure, who is supposed to answer the questions related to ESCP, what do consumers need to start the procedure, is their claim suitable for ESCP, the estimated costs of the procedure, etc.

VILNIUS: Yes, each Member State has different system related to enforcement, therefore, different rules are acceptable.

VUB:

a. No, as currently the consumers face difficulties in identifying the competent jurisdiction for sending the Claim Form A. Therefore, to tackle this issue, every EU jurisdiction should provide a list of competent courts to deal with cross-border small claims, within their judiciary systems and disseminate it on their national judiciary websites, as well as on the EU e-Justice Portal (in the latter case, available in all the EU official languages). This list should include the necessary details of the competent courts including names, addresses, phone numbers, e-mails etc. It can be remarkably helpful for consumers to have access to such information – saving them time and energy- by only referring to these websites instead of spending hours on searching the Internet for these details (highly likely in another language).

b. No. There is not adequate amount of information for consumers on the accepted means of communication for the ESCP cases. In addition, there is serious lack of using digital means of communication in the course of ESCP proceedings at national courts. Such inadequacy is in contradiction with one of the main objectives of the ESCP Regulation in using technological advancement in order to improve access to more expedited and efficient justice for consumers' small claims. To deal with this issue, Regulation should mandate the Member States to put more serious efforts in digitalizing their national courts. Accordingly, the court should be equipped with necessary electronic means of communication such as videoconference, tele-conference and VoIP facilities to enable (also encourage) creditors to favor the ESCP over the ordinary national civil proceedings. These methods should be communicated to consumers.

c. Considering that the Member States should provide their citizens with free legal aid, through competent national authorities, to assist them with resolving legal complexities they likely face within their proceedings with the ESCP cases, Belgium has been functioned rather satisfactory. The national consumer protection entities such as, ECC-Nets, Test-Achats are very actively involved in assisting consumers with practical information about the ESCP. Nevertheless, these consumer centers are very limited in their human and financial resources to provide consumers with adequate free legal assistance. Thus, it is the responsibility of the Belgian national authorities to facilitate more legal protective measures for consumers in the course of ESCP and provide transparent reports on these initiations.

d. Currently, the justices of the peace that are the competent judicial authority to primarily deal with the ESCP cases in Belgium have lack of sufficient access to the electronic means of communications. For instance, the computers in the court rooms are old and the software is very slow. As a result, sending the claim forms through electronic means of communications (i.e. e-mail) is not an option for the court. This lack of facilities has resulted in considerably high expenses spent on services of document through ordinary courier. Besides, there is not an official instruction for the consumer on the available means of electronic services of documents. The ECC-Net website briefly guides the

consumers to ‘send’ their claim form and supporting documents to the competent court without any clear indication to the method of submitting the claim.¹⁷

e. There is no such specific indication on this matter by the Belgian legislator nor by any competent national authorities. However, consumers may seek advice in this regard through physical or telephone call legal aid from the ECC-Net Belgium.

f. According to the information attained from a justice of the peace in Brussels during the course of an interview, the procedural costs for the ESCP is determined at the fixed fee of 50 euros at the first instance proceedings and fixed amount of 400 euros for the appeal phase, to be covered at the end of the proceedings by the losing party. This method will provide more transparency and prevent situations in which consumers faced challenges due to encountering high and unexpected procedural costs during the course of the Procedure. This information has been inserted within the ECC-Net website and easily accessible for consumers.

g. In Belgium the competent court to deal with appealing against a small claim judgment is the court of first instance¹⁸, with a fixed fee of 400 euros procedural costs, per appeal. In general, it is possible to appeal against the small claim judgment issued by the justice of the peace, in Belgium. However, this possibility has been limited to the claims where the value of the claim is more than 2,000 euros. Accordingly, for the small claim judgments with less than or equal to 2,000 euros, the appealing is not permitted. None of this information regarding appeal nor mechanism against the ESCP judgment, its timeframe, and procedure is available for consumers publicly through competent national authorities and/or the ECC-Net Belgium website.

h. There is an available review mechanism that can be applied in judgments where the value of the claim is not more than 2,000 euros, known as the ‘opposition’ proceeding. Thus, the ESCP rulings that are not eligible for appeal under the Belgian legislation can be reviewed through the opposition proceedings. In Belgium, national courts rarely accept

¹⁷ <https://www.eccbelgium.be/your-rights/courts/european-small-claims-procedure>, last retrieved 25 February 2020.

¹⁸ ‘*Tribunal de première instance*’ in French, the ‘*rechtbank van eerste aanleg*’ in Dutch, and *Gericht erster Instanz* in German.

the review request from the interested party in the ESCP cases as it requires the courts to spend a considerable amount of time to reconsider the case. None of this information regarding the review mechanism for the ESCP judgment and its procedure has been communicated to consumers through competent national authorities and/or the ECC-Net Belgium website.

i. In Belgium, the legislator has specifically indicated within the Belgian Judicial Code that the national courts of the country only accept the ESCP documents in one of the official languages of Belgium, namely French, Dutch and German. However, this information has not been made conveniently accessible for consumers on the official website of the judiciary in Belgium¹⁹, nor on the website of the ECC-Net Belgium. Thus, considering consumers with limited legal knowledge, not being able to investigate into the judicial code, it will be difficult for them to gain information on the official languages of the Belgian courts.

j. In Belgium, the bailiff (*huissier de justice*) and the judges of attachments (whom are competent to decide over the enforcement related matters) are the competent enforcement authorities for the ESCP judgments. Regarding the competent national authority to deal with the suspension of the enforcement of the ESCP judgments, Article 1414 of the Belgian Judicial Code stipulates a general rule as; any judgment – even if it is not enforceable irrespective of appeal or any opposition – shall be open by the court for precautionary measures regarding the judgment, unless otherwise stated by the law. Therefore, the Belgian judicial code recognises the right of the debtor to request for the suspension of the enforcement procedure, however as the interviewed justice of the peace indicated, in practice the courts rarely suspend the enforcement of the judgments. However, there is no specific indication regarding the competent court to deal with the suspension request of the party nor there is any information provided for consumers. Therefore, consumers either have to personally hire a lawyer or receive legal assistance in order to be able to proceed with their suspension request.

¹⁹ <https://www.juridat.be/>, last retrieved on 25 February 2020.

HEC:

a. In France, currently, the main resource is the public service webpage dedicated to professionals, where there is a tool that permits to find the appropriate court office to submit the ESCP's request and depending on the location of the claimant.

Still, many practitioners complain about the difficulties related to that. They claim that one of the main difficulties in implementing ESCP is that they have to check the foreign procedural law, to know which is the competent court, its address and whether one could send an electronic form. Furthermore, it is difficult to foresee the costs of this procedure because it depends on national law as there is no harmonization. Moreover, the necessary information to initiate the proceedings is not easy to find: there is no centralized platform where one could find all these information. The language is an additional difficulty in researching a competent court.

Therefore, it is suggested that more information on the competent courts should be given. A way to do so is to create a European centralized platform.

b. The official website of the French Justice has future plans to implement a tool – which is still not in use – to directly provide information to the citizen depending on whether he wants to submit the request by post (giving the address of the court office..) or directly at the office of the competent court. The webpage also specifies which documents are relevant to join the request.

In any case, many issues still today remain unclear, especially regarding the issue whether an electronic form could be sent (see reply to issue D), 1), a), above)

c. There are no dedicated French institutions in charge of assisting French citizens to apply the ESCP. As the interviews showed, public institutions and consumer associations are not familiar with this procedure. Therefore, in the dedicated web pages, in case a citizen needs any help or a more detailed presentation, the pages refer to the European consumer center.

Pursuant to Article 11 of the Regulation, the parties may request information to fulfill the

forms. In France, several entities could help citizens in doing so.

- Within the office of the courts, and particularly the clerks ('personnel de greffe') who have the competence to handle claims can provide the necessary information on the procedures.

- In public law centers, the staff could also inform citizens about this procedure. These centers have been created in order to help French citizens in exercising their rights throughout the country.

- Lawyers could help French citizens to fulfill the forms or understand the procedure in the standby consulting services provided free of charge by the legal counselling services at a local level. Parties can consult these lawyers in different places throughout the country. These consulting services are part of a general public policy to improve access to justice.

It is highlighted that these entities are common ones and most of them are not aware of the existence of ESCP. To improve the implementation of ESCP it could be more efficient to appoint one entity in charge of assisting French citizens in their procedure.

d. Initially, it is important to clarify "that Service of documents through electronic means can be used, provided the provisions on electronic service are observed" ²⁰, namely, Articles 748-1 to 6 of the Civil Procedure Code.

However, as highlighted in item D, 1, b, above, there is a lack of information easily available to citizens regarding the availability of electronic service. The two French public websites pertinent to the matter (from the Ministry of Justice and the public service website, dedicated to legal practitioners) do not contain clear instructions on that matter.

e. As in the highlighted in the previous answers, this information is not easily available to citizens through the French public webpages relevant for small claims.

f. No. See answer to question C, 4. There is an inherent uncertainty as to the costs of proceedings in France, at least in civil courts.

g. Under French law, "The parties may appeal an ESCP judgment according to the

²⁰ Ontanu, op cit., p. 134

French national opposition procedure, or file for an extraordinary appeal if the judgment is not or is no longer challengeable by appeal with the Court of Appeals (pourvoi en cassation) or a judicial review (recours en revision)."²¹

However, we do not find that this information is easily available to citizens. Furthermore, as previously mentioned, a harmonized rule on the possibility to appeal under the ESCP would be welcome.

h. See answer to question D, 1, a. We claim that there is the need to create a centralized platform providing this kind of information, as the current webpages available in France are not seen as sufficiently addressing the doubts of citizens regarding the ESCP.

i. See answer to D), I, (a), above.

j. The French websites aforementioned do not provide easily accessible information on this topic.

ADICONSUM:

a. Information about the competent court are too general and does not allow to identify the actual court

b. Yes

c. Yes

d. Electronic communications are not foreseen for claim submitted to the Justice of Peace. In tribunal they are possible but for lawyers only.

e. Only lawyers representing their clients can receive electronic communications. No information about communication when the disputants represent themselves before the court.

f. Yes

g. The procedure is only mentioned but not explained in details.

h. The procedure is only mentioned but not explained in details.

²¹ Ontanu, op. cit, 139.

i. Yes

j. Yes

*

2) Do you think it would be appropriate to restrict the discretion of the Member States in indicating the information pursuant to Article 25? (For example, languages that must necessarily be accepted, compulsory use of electronic means of communication in order to submit the application, etc.).

UNINA: In our view, it might be appropriate to improve the precision of the details that Member States have to communicate to the Commission under Article 25

LIUBLJANA: In case, we limit the discretion of the Member States (in aforementioned way) it can be expected that the procedure would be easier to use (for example if several foreign languages are prescribed as obligatory to accept by foreign courts, it means that parties can start the procedure easier, the costs are smaller and the procedure can be more attractive compared to current regulation). However, the restriction of the discretion of Member States can cause problem too (especially for the national courts, which will be required to establish special department for translating ESCP claims into native- operating language of the court(s)). It is also not entirely clear, who would bear translation costs in such case.

VILNIUS: Yes, in order to achieve as high uniformity of the ESCP proceedings state-by-state, the discretion of the Member states shall be reduced (concerning ESCP).

VUB: Yes. The language used in Article 25 of the ESCP Amendment mandates the Member States to provide country reports on their taken measures at national level to facilitate efficient implementation of the ESCP for their citizens. Nonetheless, it is necessary for the Commission to indicate legal guarantees for the countries non-compliance with this very important provision. The stricter approach in this matter can intrigue the national authorities to provide the Commission with more transparent data regarding implementing the ESCP Regulation within their jurisdiction. It is worth mentioning that one of the main obstacles on the way of efficient implication of this

Regulation is leaving making decision over a considerable number of the ESCP matters at the discretion of the Member States. Hence, this excessive discretionary approach should be balanced by the Commission through imposing stricter obligations on the national authorities to enhance the ESCP efficiency.

HEC: Yes. In particular, as previously referred, we claim that the ESCP Regulation should establish the possibility of an appeal against its judgments and clarify which languages are accepted, instead of leaving such matters to be regulated by national jurisdictions.

ADICONSUM: Indication should be provided uniformly.

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3) Do you think it would be appropriate to encourage the member states to collect and provide transparent data and adequate statistics about the ESCP practice at national courts?

UNINA: In our opinion, it could be a useful instrument for the European Commission in order to study the real use and efficiency of this instrument. Nonetheless, the publication of this data could be contrary to several Member States' legal orders.

LIUBLJANA: Collecting such data would be undoubtedly useful for research purposes.

VILNIUS: It is recommended for the Commission to take initiative in monitoring the Member States' taken actions towards the use of ESCP within their jurisdictions.

Member States should be precisely evaluated based on their annual reports concerning their contributions towards providing their citizens with disseminating the knowledge about the ESCP, serving consumers with free legal assistance and language services etc., at all stages of the proceeding.

It is highly recommended that the information provided by countries get published and distributed via the EU e-Justice Portal to identify the best practices in this regard.

VUB: Yes. It is strongly recommended for the Commission to take more serious initiations in monitoring the Member States' taken actions towards valuing the use of ESCP within their jurisdictions. Each Member State should concisely provide the exact

number of ESCP cases dealt with at the national courts clarifying the outcome of the cases from admissibility to enforcement stages.

By the same token, there should be the country evaluation mechanism from the Commission in order to precisely assess the country reports from the Member States comparing their annual reports concerning the level of countries' contributions towards providing their citizens with disseminating the knowledge about the ESCP, serving consumers with free legal assistance and language services etc., at all stages of the proceeding. Such data transparency based on the Member States' actions towards valuing the ESCP promotes the efficiency of applying this tool at domestic level. It is also recommended that the information provided by countries get published and distributed via the EU e-Justice Portal to identify the best practices in this regard.²²

HEC: Yes. The metrics would continuously provide relevant information on the implementation of the ESCP and indicate potential areas of improvement.

ADICONSUM: Yes, because collecting reliable data could allow MS to better monitor how the procedure works and which are the obstacles for a wide use of the procedure.

E. ABOUT THE EUROPEAN E-JUSTICE PORTAL

1) Do you think the wizard offered by the Portal is adequate for the purpose? Do you think it really allows a citizen to bring the legal question independently, without the help of a lawyer?

UNINA: In our opinion, the European e-justice Portal is mainly adequate for people who already know this procedure, even if in general terms, or for people that are familiar with EU law and EU portals. This portal is really useful, and it provides information about the other legal orders but for a citizen is not really easy to find this webpage and to understand all the information about the ESPC.

LIUBLJANA: The e-portal is not well known among citizens. The great majority has not even heard of it. Therefore, it is difficult to answer the question whether the portal enables citizens

²² SCAN (2019), p. 12.

to solve their problem (related to ESCP) independently.

VILNIUS: No, in our opinion, current regulation is not sufficient and not clear enough for a non-lawyer to understand how he should file a claim, what the ESCP is and what is its differences from ordinary proceedings. Therefore, the wizard should be more user-friendly.

VUB: The Wizard of the EU Portal provides some useful information for consumers about the European Small Claims Procedure, interactive and multilingual Forms (A, B, C, and D) to be downloaded free of charge and used by consumers for the ESCP application, communication and enforcement of the issued judgments. However, there are still some necessary information missing from the Wizard that their availability is indeed necessary to assist consumers having more convenient access to justice for their cross-border small claims by using the ESCP.

HEC: The idea of the wizard offered by the portal could be valid to facilitate access to justice or at least to provide initial information relevant for individuals considering initiating a claim. However, we remain sceptical that, at least in many cases, it would allow citizens to bring claims on their own, without the help of lawyers, because of potential complexities involved. Furthermore, we find that the particular wizard of the E-Justice Portal presents several confusing features, which we illustrate below.

ADICONSUM: The portal represents a good tool for a first orientation but the information provided is not so complete to allow a citizen to bring the legal question independently.

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2) If you think it is appropriate to make changes to the wizard offered by the European e-Justice Portal, what advice would you give to the policymakers?

UNINA: In the E-justice portal we can find the information about the ESCP in the drop-down menu on the left and in the consumer box under the heading “Going to Court” (Agire in giudizio) while in the Business box we can find the heading “Monetary claims” (Controversie aventi ad oggetto somme di denaro). For the consumers, an easier access to this instrument should be improved by the definition of a clearest keyword, such as “Claims for Damages” (as it is defined in the EC Infographic for Consumers) or keywords related to the others main use of the ESCP.

Also in its beta version, the E-justice portal it is not really “consumer – friendly”. If we consider a “consumer point of view”, it is not obvious that a non-legal practitioner can define

his own problem as "credito pecuniario", that in the Italian version is already a legal term.

Moreover, it is easy to find the webpages dedicated to ESCP researching "small claims" on the search engine, however if a consumer puts the word that he would usually use when searching the solutions for his problems, such as "damage", he is not immediately redirected to the ESCP page. So, it should be best indexed the word related to this kind of research for connecting to the ESCP webpage.

VILNIUS: Concentrate on the non-lawyer users, possibly involve a target-testing-group of consumers into the development of the wizard.

VUB: It is truly significant to advance the wizard of the EU Portal in order to enable consumers to benefit from more convenient and coherent access to information on the ESCP in the one hand, and to assist the Member States with an efficient implication of the ESCP Regulation within their jurisdictions, on the other. Given that, it is recommended for the Commission to take the following steps in order to improve the efficiency of the EU e-Justice Portal Wizard:

- The EU Commission should invest and employ more technological advancements in assisting the consumers to use some automatic translation tools (i.e. incorporating these services at the EU e-Justice Portal). This way the consumers won't have to bear the unnecessary costs of translation.
- Provide the creditors with appropriate information about the competent enforcing body within their jurisdiction. The name and the precise contact details of the pertinent entity should be advertised in the national judiciary websites of the Member States also at the EU e-Justice Portal.

Annual or Biannual country reports - that have been submitted by each Member States on their measures taken towards improving the efficiency of implanting the ESCP Regulation for their consumers - must get published and distributed via the EU e-Justice Portal to identify the best practices in this area.²³

HEC: We find that several of the instructions of the portal are complex and, sometimes unclear, especially for the layperson. It seems that the drafting of the questions or instructions are sometimes designed specifically for lawyers. For the laypeople, for instance, an initial question such as "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?" sounds a question designed for

²³ *Ibid.*, p. 14.

legal specialists rather than for someone with no legal expertise. Sometimes, the potential answers are also unclear: for instance, for the question “Is your claim for €5000 euro or less?”, the potential answers are “Yes” or “No”. A more pedestrian approach would be to have answers such as “I have a claim for LESS than €5000 euros” and “I have a claim for MORE than €5000 euros”.

A potential solution to this issue would be to create a focal group of consumers trying to answer to these questions and examining how effectively they are able to do it and then adjust and simplify the procedure according to the suggestions of users, until it can be pedestrian enough for those who are not legal specialists.

ADICONSUM: It would be advisable to provide citizen with a step-by-step wizard.

F. OTHER SUGGESTIONS

UNINA:

- According to Art. 24 «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 [...] ». It should be required the opening of information points at consumers’ associations and at Chambers of Commerce based in the major cities of the member States. Moreover, it should be clear that the assistance provided is for free.
- The assistance should be also provided online or through non-territorial services.
- It should be established a network between the Consumers’ associations and the information points in order to facilitate the circulation of information.

A point could be introduced in the new Regulation authorising Member States to apply the ESCP also to domestic disputes, as has been done in the Directive on certain aspects of mediation in civil and commercial matters. In our opinion, this would greatly facilitate the awareness of this instrument.

VILNIUS: To ensure efficient, timely and adequate resolution of disputes, their de-escalation ESCP might be redesigned to integrate pyramid model of dispute resolution where adjudication by judge comes in a last tier. Managing and settling of disputes might undergo first legal advice (narrowing disputable issues, the parties informing themselves about legal rights and their legal position through the use of expert systems and artificial intelligence),

then negotiation and conflict resolution techniques (restorative justice), and after that facilitated negotiation and mediation before applying adjudication by judge. Use of above-mentioned methods and techniques of amicable settlement of disputes in pre-adjudication stage shall not create substantial delay, shall not give substantial rise to costs for the parties, and shall not result in binding decisions if parties do not wish such decisions to be binding.

VUB: In order to enhance the efficiency of the ESCP, there are some further recommendations that their application to the ESCP Regulation can strengthen its effective implication in the EU Member States. These recommendations include:

- Increasing the role of consumer protection centres: These centres have crucial roles in providing consumers with information and free legal aid regarding the availability and the proceedings of the ESCP for consumers on the website in addition to free legal consultancy for consumers concerning the use of this procedure.
- Mandating transparent annual or Biannual country reports: There is a necessity for providing crystal clear statistics regarding the national courts' functions in dealing with ESCP cases in order to provide a more concrete overview about the implementation of this Regulation at national level and to identify the existing weaknesses and strengths in Member States.
- Obliging the Member States to take serious initiatives to simplify the enforcement of the ESCP judgments within their jurisdictions: This way, the creditors won't be in need of hiring lawyers in the country of enforcement which is notably cost and time consuming for consumers. The measures that can greatly help the ESCP creditors to enforce their judgments more effectively include; providing the creditors with appropriate information about the competent enforcing body within their jurisdiction, eradicating/reducing the language obstacles hindering efficient and simplified enforcement of the ESCP judgments through providing some gratuitous basic language services for the ESCP creditors who seek to execute the rulings in their favour.

There should be a strong link between the ESCP with alternative dispute resolution (ADR) and online dispute resolution (ODR): The ADR/ODR must be connected to the practice of the ESCP. Such connection encourages the use of more amicable methods of dispute resolution in cases where the consumer is not able to solve his/her cross-border small claims with the counterparty through the ESCP. So, the judge will be able to encourage the parties to resort to ADR/ODR as an opportunity to settle their dispute either prior or during the proceedings.

Besides, such connection can reduce the overburdened number of cases in national courts.²⁴

HEC: Based on the interviews and this study, the ESCP suffers from a lack of awareness. This is the main obstacle to the implementation of ESCP. Moreover, the EU private international law (Regulation Bruxelles Ibis particularly) protects consumers by allowing them to sue a professional in their country of residence. Therefore, the ESCP could appear useless toward international conflict of jurisdictions and its main added value is the use of forms.

Increase awareness through usual relay points – The ESCP is a good idea but – as is the case for a lot of European procedures – there is a lack of information on its existence and functioning. In France, several public institutions are disseminated throughout the territory to help people understand their rights: ‘centre d’accès au droit’. It could be good relay points to inform French consumers on ESCP.

Increase the awareness thanks to targeted public advertisement – As the ESCP is particularly useful in the case of an international online contract, advertisements could be sent by electronic means on targeted websites (Amazon, eBay...) to reach consumers.

At the European level, create a centralized platform – During the study, several practitioners suggested that a centralized platform could be created and gather all relevant information to initiate the ESCP in a foreign country. The platform could inform about the competent jurisdiction, the form of submission accepted, the address, the language accepted, the costs of the proceedings etc. The European consumer association and/or the European Commission could be in charge of updating information in collaboration with Member states.

²⁴ *Ibid.*

ANNEX B

NATIONAL REPORT ON GUIDELINES FOR JUDICIAL AUTHORITIES AND USERS

In this Annex we report the answers to the form illustrated in paragraph 3 of the Deliverable dedicated to the Methodology that have been formulated by the partners involved (VUB, VU, HEC, LU, ADICONSUM, UNINA).

In this Annex we reported the partners' complete answers to the questions contained in the Form for Guidelines for Judicial Authorities and Users. The synoptic table prepared allows an in-depth examination of the problems identified by each partner in the application of the ESCP. This part contains the suggestions and indications provided by the Partners who represented the starting point for the drafting of the Guidelines for Judicial Authorities and Users.

A. About the knowledge of the procedure by the competent judicial authorities to apply it.

- | |
|--|
| <ul style="list-style-type: none">• Every partner should indicate the current state/degree of knowledge by the competent authorities.• Every partner should suggest remedies or to indicate instruments to increase the knowledge and the use of the procedure. |
|--|

B. About the application of the Article 11 of EU Regulation 2007/861: organization of help desk and guarantee of assistance for the users.

- | |
|---|
| <ul style="list-style-type: none">• Every partner should indicate the current state of application of Article 11. In particular, we should describe the form of assistance and help for the users.• Every partner should suggest remedies or should indicate instruments to increase the assistance for the users. |
|---|

C. On the Use of digital means of communication.

- Every partner should describe the digital instruments available to the judicial authorities.
- Every partner should suggest remedies or should indicate instruments to increase the use of digital means of communication.

D. About the cost transparency for the small claims procedure.

- Every partner should describe if the costs of procedure are clear and easily known by users.
- Every partner should suggest remedies or to indicate instruments to guarantee cost transparency.

E. On the criteria for calculating the value of 5,000 Euros provided for in Article 2 of the EU Regulation 861/2007.

- Every partner should describe if there are discrepancies between the criteria dictated by the EU regulation for the calculation of the maximum value of small claims (art. 2 Regulation No. 861/2007) and those dictated by the internal system for the calculation of the value of ordinary cases.

F. About the use of videoconference or resort to physical hearing.

- Every partner should describe if the judicial authorities use the videoconference or still order for a physical hearing.
- Every partner could indicate some suggestions to increase the use of videoconference and to reduce the use of physical hearing.

G. About the concentration of the small claims procedure in only

one, or in few, national headquarters.

- Every partner should describe if, according to the internal law, is possible to concentrate the competence to apply the small claims procedure in only one or in few national courts.
- Every partner could indicate the effectiveness of this suggestion.

H. On the Connection between ADR/ODR in the small claims procedure.

- Every partner should describe if there is a good connection between ADR/ODR in the small claims procedure and if the internal authorities or the consumer association shall suggest the parties the use of conciliation procedure disciplined by art. 23 bis of EU Regulation No. 861/2007.
- Every partner could indicate some suggestions to improve the use of ADR/ODR in the small claims procedure.

I. About the Use of e-filing and e-evidence

- Every partner should describe if the internal judicial authorities use e-filing and e-evidence in the small claims procedure.
- Every partner could indicate some suggestions to improve the use of this kind of evidence.

J. About the Establishment or identification of a translation center

- Every partner should describe if there is a translation centre, or a help desk, that can help users to start the small claims procedure.

K. Appeal

- Every partner should describe available appeal procedures for the ESCP in the respective member state. Suggestions as to possible improvements are welcomed.

L. Other suggestions as to improvement of national procedures and practices in relation to the ESCP

- Every partner can present other suggestions as to improvement of national procedures and practices in relation to the ESCP.

M. On the Consumer protection legislation and class action

- Every partner should describe if the consumer protection legislation, envisaged by the internal regulations, provides for class action and if this instrument is compatible with the ESCP.

SYNOPTIC TABLE

A. About the knowledge of the procedure by the competent judicial authorities to apply it.

- Every partner should indicate the current state/degree of knowledge by the competent authorities.

UNINA: In our view, the knowledge of the instrument essentially depends on experience and training. On the one hand, the current low level of use of the ESCP does not make it easy for competent authorities to become familiar with it. On the other hand, not many training events on the subject are presently taking place.

LIUBLJANA: According to the interviews we have conducted, it can be observed that judicial authorities know the procedure based on the Regulation. Nevertheless, great majority has not dealt with the procedure in practice yet. As we have found out, consumers as well as lawyers prefer our national (Slovenian) small claims procedure, which they believe works well. From the answers of the interviewees it

can be concluded that stakeholders (not only judges but also lawyers) generally know the Procedure, but they do not have many experiences with it. Therefore, it is understandable that even judges find the ESCP sometimes ambiguous. It has been pointed out, that the Regulation is not entirely clear. Not only consumers but also lawyers find it difficult to define, where the application has to be lodged, in which language they can fulfil the forms, where they can get the help (which is prescribed in the Regulation) in the process of completing the forms. Despite the fact that Regulation stipulates that courts should offer help to the parties regarding the procedure questions, the reality is often different. It happens sometimes that even parties help the court with information, what the court is supposed to do, instead of inversely.

VILNIUS: Competent authorities still have very little knowledge of Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 creating a European small claims procedure (hereinafter - the Regulation)¹. Both judges and attorneys at law, other lawyers or consumer associations are not well aware of the applicability and scope of the Regulation. It is also difficult to find specific cases where the Regulation was applied.

VUB: In Belgium, with respect to the level of knowledge about the European Small Claims Procedure (ESCP), the judiciary staff, in general, do not hold a wide knowledge, despite the importance of this Procedure. Upon receiving the ESCP cases at the national courts, judges react differently. In this context, while some judges have very limited knowledge of this procedure – that may lead to the dismissal of the claim - on the contrary some other judges are thoroughly familiar with this process. In Belgium, the justices of the peace - that under Belgian Judicial Code are the competent authorities to deal with the ESCP cases – which are located

¹ Consolidated online versions of the Regulation with subsequent revisions: <<https://eur-lex.europa.eu/legal-content/LT/TXT/HTML/?uri=CELEX:02007R0861-20170714&from=EN>>, [Interactive], [Accessed on 24/03/2020].

in the vicinity of the two main airports (namely, the Brussels Airport and the Brussels South Charleroi Airport) hold the highest level of expertise in dealing with the small claims procedures. This is mainly due to the many complaints raised by consumers against the airlines services that are referred to these courts. There are also few ESCP cases referred to the justice of the peace that are raised by Small and Medium sized Enterprises (SMEs) which are mostly about the unpaid invoices in the capacity of their business. However, in general, although there are not many courts who are very well familiar with the European Small Claims Procedure in Belgium, nevertheless these courts maintain a high level of expertise in this field.

HEC: Both our interviews and the legal literature on the use of the ESCP Regulation in France indicate that judicial authorities know about the existence and general norms of the ESCP Regulation.² At the same time, the judicial authorities tend to be unsatisfied with different legal and technical difficulties presented by the Regulation.³ In any case, the procedure is not often used in courts, where the national procedure is consistently preferred by the parties themselves. That is probably related to the fact that, in France, the lawyers do not have much familiarity with the procedure.⁴

ADICONSUM: The current degree of knowledge by the competent authorities is not adequate; a relevant number of courts are not well informed about the ESCP and how the procedure works on their side. There are also courts that considers the procedure a burden for their offices since they have to take the responsibility of the notification.

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- Every partner should suggest remedies or to indicate instruments to increase the knowledge and the use of the procedure.

² Alexandra Tosello, La Mise en Œuvre en France de la Procédure Européenne de Règlement des Petits Litiges Transfrontaliers : La perspective française, in *The European Small Claims Procedure and The Philosophy of Small Change* (N. Neuwalh, S. Hammamoun, eds, 2014), 37, 50.

³Id, 50.

⁴A. E. Ontanu, *Cross-Border Debt Recovery in the EU*, p. 165.

UNINA: We sincerely believe that the dissemination of the ESCP among possible potential users, as a tool for small claims settlement, is the best way to foster its use. On the other hand, it is also important to provide training for judges in order to prevent procedural problems which could constitute obstacles to the proper functioning of the procedure.

LIUBLJANA: In Deliverable 3.2. (report with suggestions of Slovenia) we have therefore suggested advanced guidelines for the judges to be prepared.

VILNIUS: In order to promote the knowledge of the Regulation and the possibilities of its application, it is suggested that maximum training be organised for all stakeholders and authorities (judges, consumer protection organisations, attorneys at law, providers of primary legal aid, etc.).

The study programmes of law should also be revised so that the Regulation should at least be presented in the courses of civil procedural law, EU law or consumer rights' protection.

The material about the Regulation should more often and more extensively disseminated in the portals for lawyers and consumer rights' protection, and in the events of consumer rights' protection.

The forms of the Regulation should also be accessible on different online news portals of law and legal education, on the websites of state authorities, including the websites of Lithuanian courts and the National Courts Administration.

ECC offices could also be more active in explaining and communicating information about the opportunities offered by the Regulation.

VUB: In order to increase the level of familiarity with the ESCP, the VUB suggests the judicial authorities to take the necessary initiations and adequately disseminate the relevant information about the ESCP among the court staff including judges and administrative workforce through providing specific inter-

organizational workshops and trainings for them.

HEC: Our main suggestion to increase the knowledge of judicial authorities regarding the ESCP is that specialized sections in the different competent courts should be appointed to focus on European small claim disputes. In France, claims are submitted either to the civil courts or to the commercial courts (which have jurisdiction if the claim concerns traders, commercial companies or finance companies). These courts are based throughout all the territory. Therefore, the ESCP proceedings in France are decentralized. There are competent courts throughout the territory, depending on the domicile of the defendant, as it is the case in common procedural law for civil disputes. It might be useful to have a specialized section in these different courts so that the competent judges are familiar with this procedure. There may even be English-speaking judges in these specialized sections so that the forms do not have to be translated into all languages.

Furthermore, we find that the need to improve the knowledge of judicial authorities about the procedure is connected with the need to inform and simplify the access to justice to citizens regarding the ESCP. The lack of knowledge of judicial authorities, in some degree, is related to the lack of interest or significant application of the ESCP Regulation.

In that sense, we particularly emphasize that our study on the implementation of ESCP showed that there is a need for centralization, at both national and European levels. We particularly suggest that, at the French national level, a dedicated institution to inform, support and translate should be created to provide assistance to parties interested in using the ESCP.

ADICONSUM: It would be desirable to prepare specific training courses for the competent authorities and chancellery's staff, not only in relation to the procedure itself, but also on digitalization, use of electronic means of communication and foreign languages.

B. About the application of the Article 11 of EU Regulation 2007/861: organization of help desk and guarantee of assistance for the users.

- Every partner should indicate the current state of application of Article 11. In particular, we should describe the form of assistance and help for the users.

UNINA: In Italy, Article 11 is currently misapplied.

LIUBLJANA: We believe that the help, which is stipulated in the Article 11 of the EU Regulation 2007/861 is crucial for the effectiveness of the procedure. However, the current help of the courts is ineffective. As we have already stressed out, even judicial authorities are not entirely familiar with the procedure based on the Regulation, they do not know all aspects of the procedure and consequently they cannot offer adequate help. It would be crucial therefore to prepare special educational schemes, which would enable judges as well as other people to know the procedure better.

VILNIUS: Article 11 of the Regulation provides that the Member States shall ensure that the parties can receive practical assistance in filling in the forms, get general information about the application scope of the European small claims procedure as well as general information as to which courts in the relevant Member State are competent to give a judgment under the European small claims procedure. Such assistance is provided free of charge. None of the provisions of this paragraph requires that Member States should provide legal aid or legal consultations consisting of a legal assessment of a specific case. The Member States ensure that, in all the courts where a European small claims procedure may be initiated, it should be possible to get information about the authorities or organisations competent to provide the assistance referred to in paragraph 1 and that such assistance should be available through the relevant national websites.

In the meantime, the legal assistance on the application of the Regulation is one of the primary legal aid activities in Lithuania. Therefore, competent employees of municipalities, consultants of legal clinics should provide the information necessary about the Regulation and in what cases it can be applicable. That does not mean, however, that individuals really get all required information about the opportunities to apply the Regulation in specific cases. Unfortunately, not all courts have the Regulation forms for applicants to fill in on the spot. The websites of courts, including the portal e.teismai (e-courts), do not contain information about the Regulation and its forms. Such forms have not been integrated in the templates available on the E-Service Portal of Lithuanian Courts.

VUB: Currently, the free assistance is available for Belgian citizens. However, the only entities which provide such assistance concerning the small claims to citizens are the consumer protection centres such as the ECC-Net Belgium. Based on the findings of conducted interview by the VUB with the head of the ECC-Net Belgium, Ms. Karen Ghysel emphasized that this association provides consumers with legal advice about the ESCP as an available redress mechanism for resolving their small claims. This service is rendered as a gratuitous assistance for citizens in matters such as informing consumers about their rights, proceeding fees, competent tribunal, applicable laws etc.

HEC: There are no dedicated French institutions in charge of assisting French citizens to apply the ESCP. As the interviews showed, public institutions and consumer associations are not familiar with this procedure. Therefore, in the dedicated web pages of the French Government and the French Justice, in case a citizen needs any help or a more detailed presentation, the pages refer to the European Consumer Center.

ADICONSUM: In Italy, the assistance provided by art. 11 is not adequately ensured at the competent courts. There is no any information desk ensuring assistance to

users. Consumers needing for assistance can turn to ECC Italy while businesses and professionals can turn to the Ministry of Justice.

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Every partner should suggest remedies or should indicate instruments to increase the assistance for the users.

UNINA: assistance for the users.

The assistance for the users could be increased, first, by manoeuvres of economic policy, aimed to give effective implementation of abovementioned Art. 11. Second, notaries could be actively involved in the development and implementation of assistance for the users. Actually, they could collect and process the requests for justice characterised by the guided use of the forms laid down in the Regulation. The capillary distribution of notary offices over the national territory lends itself to the implementation of legal aid that could be offered to the users free of charge, where the consideration of this kind of supply consists in the loyalty of the consumers/customers.

LIUBLJANA: One of the suggested instruments could be creation of the virtual platform that would be able to answer most frequent questions related to the procedure. In our opinion, it would be necessary to organise obligatory seminars for judges too, since it is the only way we can achieve that they get to know the procedure better.

VILNIUS: It is suggested that the approach be adopted that the authorities dealing with the protection of consumer rights should have the Regulation forms and provide information about the application of the Regulation. Article 11 of the Regulation itself could be supplemented with the provision that the forms should be available in the authorities and on their websites.

VUB: Indeed, the current legal aid for consumers in Belgium is not adequate. Thus, the VUB suggests the Belgian judicial system: 1) to take serious initiatives to assist citizens with free legal aid through establishing particular help desks at justices of the peace to guide citizens on the ESCP rules and its national implementation at Belgian courts. 2) to have a strong connection with the consumer protection centres in order to have a mutual collaboration in providing consumers with adequate legal advisory services.⁵ These initiatives will grow the confidence of consumers to use the ESCP for their cross-border small claims.

HEC: Pursuant to Article 11 of the Regulation, the parties may request information to fulfil the forms. In France, several entities could help citizens in doing so.

- Within the office of the courts, particularly the clerks ('personnel de greffe') who have the competence to handle claims, can provide the necessary information on the procedures.

- In public law centers, the staff could also inform citizens about this procedure. These centers have been created in order to help French citizens in exercising their rights throughout the country.

- Lawyers could help French citizens to fulfil the forms or understand the procedure in the standby consulting services provided free of charge by the legal counseling services at a local level. Parties can consult these lawyers in different places throughout the country. These consulting services are part of a general public policy to improve access to justice.

At the same time, it should be highlighted that these entities are common ones and most of them are not aware of the existence of ESCP. To improve the implementation of ESCP it could be more efficient to appoint one entity in charge of assisting French citizens in using the procedure.

ADICONSUM: It would be advisable to set an interactive and multi-language

⁵SCAN Deliverable 3.2. on the List of Guidelines, 2019, p. 11.

website guiding users (including judges) step by step and an advice service able to answer to general and case-related users' queries via email, phone, chat. A collection of case law would be helpful to better identify the scope of the ESCP by non- professional users (citizens and enterprises).

C. On the Use of digital means of communication.

Every partner should describe the digital instruments available to the judicial authorities.

UNINA: From 2014, in Italy judicial authorities manage the litigation procedures through telematics tools (i.e. "processo civile telematico"). Parties upload their defensive deeds in a dedicated telematics dossier, as the judge publishes in it his orders and the minutes of the hearings. Only the judge, the Registry of the Court and the representatives of the parties can access to telematics dossiers.

Unfortunately, these telematics tools ordinarily do not include videoconference for distance hearings. Moreover, the Italian "processo civile telematico" now does not extend to the proceedings before the Court of cassation nor even before the Justices of Peace.

LIUBLJANA: We estimate that the use of digital means of communication is sufficient in Slovenia. Despite the fact that all procedures are not digitalised, we found out through the interviews that the digitalisation is not one of the reasons for not using ESCP in practice. Many procedures in Slovenia are already digitalised and automatized (such as claim enforcement procedure). The Slovene courts' equipment enables videoconferences and teleconferences in case they are needed within the procedure. Therefore, the equipment cannot be blamed as one of the reasons why ESCP is not more often used in Slovenia.

VILNIUS: Lithuania has the Electronic Information System of Courts LITEKO and all persons may submit all procedural documents to courts electronically. That is also

promoted through a 25 per cent discount for the stamp duty when documents are submitted electronically.

The special forms of the Regulation, however, have not been specifically integrated in the LITEKO system. Although that does not prevent from using these forms in a digital manner, in order to increase the awareness and convenience for users, we would suggest that the Regulation forms be integrated in the electronic template trees of the procedural documents used by LITEKO in the future.

VUB: In the course of conducting the interviews by VUB about the available and the extent of using the digital means of communication in the justices of the peace within the ESCP proceedings, one of the main highlighted issues was the insufficient facilities for the electronic means of communications in the Belgian justices of the peace. For instance, in the court room of the interviewed justice of the peace the computers were old, and the electronic system was very slow. These problems negatively affect sending the claim forms through the digital systems (i.e. e-mail) causing very high costs of services of document for the judiciary system as the communications are still conducted traditionally and via courier services.

HEC: As there is no digitalization or automation of ESCP, and as this procedure is underdeveloped, no ADR or ODR systems have been implemented to encourage the use of this procedure in France. The French government and the judiciary didn't create any ADR or ODR in the service of the ESCP.

Furthermore, it is important to clarify "that Service of documents through electronic means can be used, provided the provisions on electronic service are observed"⁶, namely, Articles 748-1 to 6 of the Civil Procedure Code.

In practice, "However, submitting an EOP or ESCP claim by electronic means appears to be technically impossible at the moment."⁷

⁶ Ontanu, op cit., p. 134.

⁷ Ontanu, op. cit., 136.

ADICONSUM: In Italy, competent courts do not have tools allowing Justice of Peace to hold videoconference.

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Every partner should suggest remedies or should indicate instruments to increase the use of digital means of communication.

UNINA: Most simply, each member State (in the specific case, Italy) should allocate the necessary resources to equip all the Courts (in the specific case, the Justices of Peace's offices) with the technology tools and the specialised staff to allow the purview of ESPC through web-based secure IT platforms and videoconferences.

LIUBLJANA: Therefore, the equipment cannot be blamed as one of the reasons why ESCP is not more often used in Slovenia.

VILNIUS: Although that does not prevent from using these forms in a digital manner, in order to increase the awareness and convenience for users, we would suggest that the Regulation forms be integrated in the electronic template trees of the procedural documents used by LITEKO in the future.

VUB: The VUB recommends the judicial system in Belgium to dedicate serious efforts in digitalizing the communications services in the justices of the peace. Therefore, these courts will be able to function increasingly efficient regarding the costs and time of the proceedings that would be in total conformity with the main objectives of the ESCP Regulation in being an expedited and cost-efficient procedure.

HEC: A first step could be to make it mandatory to accept the sending of electronic forms and to create the technical infrastructure to ensure that courts have the technological capacity to process them.

ADICONSUM: Competent courts should be equipped with adequate means for electronic communication.

D. About the cost transparency for the small claims procedure.

Every partner should describe if the costs of procedure are clear and easily known by users.

UNINA: The publication of the “Court fees concerning European Payment Order procedure” on the e-justice portal shows quite clearly the amount that will be paid to start the procedure. However, it is not easy to foresee the costs for the translation – if required-, as well as the costs for the execution.

LIUBLJANA: The cost transparency is one of biggest issues related to the small claims procedure. It is not only difficult to predict what are the expected costs of the procedure but also whether the costs that occur within the procedure will be reimbursed to the winning party. Regarding this ambiguity the Higher court in Ljubljana ruled in the case of VSL sklep Rg 63/2017 (Višje sodišče v Ljubljani, 5.4.2017), that all procedural issues not specifically dealt with in the Regulation shall be governed by national law (in this case Slovenian Contentious Civil Procedure Act should be applied). The fact that the ambiguity of the costs is not only the issue in Slovenia but also at the European level, it is possible to identify from the Case C-554/17 (Rebecka Jonsson v Société du Journal L’Est Républicain). Due to the fact that all the claims in the ESCP are small, the costs are often disproportionate to the claim. Therefore it often happened in the past that the party who succeeded in the procedure did not receive repayment of the costs. Since February 2019, when the judgement in Case C-554/17 (Rebecka Jonsson v Société du Journal L’Est Républicain) was issued, we can expect that costs will not be the problem anymore. The court confirmed (what has not been clear before) that: “the national court remains, theoretically, free to apportion the amount of those costs, provided that the national procedural rules on the apportionment of procedural

costs in small cross-border claims are not less favourable than the procedural rules governing similar situations subject to domestic law and that the procedural requirements relating to the apportionment of those procedural costs do not result in the persons concerned foregoing the use of that European small claims procedure by requiring an applicant, when he has been largely successful, nonetheless to bear his own procedural costs or a substantial portion of those costs.”

VILNIUS: There are no special rules in Lithuania concerning the litigation costs related to the ESCP procedure. In fact it is not easy for the parties to find all information related to litigation costs, for example, what the stamp duty should be. If necessary, the party has to pay the translation costs on its own. The stamp duty can be paid online.

VUB: In Belgium, the procedural costs of the court’s proceedings including the ESCP cases are transparent. The costs for the first instance procedure in justice of the peace is fixed rate of 50 euros per claim, which since the beginning of February 2019, this fee must be paid at the end of the legal proceedings by the losing party. For the appealing procedure – as it is allowed under Belgian judicial code – the procedural cost is 400 euros per appeal. Nonetheless, one should note that there are also some other costs associated with the enforcement procedure of the ESCP judgments regarding the translation expenses. The translation fees (if necessary) are generally paid by the claimant in advance and in case the claimant wins the small claims proceeding, the bailiff – on behalf of the claimant - will claim all these costs from the losing party. In a circumstance where the claimant loses the case, in addition to the proceeding fees s/he has paid, the expenses imposed on the defendant during the course of the ESCP proceeding are also the responsibility of the claimant to be paid for.

HEC: Indeed, it would be important to provide more practical information on the

costs of procedure in France. The uncertainty about costs creates an obstacle for the successful implementation of the ESCP.

In France, the costs of the procedure may vary a lot depending on the complexity of the dispute, the status of the parties and the need for representation/assistance.

For example, in French civil courts, there are no court costs. However, the court may order the losing party to pay the costs, including the costs of enforcing the decision.

The court of first instance may also order the losing party to pay unrecoverable costs, i.e. any representation and assistance costs incurred by the opposing party.

On the other hand, in the French commercial court (if there is a professional in the dispute), in the absence of a hearing, the court costs amount to 17.80 euros (cost of an 'ordonnance sur requête' which is a particular type of decision); whereas in the event of a hearing, the court costs amount to around 67 euros. These amounts do not include other costs, i.e any representation costs, which will be added to them if necessary.

The uncertainty of costs is an obstacle to the access to this procedure for consumers; if the amount expected is very small, a consumer may not use the ESCP to not risk a loss of money in case of failure.

ADICONSUM: Costs of procedure are not clear and easily known by non professional users (citizens and enterprises) since the cost depends on the claim value.

Information about the costs is available on the European e-justice portal, in the section "Court fees concerning small claims procedure" which is not easy to find.

Moreover, in this section, as regards Italy, the costs are not specified but the users are addressed to the national regulations.

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Every partner should suggest remedies or to indicate instruments to guarantee cost transparency.

UNINA: In our opinion, establishing a common "cost table" for each kind of expense,

with ranges for each one, may be useful for the predictability of expenses. Moreover, the cost list for the procedure in each Member State should be available in every help Desk established by Art. 11 of ESCP Regulation, in addition to the publication on the e-justice portal.

LIUBLJANA: *please refer to the previous answers*

VILNIUS: It should be ensured that all relevant information about the stamp duty and other litigation costs should be accessible on EU online portals and that at least references should be available on national websites. It would be advisable to install the electronic calculator where the claimant would enter the Member State and the amount claimed and would right away see the amount of the stamp duty and how it should be paid. It should be considered whether the maximum stamp duty amount payable for the procedure should be defined in the Regulation.

VUB: Despite the cost transparency within the ESCP proceedings at Belgian courts, it is recommended to clearly indicate these costs on the websites of the judiciary and in particular the consumer protection centres in Belgium.

HEC: We believe that the ESCP Regulation should harmonize this matter, establishing a reference range to which the courts of the Member states should conform. This measure would significantly increase the transparency of the procedure.

ADICONSUM: The creation of a summary table for all countries and a tool helping to identify the costs of procedure for each country would be useful; the table should be easily found through a step-by-step searching process.

E. On the criteria for calculating the value of 5,000 Euros provided for in

Article 2 of the EU Regulation 861/2007.

Every partner should describe if there are discrepancies between the criteria dictated by the EU regulation for the calculation of the maximum value of small claims (art. 2 Regulation No. 861/2007) and those dictated by the internal system for the calculation of the value of ordinary cases.

UNINA: According to Article 2 Regulation No. 861/2007, interest, disbursements and expenses must not be computed when calculating the value of the claim. This is a different choice from that made by Italian legislator in Art. 10 of the Civil Procedure Code, where it is established that in order to determine the value of the claim, reference should be made to the interest expired at the time of the application, as well as to previous costs and damages, which are added to the capital.

LIUBLJANA: The criteria for calculating the value of 5000 EUR are very vague. We believe that vague criteria for calculating the value of 5000 EUR are not problematic. The claimant's duty is to specify the claim otherwise the opposing party can challenge the claim. Since there are not specific criteria in the Regulation, the Slovenian legislation applies. Bigger problem than criteria for calculating the value of the claim present the provided forms in the Procedure that are not entirely clear. Judges stressed out that the forms are often only partly filled in foreign language and the court's invitation to supplement the forms is frequently required. The problem of the provided forms is also the fact that the value of the matter at issue cannot be clearly observed from the form and consequently the court fees can be imposed wrong.

VILNIUS: The amount of claims in Lithuania is calculated very similarly as defined in the Regulation. In accordance with the Code of Civil Procedure, the amount of claim in Lithuania is inclusive of the default interest claimed, i.e. according to the whole amount to be recovered. Litigation costs are not included in the amount of claim. Where fixed-term amounts are claimed, the amount of claim is calculated

according to the total amount of payments but not more than for three years. Where a claim consists of several independent claims, the amount of claim means the sum of all claims.

VUB: Regarding the calculation of the 5,000 euros as the threshold value of the ESCP cases, it is necessary to clarify what is exactly meant by the term 'value' in the context of the small claims. Against the backdrop of the Regulation, the value can be defined as either sum of money, the delivery of a certain quantity of fungible goods⁸ or the delivery of a certain movable item⁹ whose value does not exceed the ESCP threshold. The value of the claim is assessed based on the date which the court seized receives the claim form.¹⁰ Having said that, according to the Belgian Judicial Code, the value of the claim is assessed based upon the day prior to submitting the application to the competent court.¹¹ In addition, as stipulated in Article 2 of the ESCP Regulation, to determine the value of a claim; the interest, fees and expenses are not calculated.¹² In this context, Article 557 of the Judicial Code of Belgium has a similar approach - to Article 2 of the ESCP Regulation - and excludes the judicial interests and other costs at the time of calculating the value of the small claims.

HEC: Yes, the criteria determining the maximum value of small claims is different in French law in comparison with the ESCP Regulation. While the ESCP Regulation, in its last amendment, established the limit of 5.000 EUROS, under French Law, the maximum limit for a small claim is 10.000 EUROS. Since 1 January 2020, the French tribunal de grande instance and the tribunal d'instance merged into a single

⁸ Fungible goods are defined as 'the type of goods or materials that interchangeably can be used for commercial purposes and whose properties are fundamentally identical'. See US Legal, I. (2019). Fungible Goods or Materials Law and Legal Definition | USLegal, Inc., from <https://definitions.uslegal.com/f/fungible-goods-or-materials/> accessed 13 March 2020.

⁹ Movable goods such as machinery, equipment, books, utensils etc.

¹⁰ E. Kramer X, 'The European Small Claims Procedure: Striking The Balance Between Simplicity And Fairness In European Litigation' (2008) 2 Zeitschrift für Europäisches Privatrecht, p. 361 <<https://ssrn.com/abstract=1129746>> accessed 13 March 2020.

¹¹ Article 562, Belgian Judicial Code (*Code judiciaire/Gerechtelijk Wetboek*)

¹² Kramer X, 'A Major Step In The Harmonization Of Procedural Law In Europe: The European Small Claims Procedure Accomplishments, New Features And Some Fundamental Questions Of European Harmonization' [2007] SSRN Electronic Journal, p. 6 <<https://ssrn.com/abstract=1314727>> accessed 13 March 2020.

tribunal, the Tribunal Judiciaire. Under the framework of the Tribunal Judiciaire, there is a special judge ("Juge des contentieux de la protection") designated to rule on the matters for which the Tribunal d'Instance was previously competent to hear, including small claim disputes.

ADICONSUM: The criteria established by the EU regulation about the ESCP expressly state that the value of the claim doesn't include interest, expenses and disbursements; internal law, instead, refers only in general to the value of the claim and expressly mentions interest and expenses as regards multiple claims in the same process.

F. About the use of videoconference or resort to physical hearing.

Every partner should describe if the judicial authorities use the videoconference or still order for a physical hearing.

UNINA: Despite the use of videoconference is encouraged in Italy since Regulation CE 1206/2001, it is not widely used. There is only one example of the regulation of videoconferencing and it is that of the Court of Vicenza from December 2019. Some issues may include the respect of: the consent of the parties, which must always exist, the identification of the parties, made difficult by the presence of the PC screen and internet connection and the signature of the parties, if they actually reach the agreement. The solution of Vicenza are: the consent is expressed through the petition formulated by all parties; identification passes through the clerk's office staff located in the data rooms located throughout the territory; the authentication of signatures is allowed by the telematic practice, as already happens now through the console.

Moreover, a big problem is the lack of devices and connection infrastructure in the courts.

Finally, another problem could be that the connection with a party should be made

at a lawyer's office or in the presence of a lawyer.

LIUBLJANA: The great majority of Slovenian judges still prefer physical hearing over videoconference. Nevertheless, the equipment of the courts enables videoconferences in case they are needed within the procedure.

VILNIUS: In Lithuania, videoconferencing can be used for civil cases that fall into the scope of the Regulation. However, there is no statistics in fact as to how often that is resorted to. Before the COVID-19 crisis, video conferences were more often used in criminal cases than in civil cases. The restrictions imposed on the movement of persons in order to fight the coronavirus pandemic, encouraged Lithuanian courts to resort to videoconferencing for oral hearings more often. For this purpose, the technical infrastructure of courts is being adapted and organisational changes are being made. Such possibilities are allowed under effective procedural laws. It is suggested that such court hearing practice be also applied to small claims procedure in the future.

VUB: In the context of the ESCP cases, pursuant to Recital 13 and Article 8 of the ESCP Regulation 2015/2421, the claimant can ask for holding the hearing through the videoconference or teleconference subject to their availability in national courts (similar to other civil proceedings). Currently, in Belgium, there is a possibility of using the videoconferences in the court sessions as an alternative to the physical hearings for the judicial purposes. Nevertheless, this facility has been merely limited to the use in criminal court proceedings. For civil cases, there is not any transparent record of the use of technological means of communication such as videoconference or teleconference for any cross-border small claim procedure. Thus, the courts sessions related to the ESCP cases are generally held during the physical hearing which is time consuming and imposes travel costs on both the claimant and defendant, especially the consumer party.¹³

¹³ SCAN (2019), pp. 15-16.

HEC: Videoconferences are possible in French courts, but often may not be available due to technical and economic limitations of the courts. According to Ontanu, “With Regulation 2015/2421, the French Government favoured an approach that gives the judge the possibility of appreciating whether a hearing is necessary. Furthermore, French authorities backed an optional use of videoconferencing for hearings and the taking of evidence. This was due to technical and economic constraints a compulsory provision would involve considering the high number of domestic competent courts (over 400) and the limited number of annual claims.”¹⁴

ADICONSUM: Unfortunately, the courts competent for such a procedure (Justice of Peace) in Italy are not equipped to hold videoconference so they have to order a physical hearing when needed.

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Every partner could indicate some suggestions to increase the use of videoconference and to reduce the use of physical hearing.

UNINA: It has to be mandatory unless there is a proven need attested by the court.

LIUBLJANA: *please refer to the previous answers*

VILNIUS: The Regulation should establish a more explicit obligation for courts to use electronic instruments. Amendments could also be made in Article 9 of the Regulation, which reads that “The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. <...> The court or tribunal shall use the simplest and least burdensome method of taking evidence.” Instead of the words “the simplest and least burdensome”, the electronic taking of evidence should be defined more precisely.

¹⁴ Ontanu, op. cit., p. 133.

VUB: The VUB suggests the Belgian competent national authorities to take serious initiations in digitalising the court rooms to avoid the immense cost and time-consuming physical hearings for small claims. These steps can be taken in providing the digital equipment to the justices of the peace, which have the most ESCP referred cases (i.e. the courts in the vicinity of the Airports) enabling these courts to hold e-hearings.

HEC: We believe that the ESCP Regulation should establish an obligation for the Member States to make available the technical means for video conference (or a similar means of communication) to be undertaken by courts, within a certain timeframe. Art. 8 ESCP, in that sense, should be redrafted to establish that Members have an obligation to provide such technical means and to establish as a default rule in the ESCP Regulation that hearings should be undertaken through videoconferences. However, it should remain possible for judges to justify and require in-person physical hearings when that may be necessary under the particular circumstances.

ADICONSUM: Competent courts should be digitalized in terms of device availability and staff education.

G. About the concentration of the small claims procedure in only one, or in few, national headquarters.

Every partner should describe if, according to the internal law, is possible to concentrate the competence to apply the small claims procedure in only one or in few national courts.

UNINA: According to domestic law, there are not obstacles to concentrating competence only in some national Courts. The Italian legislature has already provided for this measure in reference to judiciary sections specialized in industrial

and intellectual property (Tribunals of the Entrepreneurs).

LIUBLJANA: In Slovenia there are several courts that are competent to deal with the ESCP. However, we believe it would be better to have only one competent court to deal with the ESCP, since it would enable the court to be more specialized and to know the procedure better. It would enable also parties to acquire better information service about the procedure.

VILNIUS: General rules of jurisdiction apply in Lithuania and it is not possible to submit a claim to one specific district court. In that was required or suggested in the Regulation, there should not be any major obstacles in Lithuania to decide which district court would be responsible for the cases under the ESCP procedure. That would probably add more clarity for claimants to which court they may apply in a specific Member State. We do not see any other major practical advantages.

VUB: With respect to the centralisation of the ESCP cases to be dealt with in some particular national courts in Belgium, there is no specific legislative indication, nor any adequate information provided for consumers in this regard. However, from the practical point of view, there are several regional justices of the peace in Belgium – i.e. the branches in the vicinity of the two main national airports – that generally deal with the ESCP cases. Nonetheless, it should be noted that to refer a small claim case to a national court in Belgium, the general rules on the territorial competency are strictly applicable. Therefore, not every ESCP case is referred to these highly knowledgeable – on the ESCP - justices of the peace that means currently the Belgian judiciary system does not follow any specific centralisation concerning the ESCP cases.

HEC: In France, claims are submitted either to the civil courts or to the commercial courts (which have jurisdiction if the claim concerns traders, commercial companies or finance companies). These courts are based throughout all the

territory. Therefore, the ESCP proceedings in France are decentralized. There are competent courts throughout the territory, depending on the domicile of the defendant as it is the case in common procedural law for civil disputes. It might be indeed useful to have a specialized section in these different courts so that the competent judges are familiar with this procedure. There may even be English-speaking judges in these specialized sections so that the forms do not have to be translated into all languages.

ADICONSUM: According to the internal law it seems not possible to concentrate the competence in only one or few national courts since the jurisdiction is linked to geographical aspects (e.g. consumer's domicile in case of consumer contracts).

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Every partner could indicate the effectiveness of this suggestion.

UNINA: This suggestion can be effective only if telematics tools, which prevent the parties from physically going to Court, are introduced. Otherwise, the concentration could discourage the use of the procedure because many citizens may be far away from the competent Court.

LIUBLJANA: *please refer to the previous answers*

VILNIUS: That would probably add more clarity for claimants to which court they may apply in a specific Member State. We do not see any other major practical advantages.

VUB: It is highly recommended for the Belgian national authorities to confer exclusive jurisdiction to some particular justices of the peace to deal with the ESCP referred cases. The judges in these courts should be sufficiently trained about this Procedure. Furthermore, these centralised justices of the peace must be fully equipped with the advanced technological means of communication to facilitate not

only the communications between the courts and the parties, but also to hold the hearings through videoconferences or teleconferences.¹⁵ In fact, the advantages of centralisation would lead to its positive impact on ameliorating the access to justice for consumers and the widespread use of the ESCP by them.

HEC: As pointed out above, we believe that the most adequate approach to deal with small claims in France would be to create specialized sections in the different courts of the country.

ADICONSUM: This proposal could be feasible only when high level of digitalization is reached in each EU country.

H. On the Connection between ADR/ODR in the small claims procedure.

- Every partner should describe if there is a good connection between ADR/ODR in the small claims procedure and if the internal authorities or the consumer association shall suggest the parties the use of conciliation procedure disciplined by art. 23 bis of EU Regulation No. 861/2007 and Art. 23a of the Regulation 2015/2421.

UNINA: Now, there is not any connection (neither good nor evil) between ADR/ODR in the small claims procedure.

In fact, Legislative decree No. 130 of 6 August 2015, which transposes Directive 2013/11/EU on consumer ADR schemes into Italian law, amended Italian Consumer Law by introducing a new Title dedicated to the extra-judicial dispute resolution for consumers transactions.

But this tool is not set out in the EU Regulation No. 861/2007.

At the same time, the conciliation procedure disciplined by art. 23bis of EU Regulation No. 861/2007 is purely judicial, that means it is not an “alternative dispute resolution” instrument. So, surely the judge could always attempt to achieve

¹⁵ *Ibid.*, pp. 15-16.

conciliation. Perhaps it will be meaningless if consumer association suggest the parties the use of the abovementioned procedure, precisely because it is a strictly judicial conciliation one.

LIUBLJANA: Regarding connections of ESCP to ADR and ODR in Slovenia, the European consumer centre has informed us that when the consumers ask them for help in their cross border matters (cross border disputes) European consumer centre tries to find solution, which is acceptable for both parties. If they do not manage to find such solution, they inform consumers about their options. One of them is also ESCP.

VILNIUS: There is still no clear connection between the small claims procedure and ADR/ODR procedures. Authorities may suggest the parties to use alternative dispute resolution procedures, however, there are no clear rules for that. More frequent use of such procedures would facilitate the work load for courts and increase the opportunities of conciliation for the parties to disputes.

VUB: With respect to the any existing link between the alternative dispute resolution (ADR) and online dispute resolution (ODR) on the one hand and ESCP on the other, Article 12(3) of Regulation No. 861/2007 vaguely indicates that; the court shall make efforts in encouraging the disputants to reach to a settlement. In addition, Article 23a of the amending Regulation 2015/2421 stipulates that a settlement which is either concluded at the competent court or approved by it shall be accordingly recognised and enforced in other Member States, provided that such settlement is enforceable in the State where the procedure was conducted.

Although these two provisions manifest the EU Commission's intention in encouraging consumers to resort to non-judicial redress mechanisms including ADR and/or ODR, however, such reference to out-of-court dispute resolution mechanisms has not been adequately considered in the ESCP Regulation. In this context, taking into account the enormous workload of the national courts which

causes considerable delays in delivering judgments in the ESCP cases, establishing a solid link between the ESCP cases and ADR and/or ODR shall be considered as a solution to promote the efficiency of the ESCP mechanism. On that account, the judge should strongly encourage the parties to resort to ADR and/or ODR as an opportunity to settle their conflicts either prior or during the proceedings.

From the national legislative perspective, Belgium has been one of the first EU countries in implementing the Consumer Alternative Dispute Resolution Directive of 2013¹⁶ into its national legislation. In view of this, within the Act of 4 April 2014,¹⁷ in accordance with ADR Directive, the Belgian legislator established the minimum quality standards for the ADR bodies into the national laws and created the Service of Consumer Ombudsman.¹⁸ The major function of this service¹⁹ is to act as a competent ADR entity to deal with those disputes that none of the available Belgian ADR bodies are competent to deal with. The essential purpose of this establishment is to promote the use of out-of-court dispute resolution mechanisms for small consumer claims in Belgium and encouraging the citizens to use it. Such establishment can be considered as a positive initiation in resolving the cross-border small claims through ADR at national level.²⁰

From the practical perspective and the initiations taken in connecting the ADR and/or ODR to the small claims by the national authorities and consumer associations in Belgium, the Federal Public Service Economy of Belgium launched a digital platform on ADR and/or ODR called Belmed (the abbreviated form of Belgian Mediation).²¹ The Belmed is structured on the basis of the two main pillars of offering information on ADR and providing ODR services for consumers and traders

¹⁶ 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 (Directive on consumer ADR).

¹⁷ Royal Decree of 10 April 2014 on the entry into force of the Act of 4 April 2014 inserting Book XVI "Alternative dispute resolution for consumer disputes" into the Code of Economic Law.

¹⁸ Pablo Cortés, *The New Regulatory Framework for Consumer Dispute Resolution* (Oxford University Press 2016), p 127.

¹⁹ Consumer Mediation Service' (*Consumer Mediation Service*, 2020) <<https://consumerombudsman.be/en>> accessed 25 February 2020

²⁰ Voet S, 'Relief in Small and Simple Matters in Belgium' [2015] *Erasmus Law Review*, p. 158.

²¹ 'Belmed: Online Mediation | FPS Economy' (*Economie.fgov.be*, 2020) <<https://economie.fgov.be/en/themes/online/belmed-online-mediation>> accessed 13 February 2020.

to settle their disputes quicker and at a lower cost compared to the ordinary judicial proceedings. The key aim of the Belmed is to promote the use of out-of-court redress mechanisms in energy, travel, financial services, second-hand cars, furniture and construction sectors. The information in the Belmed platform is available in four languages including Dutch, French, German, and English which makes it more accessible for a wider group of users.²²

In light of the above-mentioned facts, although there is no direct indication by the Belgian national authorities to link the ESCP to the existing national ADR and/or ODR mechanisms, the opportunities are still available for the ESCP parties to seek justice through these mechanisms.

HEC: No ADR or ODR systems have been implemented to encourage the use of this procedure in France. The French government and the judiciary didn't create any ADR or ODR in the service of the ESCP. As previously mentioned, French consumer associations are often not very familiarized with the ESCP Regulation, revealing a preference for the national procedure to pursue small claims

ADICONSUM: According to the internal law, a conciliation attempt is a requirement to take a legal action before the court for claims related to utilities (telecommunication and electricity). However, it is also worth to say that the implementation of the Mediation Directive has made that a conciliation procedure is foreseen as compulsory in case of claims in civil and commercial matters

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Every partner could indicate some suggestions to improve the use of ADR/ODR in the small claims procedure.

UNINA: In order to improve the completion of the attempts at conciliation, Art. 91, par. 1, of the Italian Civil Procedure Code shall be possible to apply in the small claims procedure: if the judge accepts the request to an extent not greater than the possible conciliation proposal, he condemns the party who has without any reasons

²² Hodges C, and Voet S, *Delivering Collective Redress: New Technologies* (Hart/Beck 2018)

refused the proposal to pay the costs of the proceeding matured after the same proposal.

LIUBLJANA: *please refer to the previous answers*

VILNIUS: It would be meaningful to address this issue in Regulations by establishing a clear connection between the procedures and the obligation of authorities to provide litigants with information about all procedures. It would be advisable to state that judicial dispute resolution should be a measure of last resort; first of all, the parties should have an opportunity to clarify the dispute, negotiate on their own or with the assistance of a mediator.

VUB: The VUB recommends the judicial authorities to emphasize on the use of ADR and/or ODR in the ESCP cases encouraging consumers to resort to these amicable models of dispute resolution to resolve their cross-border small claims in an expedited and more cost-efficient manner. Thus, the justices of the peace should strongly advise the parties to first use the ADR and/or ODR as an opportunity to settle their disputes prior or during the proceedings. The judge should also ensure the parties that in the case of failure of the settlement, they would not lose their right to refer to the court. The main advantage of using the out-of-court redress mechanisms is reducing the overburdened number of cases in Belgian courts.

HEC: First of all, it is important to acknowledge that there is a difference between traditional ADR/ODR and the particular form that these techniques display in the context of small claims, particularly when they involve consumer disputes. “[...] [A]lthough consumer dispute resolution uses classical ADR techniques, such as mediation or some form of adjudicative decision-making , it occupies its own permanent structures in Europe. For cross-border claims, a network of national

European Consumer Centres and related system for financial claims were created, to advise, signpost and facilitate negotiation and resolution of consumer disputes.”²³ Furthermore, “[t]hese CDR entities, whether they operate on mediation-arbitration or ombudsman models, are required to apply the same substantive law as courts, but their expertise and operational ability is simply quicker and cheaper than many courts, and they often include arrangements that underpin compliance with awards by traders (that is the enforcement of judgment stage).”²⁴

In our view, the development of ADR/ODR should be allowed to work independently of state courts if the non-state system works satisfactorily. For these disputes, perhaps there could be discussions as to how the enforcement regime of the ESCP Regulation could be extended to these European entities judging consumer claims, provided some safeguards are established.

For those disputes depending on the state, the use of ADR/ODR would depend on equipping courts and coordinating their actions to develop an online platform where small claims disputes could be solved.

ADICONSUM: We are in the opinion that a connection between ADR/ODR in the small claims procedure is advisable only whether it is possible to ensure a full sector and geographical coverage of ADR schemes. However, it has also to be said that to foresee the conciliation procedure as a requirement to start the ESCP could make the procedure less appealing.

I. About the Use of e-filing and e-evidence

- Every partner should describe if the internal judicial authorities use e-filing and e-evidence in the small claims procedure.

UNINA: According to the telematic civil trial only before the court (Tribunale) it is possible to use e-filing; therefore, it is not possible for proceedings before the

²³ C. Hodge, N. Creutzfeldt, Transformation in Public and Private Enforcement, in *The Transformation of Enforcement* (H. Micklitz, A. Wechsler, eds, 2016), 126.

²⁴ *Id.*, at 130.

Giudice di Pace.

About e-evidence, they are allowed.

LIUBLJANA: The Slovenian regulation does not deal specifically with e-evidence. It is considered as any other evidence. The Contentious Civil Procedure Act (Zakon o pravdnem postopku) stipulates in Article 16.a that the electronic form shall be considered equivalent to the written form. Furthermore it stipulates that electronic evidence should not be regarded as less significant compared to other evidence only due to being submitted electronically.

VILNIUS: E-evidence is accepted and used in civil cases of all categories in Lithuania. There are no special rules for their use in the small claims procedure. In our opinion, there is no need for such rules in the meantime. Besides, Lithuania does not have a finite list of the means of proof. All procedural documents, as mentioned, may be submitted electronically.

VUB: Concerning the use of e-filing under the Belgian laws, since July 2016 there has been a recent ICT tool, called 'e-Deposit' with the aim of digitalising the judicial proceedings. This facility enables the citizens to submit their written pleadings and supporting documents through e-filing to the court. At present, this tool is only available to the Courts of Appeal, Labour Courts, and the Commercial Courts and is not yet applicable in the justices of the peace as the competent courts to deal with the ESCP cases.

With respect to the use of e-evidence under the Belgian legal system, any evidence can be admitted by the judge, provided that it has been obtained on a regular basis. Therefore, all legal means can be used as evidence in the court proceedings.²⁵ However, the Belgian case law has shown that in practice the courts are reluctant to accept the e-evidences which is applicable to the ESCP cases, as well.

Considering the fact that the majority of consumer small claims refer to the online

²⁵ Taelman P, and Van Severen C, *Civil Procedure In Belgium* (Kluwer Law International BV 2018).

purchases, therefore many evidences are inevitably electronic. Nonetheless, considering the very recent initiation taken by the Belgian legislator in reforming the law of evidence with the aim of adapting them into the digital world which will come into force in November 2020, these new applicable rules of evidence can strengthen the admissibility of e-evidences within the ESCP proceedings.

HEC: Theoretically, as examined before, the use of electronic means is possible in e-filing and to collect evidence (as in video conferences, for instance).

In practice, however, often there is a lack of technical means in courts for these purposes. For instance, “submitting an EOP or ESCP claim by electronic means appears to be technically impossible at the moment.”²⁶

ADICONSUM: Given that the competent courts (Justice of Peace) are not adequately equipped to conduct a trial, the use of e-filing and e-evidence is improbability. It has to be underlined that users starting an ESCP have to send the file by ordinary post or personally. You can send the file electronically only if the competent court is the Tribunale but the e-sending is granted to lawyers only.

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Every partner could indicate some suggestions to improve the use of this kind of evidence.

UNINA: The use of e-filing has to be mandatory as in the Proceeding before the tribunal trial.

LIUBLJANA: *please refer to the previous answers*

VILNIUS: It could be established more clearly in the Regulation itself that electronic evidence shall always be admissible and that all documents may be submitted electronically.

²⁶ Ontanu, op. cit., 136.

VUB: It is highly recommended to mandate using the e-filing and accepting the e-evidence within the ESCP proceedings at national courts of the Member States. Indeed, prior to such obligation, the courts need to be equipped with necessary and adequate technological infrastructures in order to be able to implement the e-services (i.e., e-filing and e-evidence) within their ESCP processes. This facilitation can be coordinated either under an explicit provision under the ESCP Regulation or through (legislative) initiatives taken by the national policymakers to oblige the courts to accept the e-filing and e-evidence for the ESCP cases.

HEC: The initial step is necessarily to establish the technical infrastructure needed to undertake these tasks electronically. This includes not only establishing a legal obligation for the Member States to install the required technical means, but also coordination initiatives in the European level to facilitate such actions.

ADICONSUM: The use of e-filing and e-evidence should be adequately and uniformly regulated in order to allow all courts to use them in procedures.

J. About the establishment or identification of a translation center

Every partner should describe if there is a translation centre, or a help desk, that can help users to start the small claims procedure.

UNINA: There is not a translation centre or a help desk, for this reason we want improve SCAN and make it a landmark on the ESCP where people can receive information and support.

LIUBLJANA: In Slovenia there is no translation centre at the moment. We believe that establishment of such centre would be useful for the ESCP procedure, however it would be also extremely expensive to have such centre in each member state. If we take into account the fact that ESCP cases in Slovenia are very rare it is illusory

to expect to establish such centre in the near future. However, we believe translation centre could be established on European level (one translational centre for all member states). Such centre could provide all translations required in the ESCP cases across Europe.

VILNIUS: There is no official translation centre to help with translation in Lithuania. A solution to that could be, for example, an obligation of the ECC or similar authorities to help with translations or a creation of a common online translation platform shared by all Member States. It could also be established in the Regulation that each Member State shall accept documents in one common language, for example, English.

VUB: With regard to the availability of any translation service for citizens in Belgium in the context of the ESCP, there is not specific service available to consumers. However, the ECC Belgium provides some translation assistance to the consumers who need some brief translations, but if there is a necessity for translating a specific document such as evidence, the consumer will be guided to refer to an official translator for that purpose.

In the light of the above mentioned facts, concerning the translation costs for the ESCP cases, the claimant pays the costs of translation of documents such as the costs associated with the enforcement procedure, evidence, and other supporting documents that are not in any of the official languages accepted in the Belgian courts – namely, French, Dutch, and German – up front of the proceedings. Nonetheless, in case the claimant wins the procedure, the bailiff will claim the expenses incurred by the creditor – on behalf of the claimant – from the losing party. Having said that, if the claimant loses the small claims proceedings, these costs all remain the sole responsibility of the claimant without any reimbursement. In order to tackle the issue of language diversity as an obstacle for consumers to claim their right in the courts of another Member State with a different language, the VUB suggests the Belgian judicial authorities to permit the submission of the ESCP

claims in English. This permission will enable the ESCP claimants, especially those who are not familiar with any official languages of Belgium – namely, French, Dutch, and German – to file the claim more conveniently and without any incurring translation costs.

HEC: Based on the interviews conducted, one of the main obstacles to the use of the ESCP is the translation of both forms' answers and proofs. French government approach consists in accepting several languages but there are no public services of translation that are dedicated to European litigations. The accepted languages by French government are: French, English, German, Italian, Spanish. The acceptance of several languages by French court supports the use of ESCP by non-French claimant. This best practice should be taken over for future guidelines in other Member states.

Nonetheless, there is no specific assistance for translation in France. The forms are translated in French in the EC webpage, but if the claimant wants to resort to the ESCP with a Croatian defendant, for example, it has to pay for a translator or to translate the content of his claim and the proof by itself. The only indication toward the language that shall be used on the Justice webpage is the following: 'The request must be made in the language of the country of the court seized, using Form A, accompanied by the necessary supporting documents (invoices, estimates in particular).' We suggest to create a translation service for French claimants, within an appointed French court if possible, or at the European center for consumers.

ADICONSUM: A translation center or a help desk is not provided.

K. Appeal

Every partner should describe available appeal procedures for the ESCP in the respective member state. Suggestions as to possible improvements are welcomed.

UNINA: Italy has established that it is possible to appeal to the Tribunal against the

judgment of the Justice of the Peace. The procedure is the same as for measures adopted by national courts. However, the appeal procedure is not the most appropriate instrument in the case of ESCP because it is different from the one provided for in the Regulation (it does not take place with the forms) and necessarily requires the help of a legal representative.

LIUBLJANA: Judges who have been interviewed have some experiences with ruling in the ESCP. However, none of the interviewees has experience with the appeal. According to the Slovenian national legislation, the parties may appeal against a judgement of first instance or a decision ending a small claims dispute within eight days. If the claim surpasses 2000 EUR the parties have 30 days to appeal. If the value of the dispute is 2000 EUR or less, a judgement and decision may only be contested on the grounds of a serious violation of the civil procedure provisions referred to in the second paragraph of Article 339 of the Contentious Civil Procedure Act and of a violation of substantive law. In case the value of the dispute is more than 2000 EUR the judgement may be contested on all grounds specified in Article 338 (serious violation of civil procedure provisions, violation of substantive law and also due to false or incomplete finding of the facts within the procedure).

VILNIUS: Appeals against judgments under the small claims procedure may be submitted under the general procedure in Lithuania. Under the doctrine of the Constitutional Court, each judgment of the court can be an object of appeal in Lithuania. Normally appeal proceedings take place under the written procedure.

VUB: In Belgium, the appeal against the ESCP judgments issued by the justice of the peace is allowed by the legislator. The competent court to deal with appeals against the rendered decisions by the justice of the peace is the Court of First Instance. However, one should bear in mind that such possibility of appeal has been limited to the claims with a monetary value of more than 2,000 euros. Accordingly, for the small claim judgments that are lower than or equal to 2,000 euros there is no

possibility of appealing. Despite this, there is an available review mechanism in Belgium that can be applied in judgments of 2,000 euros or lower amount, known as 'opposition' proceeding. This way, the ESCP judgments that are not eligible for appealing under Belgian legislation, can be reviewed through opposition proceedings.²⁷ In the interview conducted with the justice of the peace in Brussels, the judge indicated that the review requests from the parties to a small claims are barely accepted by the court.

HEC: Under French law, "The parties may appeal an ESCP judgment according to the French national opposition procedure, or file for an extraordinary appeal if the judgment is not or is no longer challengeable by appeal with the Court of Appeals (pourvoi en cassation) or a judicial review (recours en revision)."²⁸

Our main suggestion is the harmonization of the procedure for appeal under the ESCP Regulation.

ADICONSUM: According to the internal law, users are preventing from appealing the judgement issued within the ESCP procedure without the assistance of a lawyer. Moreover, the appeal procedure requested a solid legal background that citizens do not have. It needs to set a specific and simplified procedure for appealing the judgement in order to maintain the aspects that characterise the ESCP (speed, low cost and user-friendly).

L. Other suggestions as to improvement of national procedures and practices in relation to the ESCP

Every partner can present other suggestions as to improvement of national procedures and practices in relation to the ESCP.

UNINA: A public online platform, on which all court of every member State should

²⁷ Voet S, 'Relief in Small and Simple Matters in Belgium' [2015] Erasmus Law Review.

²⁸ Ontanu, op. cit, 139.

upload the judgements rendered in the ESCP, shall be made available free of charge to anyone.

The judgements, appropriately anonymised before uploading, shall establish a very precious data bank from which to draw to disseminate models of good/best practices and harmonise the guidelines in serial litigations.

Every member State shall develop a national public online platform, and EU, for its part, shall manage a common public online platform on which all the judgements rendered in every single member State shall be collected, together with (for instance) scientific contributions and observatory networks on the jurisprudence.

LIUBLJANA: *please refer to the previous answers*

VILNIUS: The application of national small claims procedures could be expanded in general, which would make litigants more accustomed to the idea of simpler resolution of small claims. Greater approximation of national small claims procedures with the rules of the Regulation should be considered.

VUB: In Belgium, despite the hard efforts of the justices of the peace as the competent courts to proceed with the ESCP cases in an efficient manner, however, there are some obstacles that impede the effective implementation of the ESCP Regulation at national level. Apart from the issues mentioned earlier in this manuscript, the following two problems shall be taken into consideration by the judicial authorities in order to deal with them.

- There is a serious shortage in the number of court staff of the justices of the peace. The human resource deficiency has generated a considerable amount of workload for the current staff causing significant delays in the ESCP proceedings. To solve this issue, the justices of the peace need to maintain a sufficient number of court staff in order to deal with the workload in an efficient and more expedited way.

Identifying the competent court, filling the ESCP Forms, and how to present the

case at the court are still too complicated for consumers. Therefore, they either have to personally hire a lawyer and pay for the legal assistance or if unable to afford the lawyer fees they will use the pro bono legal services. The Belgian judicial authorities are advised to provide the appropriate means – such as publishing leaflets and creating a specific website with its link provided at the main webpage of the Belgian judiciary webpages - of information for consumers regarding the ESCP Forms, judicial competency, and how to proceed with their claims at the justices of the peace. This assistance can be conducted in joint collaboration between the judiciary and the consumer protection centres such as the ECC Belgium, provided that the latter organizations are equipped with sufficient financial resources and workforce.

HEC: Our two main suggestions for improvement in the ESCP Regulation are the following.

First, the creation of a specialized section in the different courts competent to hear European small claims, potentially applying the ESCP Regulation. These judges should be then more familiarized with the procedure and potentially speak English, avoiding the need to translate the forms into different languages.

Second, for the improvement of the national practices, it would be valuable to create an European centralized platform to gather all relevant information to initiate a claim under the ESCP in a foreign country. The platform could inform about the competent jurisdiction, the form of submission accepted, the address, the language accepted, the costs of the proceedings etc. The European consumer association and/or the European Commission could be in charge of updating information in collaboration with Member states.

ADICONSUM: In order to boost the use and trust in the ESCP a uniform procedure for the judgement execution across EU is fundamental.

M. On the Consumer protection legislation and class action

Every partner should describe if the consumer protection legislation, envisaged by the internal regulations, provides for class action and if this instrument is compatible with the ESCP.

UNINA: Art. 140bis of the Italian Consumer Code (Legislative Decree No. 206 of September 9, 2005) governs the class action aimed at regulating the assessment of liability and the compensation for damages in favour of consumers.

From the 18th of April 2020, this policy will be replaced from Artt. 840bis-840sexiesdecies of Italian Civil Procedure Code. Actually, for many reasons this new instrument does not seem compatible at all with the ESCP. First of all, due to the different jurisdiction about whom the consumer should address (the Justice of Peace for the ESCP, the Tribunal of the Entrepreneurs for the class action in question), but also due to the considerable complexity of the national procedure outlined in Italian Civil Procedure Code (in 15 Articles!), especially regarding the preparatory inquiries.

LIUBLJANA: The Slovenian legislation does not contain any limitation regarding the number of claimants. It is possible to lodge the class action.

VILNIUS: Class action has been provided for in the legislation in Lithuania, however, it is seldom used. The provisions facilitating the class action procedure have been adopted and will become effective. They should encourage consumers to seek remedies for their rights by means of a class action. Representation by an attorney at law will not be obligatory in such proceedings for consumer associations. As representatives of a group, they will be in the position to represent all consumers, not only members of their associations. Consumers will be exempt from a stamp duty for a non-material claim shared by the group members in class action proceedings. Class action is possible not only in consumer disputes in Lithuania. The national rules on class action do not provide for any specific connection with the small claims procedure, which is described in the Regulation.

VUB: The Belgian legislator has introduced the specific law on class actions called '*actions en réparation collective*' that is in force since September 2014. This law was originally only available to consumers, however, in June 2018 it was also extended to the Small and Medium sized Enterprises (SMEs). In accordance with Belgian laws on class action, this legal establishment is permitted to be used for certain specified types of damage claims such as contracts, competition, and consumer protection in several services from transportation to privacy, e-communications, and payment services. Although, Belgian legal system has allowed for the class actions since 2014, however, during the last six years very few class actions cases have been filed in Belgium and mostly against the airline and telecommunication services.²⁹ In the context of the ESCP implementation in Belgium, there is no direct link or indication to the use of class action for the ESCP claims. However, one of the main objectives of the national legislator in permitting the class action in relation to the consumer law is to provide more protection for them, considering the majority of the consumer claims to fall under the small individual damages. Given that, the class action can be used as an efficient legislative tool to improve access to justice for consumers in cross-border small claims (such as the eligible cases under the ESCP) also to ensure the convenient implementation of the judicial proceedings for consumers.³⁰

HEC: Class actions were officially regulated by French Law in 2014, through the Law 2014-344. There are indeed issues regarding the compatibility of class actions under French law and the ESCP Regulation. The most notable relates to the fact that only a small number of representatives of consumers and consumer associations (to this day, 15 entities) can start a class action in France. Under the ESCP, it is uncertain whether an association can start a claim.

²⁹ Champagne S, Masser A, and Esterzon E, 'Belgium: Class Actions In Belgium—Change On The Way' (2019) <<https://www.mondaq.com/Litigation-Mediation-Arbitration/844934/Class-Actions-In-BelgiumChange-On-The-Way>> accessed 14 March 2020.

³⁰ Boularbah H, The Class Action – Belgium <<https://thelawreviews.co.uk/edition/the-class-actions-law-review-edition-3/1193429/belgium>> accessed 14 March 2020.

This is why, in the context of the academic discussions about the ESCP Regulation, it has been “suggested here that a specific provision should clearly allow consumers to be represented by consumer associations and professional associations to represent their members. This is common in ADR processes but not in litigation where national procedural rules may prohibit it.”³¹

ADICONSUM: Starting from April 2020 the provisions regulating the class action move from the Consumer Code to the Civil Procedure Code. Indeed, Italy has adopted a scheme of class action no more linked to consumer matters. Given the complexity of the procedure, it is highly unlikely that it could be compatible with ESCP.

³¹ JPC Dieguez, Does the proposed European procedure enhance the resolution of small claims?, 27(1) Civil Justice Quarterly (2008), 91.

ANNEX D

WEBINARS

In this Annex we report the webinars organized by HEC, LUISS, VU and VUB. They were opportunities for dialogue with the ESCP experts to have their valuable experiences and to discuss the Guidelines covered by the Deliverable 4.1.

- **HEC**

On March 31st, 2020, HEC Paris organised an Online Workshop entitled “Implementation issues and best practices in the European Small Claims Procedure Regulation (ESCP)”. The event counted with more than 50 registered participants from different countries in Europe. The overall theme of the workshop was the fragmentation being caused by national laws filling the gaps that the ESCP left unregulated. The event counted with four main speakers: Professor Elena Alina Ontanu (Erasmus University Rotterdam), Professor Emmanuel Guinchard (Northumbria University), Ms. Joyce Pitcher (Pitcher Avocat) and Mr. Romain Drosne (CEO, Justice.cool). The Workshop was divided into two main panels, the first one on the perspective of legal practitioners and the second one on the perspective of consumers and small and medium companies regarding the ESCP. It involved discussions between its participants on what best practices have been developed in France and in different jurisdictions regarding topics that the ESCP Regulation have left to be regulated by national laws.

- **LUISS**

On 7 May 2020 the webinar "European Small Claims Procedure: the Italian experience" took place within the European project SCAN - Small Claims Analysis Net. The event, promoted by the LUISS University of Rome and organized by Dr. Irene Abignente and Dr. Rita Tuccillo, involved more than 70 participants. It was an opportunity for a fruitful confrontation with experts in the field who told the national experience of the application of the ESCP from the point of view of the different categories. During the webinar, best practices were identified, feedback and opinions were collected, and the difficulties encountered by consumers in understanding the legislation were analysed. The event, moderated by Professor Francesco Romeo, was introduced by Professor Silvio Martuccelli who highlighted the critical issues and difficulties in the application of the ESCP in Italy. The importance of greater dissemination and implementation of the ESCP in Italy was underlined by Dr. Raffaele Sabato - Judge of the European Court of Human Rights.

Margherita Morelli - Past President European Network of Associations of Laic Judges, Cinzia Leone - Justice of the Peace of Pisticci - and Monica de Rita - Lawyer of the Bar Association of Rome - told their experiences in the field, highlighting the lack of knowledge that lawyers and legal experts have of the ESCP. Finally, Dr. Valentina Rubertelli - Notary Public of Reggio Emilia (IT), clarified the role that notaries can play in this matter in order to make the procedure more usable and accessible to users and consumers. Specifically, it was proposed to involve also the class of notaries with a view to spreading the knowledge and application of the ESCP as widely as possible. The webinar ended with a speech by Professor Ferruccio Auletta, who invited speakers and participants to consider the fundamental role of the lawyer and the university in the training of trained, experienced and responsible legal experts on the importance of good cooperation between all legal practitioners.

- VU

On the 20th of May webinar “EU Small Claims Procedure” was organised at VU Faculty of Law within the frame of SCAN (Small Claims Analysis Net) project. Event was moderated by Assoc. Professor Rimantas Simaitis. Assoc. Prof. Dr. Vigita Vėbraitė presented the main aims and rules of the EU Regulation No 861/2007. Researcher Milda Markevičiūtė gave overview of the SCAN project and its main findings. Judge of Vilnius district court Igoris Kasimovas, representative of Lithuanian Justice Ministry Algis Baležentis and board member of Lithuanian Alliance of Consumer organisations Tomas Kybartas participated in the active discussions.

All speakers agreed that EU Regulation is still not well known among legal practitioners and consumers in Lithuania. It should be easy and quite quick procedure but nevertheless in practice it can take a long time if there are problems with service of documents. Translations can be very expensive for the parties to the dispute. Many particularities on handling EU Small Claims Procedure and related issues were discussed.

- VUB

On 26 May 2020, the Vrije Universiteit Brussel (VUB) held an online seminar on ‘Implementation of the European Small Claims Procedure (ESCP) in Belgium: Opportunities and Challenges’. This online event was organised and hosted by Dr. Marco Giacalone, Prof. Gina Gioia, PhD candidate Sajedeh Salehi and Prof. Paul De Hert, as part of a series of activities for the Small Claims Analysis Net (SCAN) project. The main objective of this webinar was to enhance awareness – among citizens –

about the potentials of the ESCP to provide consumers with an efficient and facilitated enforcement of their rights by enabling citizens to seek justice through a simplified and expedited cross-border procedural redress mechanism, particularly in Belgium.

The event initiated by Dr. Marco Giacalone explaining about the European Small Claims Procedure Regulation No 861/2007, the SCAN project, its objectives and activities followed by introducing the experts' panel of the webinar. Professor Pablo Cortes, as the first speaker, delivered his presentation on 'The Pursue of Early Settlements in the ESCP — Lessons from the English Small Claims Procedure' discussing the key causes that explain the lack of use of the ESCP. In his presentation prof. Cortes examined the new Small Claims Procedure in England as an example that is being used for early settlements. This presentation was then concluded by making a number of suggestions on how some of the features of the English model could be applied to the ESCP with a view to improve its efficiency and awareness. The next speaker, Justice Henri Colman, discussed his years of experience as a judge in dealing with the ESCP cases and uncontested claims, implementation of the ESCP in Belgian courts while highlighting the existing challenges – i.e. the lack of sufficient technological facilities in the courts – that hinder the efficient implementation of this regulatory tool. The presentation of the last panellist, Ms. Margarita Synanidi from the European Consumer Centre of Belgium (ECC Belgium), was given on the Practical burdens that consumers face in using the ESCP in Belgium that was in particular focused on the reasons behind the limited use of the European Small Claims procedure Regulation in Belgium. In this consumer protection-oriented presentation, Ms. Synanidi emphasized on the existing obstacles (i.e. lack of awareness, language barriers and related procedural costs) that prevent consumers from using the ESCP for their low value claims that has ended up with the limited use of the ESCP in Belgium.

The Webinar was concluded by Professor Gina Gioia providing her final remarks on the topics of presentations. Prof. Gioia emphasized on the necessity for considering the relationship between the constitutional laws and their impact on intriguing more serious implementation of the ESCP, the role of the consumer centres in raising awareness among citizens about this Procedure and the necessity to overcome the existing obstacles on the way of efficient implementation of the ESCP in Belgium and other EU Member States.