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Chapter X

European small claims procedure: Regulation 861/2007

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1. GENERAL CONSIDERATIONS

The free movement of court judgments in civil and commercial matters within the European Union requires a mutual commitment by Member States to recognise judgments and thus abolish the procedural borders and make their national procedures compatible. The simplification of legal systems will enable persons subject to such systems to exercise their rights before the courts and authorities of any Member State, as if it were their own. The principle of mutual recognition, in other words, recognition and enforcement in a Member State of the judicial decisions adopted in another requires the creating of standard regulations of procedural law that gradually abolish the legal and judicial obstacles to access to justice and therefore enable an acceptable level of legal assistance in cross-border disputes.

Since the beginning of studies devoted to civil and commercial matters, it was clear that in small claims litigation, standard procedural regulations would require a simplified and rapid procedure and that judgments would have to be automatically recognised throughout the European Union, without intermediate proceedings or causes for refusing enforcement. The Community Law instrument designed to reach such objectives in the area of civil judicial co-operation at a community level in cross-border disputes is Regulation (EC) No. 861/2007 of the European Parliament and of the Council dated 11 July 2007 (hereinafter, the ESCP Regulation), establishing a *European Small Claims Procedure* (hereinafter, ESCP). Given that the building of the process had to be grounded on the general principles of subsidiarity, proportionality, solidarity and respect for the different legal systems and traditions of the Member States (*The Hague*

Programme, OJ C 53 of 3.3.2005), the ESCP is governed by the ESCP Regulation and, with respect to certain issues, by national procedural law. The policy adopted has been one of non-conflict and pacific co-existence with national law, given that in the end, the effective functioning of the former depends on the acceptance and cooperation of the latter.

1.1. CONCEPT AND FEATURES

In order to «to facilitate access to justice» (see Whereas 7), the European «small» claims procedure in cross-border civil and commercial disputes has been created as a simplified, quick, cost-effective and optional system to national law, in which judgments are recognised and enforced automatically in other Member States.

The ESCP Regulation has been created to:

1) Simplify and speed up litigation (art. 1, Whereas 6-8, 23 and 36). The Community institutions involved in the preparation and approval of the ESCP Regulation justified the need for the procedure on the current complexity of the procedural law systems in Member States and the barriers preventing a quick solution to cross-border disputes (Whereas 7). An analysis of the ESCP Regulation shows that the provisions allowing a simplified and speedy procedure are the following: the intention to abolish unnecessary time limits; the requirement for courts to act «as soon as possible even when this Regulation does not prescribe any time limit for a specific phase of the procedure» (Whereas 23, art. 14.3); which, in certain cases (see art. 7.3), can reduce the duration of proceedings to approximately 3 months; service effected by mail with acknowledgement of receipt (Whereas 18); the acts carried out by the parties and certain acts by the court using a standard form established for such purposes (Annexes I-IV ESCP Regulation); the non-mandatory intervention of attorneys or other legal professionals (art. 10); the duty of the court to inform or gather information and documents from the parties on issues relating to the procedure and proceedings [arts. 4.3, 4.4, 6.3, 7.1 a), 12.2, 14.1; Whereas 22 and 28]; the non-requirement for «any legal assessment of the claim» (art. 12.1)... In spite of the possible success of the provisions in achieving the simplification and speed of the procedure, the truth is that its advantages will only be offset by internal procedural legislation.

2) A cost-effective procedure. If «costs, delays and complexities connected with litigation do not necessarily decrease proportionally with the value of the claim», the fulfilment of the objective to facilitate access to justice to creditors and debtors by applying consistent regulations throughout the European Union requires having regard to «the principles of simplicity, speed and proportionality when setting the costs of dealing with a claim under the ESCP», publishing the cost items involved and that the means of determining such costs are transparent (Whereas 7). For cross-border litigants, the ESCP Regulation is not free, but involves a cost nevertheless lower than that of the national law alternative. The abolishing of disproportionate costs will benefit the cost-effectiveness of the procedure. In any procedure, the general rule is that each party pays its own expenses in accordance with its own needs and legal requirements.

The ESCP Regulation seeks to reduce costs and make the intervention of legal professionals optional (art. 10, Whereas 15); granting the court certain powers, such as that of ordering that a document not be translated (art. 6.2) or to decide whether expert reports or witness statements are required (art. 9.2) or require the cheapest form of taking evidence (art. 9.3); making it unnecessary to appoint an authorised representative or postal address in the Member State of enforcement (art. 21.3, Whereas 32), or establishing the prohibition of demanding a deposit or security from the enforcing party (art. 21.4). With respect to costs, the ESCP Regulation highlights the fact that the objective is cost-effectiveness (Whereas 29 and 32). Courts can only include costs which, in their opinion, have been necessary and the amount proportional to the value of the claim. The reduction of costs under the ESCP in proportion to the amount of the claim (excluding interest, expenses and court costs) will enable cross-border litigants to positively consider the advantages provided by the procedure.

3) An optional or alternative procedure. The ESCP is seen as an alternative to the procedures currently existing in Member States, meaning that the plaintiff can choose between a national procedure or the ESCP, provided the scope of application is the same (art. 1.1, Whereas 8). Making the ESCP optional was a wise decision and enables the coexistence of the European procedure with that of Member States. The plaintiff's choice will depend on the circumstances and cost effectiveness of the judgment resulting from both systems.

4) A procedure in which the judgment will be recognised and enforced automatically in any Member State: the ESCP Regulation abolishes intermediary procedures required for recognition and enforcement in other Member States of judgments issued in other States under the European small claims procedure (art. 1.1, second paragraph). As a result, according to article 20, section 1, judgments given in a Member State—following the issue of a certificate by the court (art. 20.2)—must be recognised and enforced in another Member State, without a declaration of enforceability or the possibility of refusing recognition.

1.2. SCOPE OF APPLICATION OF REGULATION 861/2007

1.2.1. Material Scope of Application

The ESCP Regulation is applicable in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2000, excluding all interest, expenses and disbursements.

A) Civil or Commercial Nature of the Claim

Application of the ESCP Regulation and therefore of the European small claims procedure depends on the nature of the subject matter of the claim, which European Union Regulations normally refer to as «civil or commercial matters». The issue is not referred to in the Regulation, which has opted for a list of included and excluded

matters. In any event, the concept is independent to the meaning provided in national laws, which must be interpreted «first, to the objectives and scheme of the convention of [the ESCP Regulation] and, secondly, to the general principles which stem from the corpus of the national legal systems» (ECJ Judgment dated 14 October 1976 – Case 29/76, *LT v. Eurocontrol*). In addition, the «civil and commercial matter» is irrespective of the «nature of the court or tribunal» (art. 2.1). The subject matter of the dispute does not change according to the nature of the court, meaning that it is perfectly possible for the «court or tribunal» of a Member State to be an Administrative body. This means that it is also a Community concept, without reference to national procedural law.

For application purposes, the ESCP Regulation «shall not apply to matters concerning» (art. 2.2): «a) the status or legal capacity of natural persons; b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession; c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; d) social security; e) arbitration; f) employment law; g) tenancies of immovable property (...); or h) violations of privacy and of rights relating to personality, including defamation.» It also excludes («shall not extend, in particular to», art. 2.1) revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*). Disputes relating to agreements or legal acts in civil and commercial matters carried out by State Authorities are therefore excluded from the material scope of application of the ESCP Regulation, when they act *iure imperii*, in other words, with the powers and prerogatives of an administrative authority. In addition to the «civil and commercial matters» excluded, in order to accurately define its content and scope, article 2, section 2, letter g) of the ESCP Regulation states that the exclusion does not refer to actions on financial rights relating to the leasing of property, which are therefore subject to the ESCP Regulation. In short, bearing in mind the exclusions, the only expressly included matter [art. 2.2, g)] and the status with which public authorities act, the «civil and commercial matters» coincide with those of private financial law.

B) Cross-border Nature of the Dispute

The ESCP Regulation states that the ESCP functions on a cross-border basis within the territory of the European Union and is not applicable to internal litigation. In Chapter 1, (*Subject Matter and Scope*), the three first articles emphasise that disputes relating to civil and commercial matters must have a cross-border nature. Article 3, section 1 defines what is understood as a cross-border case: «For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised». Taking the reference as the State of the court or tribunal seised, there are four possible cases: a) a plaintiff brings an action before a court of his own State and the defendant is domiciled in another Member State; b) the defendant defends himself in a court of his own State against the plaintiff domiciled in another State; c) the

parties are domiciled in a Member State, whereas the court belongs to another State; and d) both parties are domiciled in different Member States and the court belongs to a third State. Defining of a cross-border case is intended to prevent application of the ESCP Regulation to cases in which the plaintiff or defendant is located outside the territory of the European Union. The ESCP Regulation determines «the date on which the claim form is received by the court or tribunal with jurisdiction» as the relevant moment for determining «whether there is a cross-border case» (art. 3.3). This rule prevents litigants domiciled in a Member State from enforcing a judgment in another Member State, in order to convert it into a cross-border case.

Finally, the basic element of domicile to determine whether or not the case is cross-border is determined in accordance with the provisions of articles 59 and 60 of Council Regulation (EC) 44/2001, dated 22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter, BR) (art. 3.2 ESCP Regulation). The BR does not contain a standard definition of domicile, which is hindered by the substantial differences between the legal systems of Member States. The solution adopted consists in referring to the internal laws of Member States, in the understanding that domicile is linked to State sovereignty and, therefore, to its territory (art. 59.1 and 59.2 BR). On the contrary, with regard to the domicile of companies, the BR does contain an independent or standard definition: «For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its: a) statutory seat; b) central administration; c) principal place of business» (art. 60.1).

C) Small Claims

In all Member States, the ESCP is the applicable procedure for cross-border disputes in civil and commercial matters, upon application by the plaintiff, when the declared value as stated in the claim does not exceed 2,000 Euros at the time the claim form is received by the court or tribunal with jurisdiction, «excluding all interest, expenses and disbursements» (art. 2.1).

If the cross-border civil requirements are met, use of the ESCP will be based only on the amount, either of a claim for payment of an amount of money or a «non-monetary claim» in which the amount has to be determined (arts. 4.3 y 5.5). Form A clearly distinguishes between monetary and non-monetary claims. Given that the essential element is monetary value, «non-monetary claims» can be defined as all obligations to perform a particular act (to do, not to do or deliver an asset other than money) and even constituting or merely declaratory claims. However, all non-monetary claims necessarily require the determining of the amount, which must not exceed 2000 Euros. One thing is the determining of the amount to establish the applicable procedure and another completely different issue is the nature of the judgment as to the substance of the case. The ESCP Regulation does not contain a provision relating to the amount of the proceedings, with the exception of the exclusion of all interest, expenses and disbursements (art. 2.1, Whereas 10), the amount of proceedings or of the claim therefore subject to internal Member State law.

1.2.2. Territorial Scope

The ESCP Regulation is applicable to the entire European Union, except Denmark: «In this Regulation, the term «Member State» shall mean Member States with the exception of Denmark» (art. 2.3). In accordance with articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application (Whereas 38 ESCP Regulation). Accordingly, recognition and enforcement in Denmark or in Spain of a judgment issued in Spain or Denmark, respectively, will be in accordance with the Brussels Regulation (Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, of 19 October 2005, in force since 1 July 2007). On the contrary, in accordance with article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation (Whereas 37 ESCP Regulation).

1.2.3. Temporal Scope of Application

According to the provisions of paragraph 1 of article 29, the ESCP Regulation «shall enter into force» on the day following its publication, in other words on 1 August 2007 and paragraph 2 states that «it shall apply» from 1 January 2009, with the exception of article 25 which will apply as of 1 January 2008. This means that the Regulation, *as a whole*, has been in force since 1 August 2007, however the specific application of its provisions depends on the exact date set forth in the Regulation or the condition established. The ESCP Regulation distinguishes between two types of provision: procedural rules that are applicable to the subjects, courts and parties to proceedings and, secondly, those involving Member States, Community institutions or both. Non-procedural rules are set forth throughout the provisions of the Regulation (arts. 4.2, 4.5, 11, 17.1), however the majority appear in Chapter IV (*Final Provisions*, arts. 24-28). The final provisions refer to the information required by the «nationals», «professional circles» and the «general public» on certain legal issues of the European small claims procedure (arts. 24 and 25) and possible amendment of non-essential elements (forms) of the ESCP Regulation made by the Commission itself under the relevant procedure (arts. 26 and 27; Whereas 35) and, finally, the detailed report to be submitted by the Commission «by 1 January 2014», on the functioning of the European small claims procedure and process, as well as its impact on each Member State, in order to assess the possible amendment of the Regulation or its abolishing and replacement by another (art. 28). There is no doubt that the procedural provisions [arts. 1, 2 and 3; 4.1, 4.3, 4.4, 5-10, 12-16, 17.2, 18-23] were applicable from 1 January de 2009, similar to arts. 26 to 28, which required a certain number of years of «running in». On the other hand, arts. 24 y 25 refer to the duties to be fulfilled by Member States either directly or through the Commission in order to provide information on certain issues relating to the ESCP. In

particular, the information that Member States have provided or are to provide to the Commission in relation to internal procedural law relating to the European procedure (arts. 4.2, 17.1, 21.2 b), 23, 24 and 25), is necessary to ensure the effectiveness of the ESCP. article 25 therefore establishes a deadline («by») 1 January 2008, for the providing of such information to the Commission (see section 1.4 below).

1.3. RELATIONSHIP WITH OTHER COMMUNITY INSTRUMENTS AND NATIONAL PROCEDURAL LAWS

The ESCP is a hybrid regulation governed firstly by Community or standard regulations and, secondly, by the procedural laws applicable in the Member State in which the process is carried out.

1.3.1. Consistent Regulations

In addition to the rules set forth in the ESCP Regulation itself, certain other EU regulations are applicable by specific reference in the ESCP Regulation as legal sources thereof. This is the case of Regulation (EEC, Euratom) No. 1182/71 of the Council dated 3 June 1971 determining the rules applicable to periods, dates and time limits (hereinafter PDTR), to which Whereas 24 of the ESCP Regulation refers (see section 2.2.3 below); and the BR for the purposes of determining the international jurisdiction of the court to be seised of proceedings, the concept of domicile, in relation to cross-border disputes (art. 3.2 ESCP Regulation) (section 1.5 below) and the meaning of a counterclaim (Whereas 16) (see section 2.3.2. below). With regard to service, the ESCP Regulation [arts. 13.2 and 18.1 a), i)] refers to the service procedures set forth in articles 13 and 14 of Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (EEO Regulation), which is applicable together with Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (RN), abolishing Council regulation (EC) No 1348/2000 of 29 May 2000 (Whereas 21 RN). In addition, Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (RP), designed to improve, simplify and expedite cooperation between courts in the obtaining and taking of evidence, can also be used for the purposes of determining the need for personal assistance by an applicant, witness or expert witness when making a statement under the European small claims procedure. As a supplementary regulation, we could also quote Council Directive 2002/8/EC dated 27 January 2003 (LAR), intended to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes and applicable to all Member States, except Denmark.

1.3.2. National Procedural Law

The application of the ESCP Regulation to Member States does not imply the abolishing of previously existing national procedural laws, given that the new procedure is

structured «as an alternative to the procedures existing under the laws of the Member States» (art. 1, first paragraph of the ESCP Regulation). This means that, when exercising their right to judicial protection, litigants have an additional optional tool, which will remain unaffected (Whereas 8). However, this does not mean that the ESCP Regulation is self-sufficient, given that on a number of occasions, the Regulation refers expressly to national procedural law [article 19 (*applicable procedural law*) or article 21 (*enforcement procedure*), section 1 of the ESCP Regulation] which also acts as subsidiary legislation. There are also other references to national procedural law to determine the meaning of a «*clearly unfounded*» or «*inadmissible*» claim (Whereas 13); the costs of the proceedings (Whereas 29) or the existence or not of the right to appeal against a judgment given under the ESCP Regulation (arts. 15.1 and 17.1, Whereas 26). In addition, the Regulation does establish minimum or uniform standards that, in conjunction with national law, provide for a «review» of the judgment given in a European small claims procedure that violates the right to defence (art. 18 and Whereas 9 and 31), resulting in it being declared null and void. Finally, the ESCP Regulation contains a large number of terms, concepts and procedural institutions that must be governed by internal procedural laws, other than the concepts of court, counterclaim, compensation, final judgment, calculation of time limits and domicile (in a particular context), which are independent or standard. The legal instrument used –the Regulation– does not require any ulterior legislative act by a Member State, at least those similar to Directive requirements, however it is true that internal laws are necessary to solve loopholes, resolve problems of interpretation and ensure the effective application of its provisions. In short, the European small claims procedure is hybrid legislation, to the extent that it is the result of coinciding legislation: the procedural laws of the ESCP Regulation, the only European regulations applicable in 26 Member States and internal procedural laws (be they general or specific), which are multiple by definition and thus lead to the disparity of the procedure.

1.4. MEMBER STATE REPORTING OBLIGATIONS

In compliance with the provisions of article 25 of the ESCP Regulation, each Member State shall notify the Commission: *a)* which courts or tribunals have jurisdiction to give a judgment in the European Small Claims Procedure; *b)* which means of communication are accepted for the purposes of the ESCP, in accordance with article 4, section 1; *c)* whether an appeal is available under their procedural law in accordance with article 17 and with which court or tribunal this may be lodged; *d)* which languages are accepted pursuant to article 21, section 2, letter b). The updated information provided by Member States is made public by the Commission on the European Judicial Atlas in the document titled «Information communicated by Member States in accordance with article 25 of Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure»⁹, consolidated version (latest update 12.03.2010).

9. http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_en_861.pdf.

1.5. JURISDICTION

The competent court in cross-border litigation relating to civil and commercial matters defined under the ESCP Regulation must have international jurisdiction according to the Brussels Regulation, given that the ESCP Regulation does not contain any provision whatsoever establishing such jurisdiction. In the claim filed, the plaintiff must identify the court with which the claim is to be filed, as only the competent court can be seised of the proceedings. In this regard, Form A states that «the court's jurisdiction shall be pursuant to the provisions of Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters». The BR criteria for determining jurisdiction is based on priority, which gives preference to exclusive matters (art. 22), regardless of the domicile of the parties. Nevertheless, paragraph two of section one establishes the joint jurisdiction of the courts of the parties' domicile in another Member State and that of the courts of the place of immovable property, although in cases of actions for monetary claims relating to the leasing of property [art. 2.2 g) ESCP Regulation] the courts of the domicile of the parties will not have jurisdiction under the ESCP, given that the dispute will not be of a cross-border nature.

The parties' freedom to reach an agreement in a cross-border dispute cannot alter the application of exclusive rules of jurisdiction, however when no such rule is applicable, they may either expressly or tacitly determine the Member State court to be seised of proceedings, irrespective of domicile. An express choice of court agreement will not be valid if it contravenes the special rules regarding insurance [arts. 8-14, art. 13 BR]. The case referred to in section 3 is not applicable, as it is not a cross-border dispute, which is also the case set forth in section 4, because one of the parties is not domiciled in a Member State] or the special rules governing agreements entered into by consumers [arts. 15-17, art. 17 BR]. The case referred to in section 3 is also not applicable, as it does not deal with cross-border litigation). Following an express agreement and even if such an agreement does not exist, should the plaintiff file a claim with a particular court and the defendant appear and answer the claim in relation to the substance of the matter, the parties would have tacitly agreed to international jurisdiction in the proceedings, thus annulling the effects of express submission. In the absence of exclusive rules and submission by the parties, in addition to the aforementioned special matters, other special rules will also apply (art. 5 BR), as well as eventually that of defendant domicile (art. 2 and 3.1 BR). Finally, other rules based on connection exist, such as those governing counter-claims –understood as claims «arising from the same contract or facts on which the original claim was based»–, filed by the defendant against the initial plaintiff, in which the competent court is that seised of the initial proceedings (art. 6.3 BR), even in matters relating to insurance (art. 12.2 BR) and agreements entered into by consumers (art. 16.3 BR). The accumulation of claims against several defendants is also permitted (art. 6.1 BR), however not cases of multiple claims filed by different plaintiffs against a single defendant. To commence a European small claims procedure, the claim must be filed with– or sent to «the court or tribunal with jurisdiction directly» (art. 4.1 ESCP Regulation). Following application of the provisions of the BR, the competent court will be determined according to the rules governing jurisdiction of the Member State whose courts have international jurisdiction.

1.6. REPRESENTATION OF THE PARTIES AND LEGAL AID

The cost effectiveness objective requires a drastic reduction of the costs of proceedings, a substantial part of which is the remuneration of the services rendered by professionals of law. Accordingly, article 10 establishes a standard rule that eliminates the mandatory nature of defence and/or representation of the parties by professionals of law in Member State courts, in all procedural acts included in the application of the ESCP Regulation. In addition, private individual cross-border litigants domiciled or habitually resident in a Member State other than the Member State where the court is sitting or where the decision is to be enforced (art. 2.1 of the Legal Aid Directive) that lack sufficient financial resources to litigate under the ESCP at the time of application for legal aid in the Member State of the court shall be entitled to receive appropriate legal aid in order to ensure their effective access to justice (art. 3 LAR).

The ESCP Regulation proves to have substantial internal coherence, in that certain provisions are aimed at replacing or neutralising the foreseeable absence of legal professionals in the proceedings. Firstly, the acts of the parties and certain acts of the court must be recorded on standard forms provided for such purpose (Annexes I-IV of the ESCP Regulation). It is not sufficient for the forms to be available to those involved in the proceedings, but also necessary for the parties to receive technical and practical assistance on how to complete them by a member of the court (the Secretary). The court and party standard forms constitute the legal assumption in a number of ESCP Regulation provisions, thus demonstrating their active role in the European small claims procedure. Secondly, the court must inform the parties or interested party of certain aspects of the procedure or the consequences of not performing certain acts [arts. 4.3; 4.4, first paragraph; 4.4, second paragraph; 6.3; 7.1 a); 12.2, Whereas 22; 14.1, Whereas 28]. Thirdly, the ESCP Regulation imposes the prohibition on the court of making any legal assessment of the claim (art. 12.1). The claim, or rather field 8 of Form A of Annex I states «you should describe briefly the substance of your claim (...), for example, what happened, where and when» and nothing else. Special importance is given to not imposing an obligation on the plaintiff, who is not assumed to have knowledge of the law, to quote regulations or facts nor to link them with the facts stated, but only to describe the facts that identify the claim, such as the date, etc. The description provided by the plaintiff will not always enable the claim to be identified and, in such case, the court will often be required to complete or rectify such claim, through (written) dealings with the parties [art. 4, section 4 and art. 7, section 1, point a)] during the proceedings to avoid surprises relating to possible legal issues (*iura novit curia*) of which the parties were not aware.

2. PROCEDURE

2.1. PRINCIPLES OF THE PROCEDURE

The European small claims procedure in the first instance consists of procedural acts carried out by the parties and the court, the possibility of statements made in person by videoconference, an appeal against the judgment, as the case may be, a «review» of the

judgment, its enforcement and stay or limitation of such enforcement. When designing a simplified and rapid procedure that is cost-effective between parties domiciled in different Member States—which occurs in the large majority cases—the preference for written proceedings is obvious. The ESCP is not a procedure that requires the presence of those involved—if it were, the instrument would be inefficient and socially undesirable. Given that the presence of those involved increases costs, especially in cross-border disputes, the preference for written proceedings becomes absolutely necessary: the ESCP is a cost-effective alternative as opposed to the disproportionately costly national proceedings that result in an authentic absence of access to justice.

The European small claims procedure is obviously intended to be in the written form: article 5, section 1 of the Regulation (Whereas 14), openly declares that it should be a written procedure; the allegations made by the parties should be in writing, either by standard means or not; the judgment should also be in writing and the court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties (art. 9.1 ESCP Regulation). A hearing may take place if the court considers it necessary or, if one of the parties so requests, bearing in mind the circumstances of the case and whether or not it is necessary for the proceedings to correctly take place. Nevertheless, for the purposes of pleadings and evidence (arts. 8 and 9.1 ESCP Regulation), the possibility exists of a hearing in the presence of the parties or, to the extent that the relevant technical means are available, by videoconference or other communications systems. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties only if considered necessary for its judgment (art. 9.2). When deciding whether to carry out oral testimony by videoconference, the court must take into account: i) the evidence necessary to give judgment (art. 9.1), ii) the cost of oral testimony (art. 9.2) and iii) the option of the simplest and least burdensome method of taking evidence (art. 9.3). Notwithstanding the above, the deficiencies of written proceedings, possibly heightened by the foreseeable absence of legal professionals, must be offset by the court through written «dealings» with the parties (see section 1.6 above). The principle of remedy of defects in the written documents provided by the parties must be observed, in addition to the principle of contradiction and the right to judicial protection (Whereas 9). Finally, if there is no oral testimony, it is obvious that the court cannot endeavour to reach a settlement between the parties (art. 12).

2.2. GENERAL RULES GOVERNING JUDICIAL PROCEEDINGS

2.2.1. LANGUAGE OF PROCEEDINGS

Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it is willing to accept in a European small claims procedure [arts. 21.2 b), 25.1 d) ESCP Regulation]. Art. 6.1 of the Regulation states that the claim form, the response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents shall be submitted in the language or one of the languages of the court or tribunal. If any other document received by the court or tribunal is not in the language in which the proceed-

ings are conducted, the court or tribunal may require a translation of that document only if the translation appears to be necessary for giving the judgment (art. 6.2 ESCP Regulation). The rule is difficult to understand, given that to determine whether or not a document is necessary to give judgment, it is essential to have prior knowledge of its content, which is normally acquired from reading it. However, if the document is written in a different language to that of the proceedings or is unknown to the court, how is it possible for a translation not to be necessary? According to the provision, it must be another document («if any other document») different to those referred to in section 1 of the article. article 6, section 3 of the ESCP Regulation (Whereas 19) allows one of the parties, under the provisions of article 8 RN (and under the abolished Regulation 1348/2000), to refuse to accept a document if it is not written in the official language of the Member State addressed, or in the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched if there are several official languages in that Member State, or a language which the addressee understands. The court must inform the other party to provide translation. The problems involved in a lack of translation should be resolved by the courts in accordance with their national procedural rules, whilst respecting the meaning and purpose of the RN [see ECJ Judgment (3^a) dated 8 May 2008: Case C-14/07, *Industrie- und Handelskammer Berlin v. Nicholas Grimshaw & Partners Ltd*].

All parties to cross-border disputes resolved by a European small claims procedure that are entitled to legal aid would be reimbursed for expenses incurred as a result of the cross-border nature of the litigation, those resulting from the need for an interpreter and translation of the necessary documents submitted by the beneficiary (v. art. 7 Legal Aid Directive, Whereas 19).

2.2.2. Service of Documents

The service of documents required in the European small claims procedure must respect the fundamental procedural rights set forth in the Spanish Constitution (art. 24) and the Charter of Fundamental Rights of the European Union (art. 47) (Whereas 9 ESCP Regulation). Accordingly, article 18 of the ESCP Regulation grants the defendant the right to apply for a «review» of the judgment given in the ESCP (see section 2.4 below). In order to reduce costs and delays (Whereas 18), article 13, section 1 of the ESCP Regulation requires documents to be served by postal service attested by an acknowledgement of receipt including the date of receipt, whereas article 7, section 2 of the ESCP Regulation states that the judgment may be served upon the parties by such means. In general, the form of service required is by mail with proof of receipt, certifying the date of receipt, however the plaintiff may also use other equivalent means to send a claim form, such as fax or electronic mail, provided it is admitted by the Member State in which proceedings commence [arts. 4.1, 4.2 and 25.1 b) ESCP Regulation]. Whenever service is not possible by certified mail with proof of receipt, article 13, section 2 of the ESCP Regulation provides that service may be effected by any of the methods provided for in articles 13 (*Service with proof of receipt by the debtor*) or 14 (*Service without proof of receipt by the debtor*) the European Enforcement Order (EEO) Regulation.

The EEO Regulation establishes minimum standards to ensure that «the debtor is informed, in sufficient time and in such a way as to enable him to arrange for his defence, about the court action against him» and «any method of service that is based on a legal fiction as regards the fulfilment of those minimum standards cannot be considered sufficient» (Whereas 12 and 13 EEO Regulation). The methods of service set forth in article 13 of the EEO Regulation provides «total certainty» and those of article 14 «a high degree of likelihood» that the document will be received by the addressee. For service to be valid under article 14, the Member State of origin must provide a suitable instrument for the defendant to apply for review of the judgment under the conditions established by article 18 of the ESCP Regulation, when the defendant claims that he has not received the document (Whereas 14 EEO Regulation). When the address is not known with certainty, article 14, section 2 of the EEO Regulation expressly states that service—in accordance with section 1—without proof of personal receipt by the debtor is inadmissible.

2.2.3. Time Limits

Procedural acts under the European small claims procedure must be carried out in compliance with the time limits and conditions set forth in the ESCP Regulation. With respect to time limits, the addressee may be one of the parties or the court itself. As a general rule, the duration of the periods of time is expressed in each case by the ESCP Regulation, however there are cases in which the court sets the relevant time limit. According to the ESCP Regulation, certain time limits are legally extendable and others are not.

Procedural Time Limits set forth in the ESCP Regulation

Article	Procedural Act	Comments
4.4 I 5.7 II	Term granted to the plaintiff to: – «complete or rectify the claim form», or – «to supply supplementary information or documents», or – «to withdraw the claim»	– Period determined by the court, without limits as to duration. – Extendable by the court (art. 14.2).
5.2 II	Term granted by the court for the defendant to be sent a copy of the claim form, and, where applicable, of the supporting documents, together with the answer form thus filled in.	Legal time limit. 14 days, as of receipt of a duly completed claim form.
5.3	Term granted to the defendant to reply to the claim.	– Legal time limit. Within 30 days of service of the claim form and answer form. – Extendable by the court (art. 14.2).
5.4 5.6 I	Term available to the court to send the plaintiff a copy of the defendant's reply—with or without a counterclaim—as well as the relevant documents	– Legal time limit. Within 14 days of receipt of the response from the defendant. – Extendable by the court when a counterclaim is filed (art. 14.2).
5.6 II	Term granted to the plaintiff to reply to a counterclaim.	– Legal time limit. 30 days as of the date of notification of the counterclaim. – Extendable by the court (art. 14.2).

5.5	Term for the court to issue a judgment on the allegations filed by the defendant that the claim exceeds the financial amount set forth in article 2, section 1 of the ESCP Regulation.	- Legal time limit. 30 days as of the date the reply is sent to the plaintiff.
7.1 I	Term for the court or tribunal to issue judgment.	- Legal time limit. Within 30 days of receipt of the response from the defendant or the claimant to a counterclaim. - Extendable by the court (art. 14.2).
7.1 a)	Term available to the court to demand further details concerning the claim from the parties (or the counterclaim).	- Not exceeding 30 days. - Extendable by the court (art. 14.2).
7.1 c)	Term of oral hearing.	- 30 days. - Extendable by the court (art. 14.2).
7.2	Term for the court or tribunal to give judgment.	- Within 30 days of any oral hearing or after having received all information necessary for giving the judgment.

With regard to time limits, the ESCP Regulation empowers the court to determine the duration of the term available to the plaintiff to remedy defects or omissions that may have occurred in relation to the claim or in the submitting of accompanying documents (arts. 4.4, first paragraph; 5.7, second paragraph). In addition, article 14, sections 2 and 3 also grant the court the power to extend (i) the legal time limits when it is the addressee (for example, art. 5.6, paragraph one) and the time limits established by the court itself (art. 4.4, first paragraph), as well as (ii) the time limits applicable to the acts performed by the parties (arts. 4.4, 5.3, 5.6, second paragraph; and 7.1), «in exceptional circumstances» that make it impossible to comply or in order to safeguard «the rights of the parties» or, otherwise «shall take the steps required by those provisions as soon as possible» (arts. 5.2 to 6; and 7). With respect to the calculation of time limits, Whereas 24 of the ESCP Regulation refers to Regulation No. 1182/71 of the Council dated 3 June 1971 determining the rules applicable to periods, dates and time limits (Section 1.3.1). According to such section, terms shall include public holidays, Sundays and Saturdays (art. 3.3). Public holidays are all days classified as such in the Member State in which the act is to be performed and working days as all others excluding public holidays, Saturdays and Sundays (art. 2.1 and 2). The lists of public holidays notified by all Member States to the Commission are published in the *Official Journal of the European Union* (in 2010, the list of public holidays was published in OJ C 9 dated 15.1.2010; correction of errors –the Netherlands– OJ C 78 dated 27.3.2010). The month of August is not considered a non-working month for the purposes of calculating the time limits set forth with respect to days and only non-working days are excluded, in other words public holidays, Saturdays and Sundays. According to Whereas 23, given that the objective of the ESCP Regulation is to simplify and speed up litigation concerning small claims in cross-border cases, courts must act as soon as possible even in cases in which there is no time limit for a particular phase of the procedure. Finally, all parties must be informed not only of the overall consequences of non-compliance with the procedural act within the prescribed term, basically a deadline, but also of the effects of non-compliance with a specific procedural act (art. 14.1, Whereas 28).

2.3. PROCEDURE

2.3.1. Claims and Admission

The procedure commences with an application completed by the plaintiff using a «standard claim Form A, as set out in Annex I», available on the European Judicial Atlas website¹⁰ and available in all the official languages of the European Union.

Requirements of the claim:

1) The plaintiff must state the competent court. In order to do so, he/she applies the rules of the Brussels Regulation and, according to Form A, may seek assistance from the European Judicial Atlas to obtain information on the rules relating to jurisdiction and a glossary of terms¹¹. The determining of the competent court is not an easy task and does not simply involve the plaintiff indicating the jurisdiction considered applicable (*domicile* of the defendant; consumer; policyholder; insured or the beneficiary of insurance; *place* of compliance with the obligation claimed; damage; location of property; *other rules*) or the fact that there is a choice of court agreement. Subsequently and in the event territorial jurisdiction does not have to be determined, the plaintiff must specify the competent court according to the procedural laws of the Member State, again with the assistance of the European Judicial Atlas. Should the competent court be determined, the plaintiff must identify it and provide postal details as to its location (name of the court, street and number, city and postcode). According to the information on the claim, the court must be capable of determining its own international jurisdiction, whether or not it has jurisdiction with regard to the matter and territorial jurisdiction, as the case may be.

2) The plaintiff provides personal details and states his/her address. The details required are name and surname, street name and number, city and postcode, Member State, telephone number, electronic mail, etc. The form also requires other useful personal identity details: date of birth, employment, company position, identity card number and, in certain Member States, the company registration number. If a company, in addition to the above information, the company name is required.

3) The person or persons against whom the claim is filed and their identification details must be clearly indicated, as required above.

4) The dispute must be cross-border. Accordingly, the plaintiff must indicate the Member State of both his and the defendant's domicile, as well as the domicile of the court.

5) If the Member State in which the claim is to be filed requires payment of court fees, the plaintiff may inform the court of how the application fee is to be paid. If he chooses to pay by credit card or deposit into the account of the relevant authority or authorises the charge to be made to his current account, the relevant credit card or current account details must be specified in the appendix to the form. The informa-

10. http://ec.europa.eu/justice_homejudicialatlascivil/html/index_es.htm.

11. http://ec.europa.eu/civiljustice/glossary/glossary_es.htm.

tion contained in the appendix is exclusively intended for the court and not provided to the defendant.

6) Amount of the claim. Whether the claim is monetary or non-monetary must be clearly indicated and, in any case, the monetary amount thereof specified. If interest is claimed, interest rates and date as of which contractual or statutory interest is calculated must also be specified. If the costs of proceedings are claimed, the type of such costs and amount claimed or incurred to date is required.

7) Details of the claim. The form refers to the «reasons» of the claim, as well as to what happened, where and when, without requiring specification of the relevant legal grounds (art. 12.1 ESCP Regulation; 1.6 *in fine*).

8) The plaintiff must provide a «description of evidence supporting the claim» (art. 4.1), «accompanied [according to the form], where appropriate, by any relevant supporting documents» (art. 4.1). The plaintiff may request on the form or at a later date that a hearing take place. The court or tribunal shall hold an oral hearing if it considers this to be necessary or if a party so requests; or may refuse such a request (art. 5.1 ESCP Regulation).

9) Date, place and signature. The plaintiff is required to state his name and surname on the last page of the form. The form concludes by stating: I hereby request that the court/tribunal give a judgment against the defendant on the basis of my claim and «I declare that the information provided is true to the best of my knowledge and is given in good faith».

10) The document must be submitted in the language or one of the languages of the court or tribunal (art. 6.1 ESCP Regulation) «and lodged with the court or tribunal with jurisdiction directly, by post or by any other means of communication (fax, email, etc) acceptable to the Member State in which the procedure is commenced» (art. 4.1 ESCP Regulation).

When the court considers that the claim contains defects that can be remedied –inadequate or insufficiently clear information, or if the claim form is not filled in properly or supplementary documents are missing (art. 4.4, first paragraph ESCP Regulation), it may provide information to the plaintiff of such defects and offer the possibility of completing or correcting the claim form, or providing information or the supplementary documents required, or withdraw the claim within the prescribed period of time (art. 4.4 ESCP Regulation), using standard form B of Annex II. Should the plaintiff fail to remedy the defects, the application «shall be dismissed». The expression is incorrect and should state that the claim shall be refused or not admitted. In any event, Whereas 13 establishes that the meanings of the terms used by the ESCP Regulation «should be determined in accordance with national [procedural] law». The court will order non-admission of the claim when the defect or omission is not remedied before the prescribed time limit, is unfounded or lacks identity details of the parties or for other causes (4.4, second paragraph ESCP Regulation). Instead of non-admission, there would be a change of proceedings when a claim is not included in the scope of application of the ESCP Regulation, given that after informing the plaintiff accordingly and unless such plaintiff withdraws the claim, the court will continue with

proceedings according to the procedural laws of the Member States of the procedure (4.3 ESCP Regulation).

2.3.2. Answer to the Claim and Counterclaims

Once the claim has been admitted, the court has 14 days to complete the relevant part (part I) of the standard answer form C, contained in Annex III and to send the defendant copies of the claim form, relevant supporting documents and the answer form (art. 5.2 ESCP Regulation). The defendant is required to «answer» the claim, either by completing and returning part II of the standard answer form C, accompanied by the relevant supporting documents, as the case may be, or by any other means without using the standard form, within a period of 30 days as of the date upon which the defendant was notified of the claim and answer forms. In order to avoid so-called idle time, the court has 14 days to send the plaintiff a copy of the «answer» given by the defendant, together with the supporting documents (arts. 5.3 and 5.4 ESCP Regulation).

Counterclaims filed by the defendant and the answer thereto by the plaintiff will be processed in the same way, *mutatis mutandis*, as the initial claim and answer forms (art. 5.7, second paragraph). Sections 6 and 7 of article 5 of the ESCP Regulation do not require any form of connection with the initial claim to file a counterclaim. On the other hand, Whereas 16 y 17 contain two interpretation criteria related to counterclaims: according to the first, the concept of counterclaim «should be interpreted within the meaning of section 3 of article 6 of the Brussels Regulation as arising from the same contract or facts on which the original claim was based» and, according to the second, the right of set-off «should not constitute a counterclaim for the purposes of this Regulation», meaning that the defendant is not obliged to use standard form A of Annex I to invoke the right. If the counterclaim exceeds the amount of 2,000 Euros, a claim and counterclaim will not proceed under the ESCP, but dealt with in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted (art. 5.7, first paragraph ESCP Regulation). Article 4, section 3 and article 5, sections 5 and 7 of the ESCP Regulation deal with the problem of the suitability of the procedure, as mentioned.

2.3.3. Hearing and Taking of Evidence

If the defendant fails to «answer» the plaintiff's claim or the plaintiff does not answer the counterclaim filed by the defendant, the court will give its judgement (art. 7.3 ESCP Regulation). After receiving the «answer» from the defendant or answer to a counterclaim, as the case may be, the court may i) request supplementary information from the parties in relation to the claim, ii) order the taking of evidence, pursuant to article 9, or iii) some of the parties to a hearing. If such answers are not received, it shall give judgment (art. 7.1 ESCP Regulation). The regulation of the European small claims procedure is predominantly written and therefore only allows a hearing if the court considers it necessary of its own motion or upon application by party. The reasoned judgment containing the adopted decision «may not be contested separately» (art. 5.1

ESCP Regulation), but may be again challenged by means of the appeal against the judgment given by the court (v. art. 17 ESCP Regulation). For the purposes of allegations and evidence (arts. 8 and 9.1 ESCP Regulation), the possibility exists of an oral hearing in the presence of the parties or, depending on the availability of the relevant technical resources, by videoconference or other communication systems. The court or tribunal may take expert evidence or oral testimony only if it is necessary for giving the judgment. (art. 9.2 ESCP Regulation). When determining whether or not oral testimony should be given by video conference, a court must take into account: i) the evidence necessary for its judgment (art. 9.1 ESCP Regulation), ii) the cost (art. 9.2 ESCP Regulation) and iii) the simplest and least burdensome method of taking evidence (art. 9.3 ESCP Regulation). Provided the procedure has not terminated earlier, by means of a settlement, following such proceedings the court will give its judgment (art. 7.2).

2.3.4. Judgment and Appeal

Conclusion of the proceedings (art. 7 ESCP Regulation) result in a judgment by the court. Articles 17 and 25, section 1, paragraph c) of the ESCP Regulation state that Member States must inform the Commission whether an appeal is available under its law and the time limit for such appeal. Information provided by Member States is available from the (aforementioned) European Judicial Atlas. Article 15 states that a judgment given under the European small claims procedure shall be enforceable –notwithstanding any possible appeal– even without the provision of a security (section 1) and, in the event that the judgment is to be enforced in the Member State where the judgment was given, the suspension or limitation regulated in article 23 will apply (section 2). However, a judgment containing a condemnatory decision will be enforceable. Article 15 is a consistent provision that establishes provisional enforcement of the judgment after an appeal has been filed, without the court requiring security, although the provisional measures set forth in article 23 may be adopted.

2.4. REVIEW OF JUDGMENTS IN EXCEPTIONAL CASES

Article 18 of the ESCP Regulation requires the procedural laws of Member States to allow the defendant to exercise the right to review of a judgment issued under the European small claims procedure, in the exceptional cases set forth therein. Should the competent court reviewing the decision refuse to declare it null and void by considering that none of such grounds apply, «the judgment shall remain in force» (section 2, first paragraph). The concept of a final ruling is consistent under the ESCP Regulation, which should not be interpreted according to national procedural law, given that under the Regulation, no judgment is final until the competent court decides as to the grounds of appeal alleged by the defendants and confirms the judgment challenged if such grounds are not applicable. If the Member State law does not contain an *ad hoc* means of appeal and the defendant is required to use existing means, the internal meaning of a final judgment should not be an obstacle to the exercising of the right to review granted to the defendant under the ESCP Regulation. Until such time, for

the purposes of the European small claims procedure, the judgment will not be final, although as of the decision dismissing review, «shall remain in force». Accepting the independence of national procedural law, it does not appear that the judgment will be considered as «completely final» and ratify the final nature of the judgment subject to review. What could occur is that the defendant becomes aware of the proceedings prior to or after the judgment is given. If he becomes aware prior to the judgment, he must act «promptly» (art. 18.1 ESCP Regulation), allege the relevant grounds before the court, which were not taken into consideration and a judgment given against his. This will also be the case if the defendant becomes aware of the –concluded– proceedings after the judgment is given. In both cases, the issue to resolve consists in determining the competent court to receive the alleged legal grounds for review of the judgment and what challenge or form of appeal could be used to do so.

3. RECOGNITION AND ENFORCEMENT OF THE JUDGMENT

3.1. ABOLISHMENT OF EXEQUATUR AND ENFORCEMENT OF THE JUDGMENT

Article 20, section 1, of the ESCP Regulation establishes the automatic nature of enforcement of an ESCP judgment given in a Member State, without the need for a declaration of enforceability or the possibility of opposing recognition. All ESCP judgments are enforced in the same conditions as judgments given in the Member State of enforcement (art. 21.1, second paragraph ESCP Regulation). Notwithstanding the provisions of articles 20 to 23 of the ESCP Regulation, the enforcement procedures shall be governed by the law of the Member State of enforcement (art. 21.1, first paragraph). The court of the Member State of origin, either in the first instance or second phase and upon application by one of the parties, without additional costs, will issue a certificate of enforceability of the judgment (Form D of Annex IV of the ESCP Regulation).

The party requesting the enforcement of judgment by means of a claim must submit: a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity, and b) a copy of the certificate concerning a judgment in the European Small Claims Procedure and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the ESCP. The content of Form D shall be translated by a person qualified to make translations in one of the Member States.

The party seeking the enforcement of a judgment given in the European Small Claims Procedure in another Member State shall not be required to have: an authorised representative or a postal address in the Member State of enforcement. No security, bond or deposit, however described, shall be required of a party who in one Member

State applies for enforcement of a judgment given in the European Small Claims Procedure in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

3.2. REFUSAL OF ENFORCEMENT

Under no circumstances may a judgment given in the European Small Claims Procedure be reviewed as to its substance in the Member State of enforcement (art. 22, section 2 of the ESCP Regulation). Enforcement shall, upon application by the person against whom enforcement is sought, be refused by the court or tribunal with jurisdiction in the Member State of enforcement if the judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided the following requirements are met: *a)* the earlier judgment involved the same cause of action and was between the same parties; *b)* the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and, *c)* the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given (art. 22, section 1 of the ESCP Regulation). These grounds for refusal are similar to those set forth in articles 21.1 of the European Enforcement Order Regulation and 22.1 of the European Order for Payment Procedure Regulation.

3.3. STAY OR LIMITATION OF ENFORCEMENT

When the competent court is carrying out proceedings for enforcement of a judgment given under the European small claims procedure and one of the parties has challenged the judgment or such challenge is still possible, or an application for review has been filed pursuant to article 18, upon application by the party subject to enforcement, the court may: *a)* limit the enforcement proceedings to protective measures; *b)* make enforcement conditional on the provision of such security as it shall determine, or *c)* under exceptional circumstances, stay the enforcement proceedings (art. 23 ESCP Regulation; in a similar sense, arts. 23 of the European Enforcement Order Regulation and 23 of the European Order for Payment Procedure Regulation EOPP).

Chapter XI

Insolvency proceedings: Regulation 1346/2000

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1. CROSS-BORDER INSOLVENCY IN THE EUROPEAN UNION*

Insolvency proceedings are aimed at meeting all the debts of an insolvent debtor by making use of all his/her assets. In order to comply with this objective, the proceedings must firstly be open to all the creditors involved and, secondly, extend their effects to all the assets and rights belonging to the debtor. However, insolvency

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