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enFORcemenT of claimS in  
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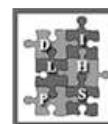
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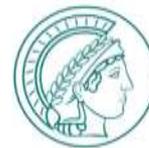
# EFFORTS Practice Guide for the application of the Regulation on the European Small Claims Procedure – France

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\* The author warmly thanks the members of the *EFFORTS French Working Group* for their valuable comments and suggestions regarding the contents of the present Practice Guide:

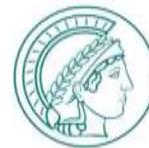
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<b>I. INTRODUCTION .....</b>	<b>4</b>
<b>II. THE ESCP: SCOPE OF APPLICATION .....</b>	<b>4</b>
<b>III. COMMENCING THE PROCEDURE.....</b>	<b>6</b>
<b>IV. PROCEDURE AFTER THE COURT RECEIVES THE CLAIM.....</b>	<b>13</b>
<b>V. ESTABLISHING THE FACTS.....</b>	<b>19</b>
<b>VI. THE JUDGMENT .....</b>	<b>23</b>
<b>VII. REVIEW AND APPEAL .....</b>	<b>26</b>
<b>VIII. RECOGNITION AND ENFORCEMENT.....</b>	<b>28</b>



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## I. Introduction

*The paragraphs below address the concrete implementation of Regulation No 861/2007 (as amended by Regulation No 2015/2421) establishing a European Small Claims Procedure (hereinafter indicated as “ESCP” and “ESCP Reg.”) into the national law of France. In doing so, it integrates and supplements the European “Practice Guide for the Application of the European Small Claims Procedure” published by the Commission on the [e-Justice Portal](#)<sup>(1)</sup>.*

*Following the structure of the European Practice Guide, the present section will address, in turn: questions related to the scope of application of the ESCP (II), the commencement of the procedure (III), the procedure to be followed after the court receives the claim (0), the rules applicable to the establishing of the facts (0), the ESCP judgment (0), the review and appeal mechanisms (0), and the recognition and enforcement of ESCP judgments (0).*

## II. The ESCP: Scope of application

When France is the Member State of origin

**1. Material scope of the ESCP Reg.** Pursuant to Art. 2 ESCP Reg., the Regulation applies to “civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 5 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements”. Regarding the financial limit, Art. 2(1) ESCP Reg. sets out how the value of the claim is to be determined (EC PG 2.1.1.). Unlike the procedure for the European Order for Payment which is limited to monetary claims, non-monetary claims can be the subject of a claim under the ESCP (EC PG 2.1.2.). If the claim is non-monetary, it must be given a value which falls within the financial limit of the ESCP (EC PG *ibid.*).

In the absence of any specific provisions concerning the ESCP Reg., the calculation of the value of the initial claim should follow the requirements of the ESCP Reg. as

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<sup>1</sup> The European Practice Guide prepared by the Commission is available at: ‘European e-Justice Portal – Small claims’, <[https://e-justice.europa.eu/42/EN/small\\_claims](https://e-justice.europa.eu/42/EN/small_claims)> accessed 21 April 2022.



well as the general rules set out in Arts 35 ff of the Code of Civil Procedure (hereinafter, “**CCP**”).

Firstly, Art. 2 ESCP Reg. seems to suggest that when the amount of a monetary claim is expressed in a currency other than the euro, its value should be calculated based on the rate of conversion applicable at the time when the claim form is received by the court or tribunal with jurisdiction.

Secondly, the CCP provides that where the dispute concerns multiple claims opposing a single claimant and a single defendant, the jurisdiction shall be determined by the total value of such claims if the claims are based on the same or related facts (Art. 35(2) CCP), and by the nature and value of each claim standing alone if the claims are unrelated and based on different facts (Art 35(1) CCP). Under Art. 101 CCP, the claims are related if there is such a connection that it is in the interests of good justice to have them heard and determined together.

Thirdly, Art. 36 CCP provides that in case of multiple parties: “Where claims are asserted in the same proceeding under the same title by more than one plaintiff or against more than one defendant, the jurisdiction and rate of jurisdiction shall be determined for all claims by the highest of them”.

Fourthly, Art. 37 CCP provides that: “Where jurisdiction depends on the amount of the claim, the court shall hear all joinders and counterclaims and claims for set-off which are less than the amount of its jurisdiction, even though, taken together with the claims of the plaintiff, they would exceed it”.

Finally, the CCP does not specify how the value of a non-monetary claim should be determined for the purpose of appeal and jurisdiction.

**2. Geographical scope of the ESCP Reg. (cross-border cases).** The ESCP only applies to cases defined as ‘cross-border’, that is cases in which at least one of the parties is domiciled or habitually resident in a Member State other than that of the court or tribunal seised with the claim (EC PG 2.2.2.). In Article 3(3) it is provided that the relevant moment for determining whether a case is a cross-border case is the date on which the Claim Form is received by the competent court or tribunal (EC PG *ibid.*). Furthermore, Art. 3(2) ESCP Reg. provides that the domicile should be determined according to Art. 62 and 63 BI



bis Reg. According to these provisions, the domicile of physical persons should be determined in accordance with national law.

Under French national law, Art. 102(1) of the Civil Code (hereinafter, “**CC**”) sets out the general rule: “The domicile of any French person, as regards the exercise of his civil rights, is the place where he has his main establishment”. Additionally, Arts 102 ff CC provide specific rules that may apply in special circumstances.

These rules may nevertheless lead to jurisdictional gaps in cases where a defendant resides in France without having their domicile in the country nor fulfilling the conditions to be domiciled in another Member State according to the applicable foreign law. In such cases, the Court of Cassation held – in a case involving the old Brussels Convention – that the jurisdiction of French courts may be determined following Art. 43 of the French Code of Civil Procedure (hereinafter, “**CCP**”) (Cass. Civ. 1, 04.01.1984, No 82-15.835). According to this provision, defendants whose place of domicile is unknown may be sued before the courts of the place of their residence.

### III. Commencing the Procedure

When France is the Member State of origin

**1. Access to the form.** In accordance with Art. 4 ESCP Reg., the claimant shall commence the procedure by filling in Claim Form A (Annex 1) (EC PG 3.1). The Claim Form should be available at all courts and accessible through relevant national websites (Article 4(5)) (*ibid.*).

The standard forms are directly available in French via the e-Justice Portal at the address [https://e-justice.europa.eu/177/FR/small\\_claims\\_forms?clang=fr](https://e-justice.europa.eu/177/FR/small_claims_forms?clang=fr)

**2. Practical assistance.** Since through Art. 11 ESCP Reg. the Member States are under the duty to ensure that the parties can receive practical assistance in filling in the forms, such assistance should be available in all the Member States as regards completion of the Claim Form as well as all the other forms (EC PG 3.1). In accordance with Art. 25(1)(c) information on the



organisation of the practical assistance has to be provided to the European Commission. This information is made available on the e-Justice Portal (*ibid.*) (on practical assistance, cf. also EC PG 9.2.2.).

According to the communication made by the French government under Art. 25(1)(c) ESCP Reg., the litigants may request assistance in filling in the forms either directly from the court clerks (generally located at the court's reception), or from the staff working in law centres (*maisons de la justice et du droit*) and lawyers serving at the advice centres operated free of charge by the legal counselling services at département level (*centres départementaux d'accès au droit*)<sup>2</sup>.

These different options are succinctly presented on the website *Justice.fr*<sup>3</sup>.

**3. Legal aid.** The ordinary provisions on legal aid apply in the Member States (EC PG 3.1).

In France, official information on the requirements and procedures to benefit from legal aid are detailed on the website *Service-public.fr*<sup>4</sup>, which also features relevant forms and contact points.

**4. Competent court or tribunal.** National rules of the Member State seized determine the local court having competence (EC PG 3.2.2.). For the purposes of the ESCP, a court or tribunal should include at least one person qualified to

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<sup>2</sup> See 'European e-Justice Portal - Small claims', <[https://e-justice.europa.eu/354/EN/small\\_claims?FRANCE&member=1](https://e-justice.europa.eu/354/EN/small_claims?FRANCE&member=1)> accessed 10 August 2022.

<sup>3</sup> See <<https://www.justice.fr/acces-droit>> accessed 10 August 2022.

<sup>4</sup> 'Aide juridictionnelle', <<https://www.service-public.fr/particuliers/vosdroits/F18074>> accessed 10 August 2022.



serve as a judge under the law of the Member State of the court where the claim is proceeding (See Recital (27) ESCP Reg.) (EC PG 5.6.2.).

Regarding the territorial competence of French courts, Art. 1382 CCP provides that: “Where Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters designates the courts of a Member State without further specification, the court with territorial jurisdiction shall be that of the place of residence of the or one of the defendants” .

Regarding the material competence, France has decided to split the competence over the ESCP between civil and commercial courts<sup>5</sup>.

Following the abolition of the *tribunaux d'instance* by the Law No 222-2019 of 23 March 2019, Art. L211-4-2 of the Code of Judicial Organisation (hereinafter, “CJO”) grants jurisdiction in civil cases to the local chambers of the combined courts (*chambres de proximité des tribunaux judiciaires*).

With respect to commercial disputes , Art. L721-3-1 of the Code of Commerce grants jurisdiction to the commercial courts (*tribunaux de commerce*).

If the claimant files an ESCP request before an incompetent court, the defendant may raise an exception pursuant to Arts 76 (material competence) and 77 (territorial competence) CCP. The court may also rule on its competence *ex officio* if the defendant does not appear, if the dispute falls within the exclusive territorial competence of another court, or under a mandatory rule of material competence. In case of lack of competence, the case is transferred to the competent court pursuant to Arts 81 and 82 CCP, unless the dispute falls under the jurisdiction of a criminal, administrative, foreign court or arbitral tribunal.

By way of exception, Art. 82-1 CCP provides an automatic transfer of cases if the dispute falls within the jurisdiction of another court within the same *tribunal judiciaire*.

**5. Description of the claim.** The factual basis of the claim to be given in box 8 of the Claim Form needs to be supported by as much written material as is necessary to enable the court which receives the claim to determine the value of the claim, the basis of the claim and the evidence which supports the claim. If this is not done, there is a risk that the court may reject the claim as unfounded or, at

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<sup>5</sup> See ‘European e-Justice Portal - Small claims’ (cit n 2).



the very least, require further information from the claimant which will cost time and delay the procedure (EC PG 3.3.1.1.).

**6. Interest.** Although the claim is assessed without taking interest claimed into account, the interest figure or rate still has to be stated, as does the basis on which interest has accrued or is accruing to the principal claim (EC PG 3.3.2.).

In France, Art. 1231-6 of the Civil Code (hereinafter, “**CC**”) provides that monetary obligations produce interest at the legal rate calculated from when the debtor received the notice of default. Nevertheless, a higher interest rate may apply if the parties have so agreed, provided the judge does not consider it as manifestly excessive or derisory (see Art. 1231-5 CC). These rules apply if the underlying claim is governed by French law.

Additionally, Art. 1231-7 CC provides that any decision awarding compensatory damages shall bear interest at the legal rate even in the absence of a claim or special provision in the judgment. Unless otherwise provided by law or the judgment itself, such interest shall accrue from the date of the decision.

From a procedural standpoint, statutory interests are automatically added to the principal by operation of law, do not need to be included in the application, and run until the date of the payment (see Civ. 2, 23.09.2004, No 02-20.943). If the enforcement is carried out in France, Art. L313-3 of the Monetary and Financial Code provides that the legal interest rate is increased by 5% after two months from the day of the notification of a (provisionally or finally) enforceable decision on the debtor (Cass. Civ. 2, 04.04.2002, No 00-19.822).

The legal interest rate applicable in France is revised every six months and may be consulted at: <https://www.service-public.fr/particuliers/vosdroits/F783>.

**7. The cost of lodging a claim.** In accordance with Art. 15a ESCP Reg., court fees need to be proportionate and not be higher than those charged for comparable national procedures. Distance means of payment should be



available by way of either (a) bank transfer; (b) credit or debit card payment; or (c) direct payment from the claimant's bank account (EC PG 3.4.).

In civil cases, there are no court fees, and the court also bears the costs of document notifications unless service has to be performed by a judicial officer pursuant to Art. 1387 CCP. This provision applies where the notification of a document cannot be carried out by letter with acknowledgement of receipt. In such cases, the court advances the service fees, which are then included in the final calculation of costs.

In commercial cases, court fees depend on whether a hearing has to be held. According to the information published on the *e-Justice Portal*, the fee for lodging an initial claim is 18.72 euros. If a hearing needs to be held, fees are around 70 euros<sup>6</sup>.

These amounts exclude costs for legal representation, service (where applicable), and enforcement costs.

**Sending the claim to the court.** The form should be lodged by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced (EC PG 3.1 and EC PG 3.6). Because the ESCP is intended to be essentially a written procedure, it is necessary to send with the Claim Form all necessary supporting material in the shape of documentary evidence (EC PG 3.5.). Even if a court could accept the claim in electronic form it may not be possible to send the supporting material electronically and so it would make sense to send the Claim Form with the documentary material by some other means acceptable to the court (EC PG 3.6).

According to the communication made by the French Government on the e-Justice Portal, "A request for institution of legal proceedings can be submitted to the court by post"<sup>7</sup>, i.e. by registered letter with acknowledgement of receipt, including the supporting documentation. Furthermore, the communication made under

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<sup>6</sup> See 'Frais de justice applicables à la procédure de règlement des petits litiges | Portail e-Justice européen', <[https://beta.e-justice.europa.eu/306/FR/court\\_fees\\_concerning\\_small\\_claims\\_procedure?FRANCE&init=true&member=1](https://beta.e-justice.europa.eu/306/FR/court_fees_concerning_small_claims_procedure?FRANCE&init=true&member=1)> accessed 10 August 2022. The information is currently available in French only.

<sup>7</sup> 'European e-Justice Portal - Small claims' (cit n 2).



Art. 25(1)(d) ESCP Reg. states, in the relevant part, that: “Communication with the French courts with competence to handle claims lodged under the Small Claims Regulation is by post only”.

However, (French) lawyers wanting to file a request for an ESCP on behalf of their clients before commercial courts should be able to do so electronically through the lawyers’ virtual private network (*réseau privé virtuel des avocats*, “RPVA”). In such cases, the lawyer has to fill in an electronic form and send an e-mail with an attachment that includes the initial request form and all the supporting documentation.

Apart from the filing of the initial claim, French law provides that communication between the court and the parties’ legal representatives can be carried out through electronic means following the conditions of Arts 748-1 ff CCP. This provision applies before civil and commercial courts.

**8. Language.** Under Art. 6(1) ESCP Reg., the Claim Form must be submitted in a language of the court or tribunal, and this also applies to the description of the supporting documents in Part 8.2 of the Claim Form (EC PG 3.7).

Regarding language, the Circular of 26 May 2009 on the ESCP stated that requests to French courts should be made in French, but added that competent courts may accept the standard forms in a different language, provided the information is completed in French.

**9. Court settlements.** In accordance with Art. 12(3) ESCP Reg. the court is placed under a duty to seek a settlement between the parties (EC PG 3.8.). This duty is, however, not confined to the oral hearing but extends throughout the proceedings on claims and counterclaims (*ibid.*).

**Before the beginning of the procedure.** In civil cases, Art. 750-1 CCP (as amended by Decree No 2022-245 of 25 February 2022) provides that the filing of a claim of up to 5,000 euros in value must in principle be preceded by an attempt to



reach an amicable settlement between the parties by conciliation, mediation, or participatory procedure. Failing to do so, the judge may, even *ex officio*, reject the claim as inadmissible. However, parties may be relieved from this obligation if the dispute falls under one of the cases provided for in Art. 750-1, 1° to 5° CCP. Specifically, Art. 750-1 3° provides that the attempt to reach an amicable settlement is not required in case of a legitimate reason relating either to the obvious urgency or to the circumstances of the case, or when the organisation of the first conciliation meeting would require too much time compared to the nature and stakes of the dispute. Noteworthy, Art. 750-1 CCP also does not apply to cases brought before French commercial courts.

**In the course of the procedure.** During the procedure, Art. 21 CCP provides that: “It is part of the judge’s mission to reconcile the parties”. More specifically, Art. 127 CCP provides that the judge may invite the parties to resort to conciliation (Arts 128 to 131 CCP) or mediation (Arts 131-1 to 131-15 CCP) when they have not attempted to reach an amicable settlement through ADR before the filing of the claim. Furthermore, Art. 127-1 CCP provides that, if the parties refuse to resort to mediation despite the judge’s invitation, the latter may nevertheless order them to meet a mediator who will inform them of the purpose and progress of mediation. These provisions apply both before civil and commercial courts.



#### IV. Procedure after the Court receives the claim

When France is the Member State of origin

**1. Claim falling outside of the scope of the ESCP Reg.** If the court concludes that the claim is outside the scope of the Regulation, say if it deals with subject matter which cannot be the basis of a claim under the ESCP or if the value of the claim is above the financial limit of the ESCP, under Art. 4(3) ESCP Reg. it must notify the claimant of this. The claimant can then decide to withdraw the claim or, if she or he does not do so, the court is required to proceed with it under an appropriate national procedure (EC PG 4.1.2.).

In France, Art. 1384(1) CCP provides that the court shall conduct an initial evaluation of the documents and the forms submitted to it. If it appears that the case does not fall within the scope of the ESCP Reg., the court clerk shall so inform the claimant by registered letter with acknowledgement of receipt. In this letter, the court shall also set a time limit for the claimant to withdraw the claim and inform him/her that, if he/she fails to do so, the case will be heard in accordance with the applicable procedure on the merits.

Art. 1384(2) CCP also provides that if the plaintiff has not withdrawn his/her claim at the expiry of the time limit, the court shall rule that the dispute does not fall within the scope of the ESCP. The court clerk notifies the plaintiff by registered letter with acknowledgement of receipt and invites him/her to initiate new proceedings following the ordinary rules.

In this regard, it has to be noted that even though Art. 1384(2) provides that the court: “invites the plaintiff to serve the summons on the defendant”, Art. 750(2) CCP (as amended by Decree No 2019-1333 of 11 December 2019) provides that in civil cases where the amount of the claim does not exceed 5,000 euros, the initial claim may also be filed by way of unilateral request addressed to the combined court (*tribunal judiciaire*). Presumably, this provision is also applicable to requests submitted after a determination made pursuant to Art. 1384 CCP.

Finally, it has to be noted that when the plaintiff initiates a procedure on the merits following a ruling under Art. 1384 CCP, the court seised with this procedure may still find that the dispute does not fall within its material or territorial competence. This determination is made pursuant to the ordinary rules of competence (Art. 1384(3) CCP).



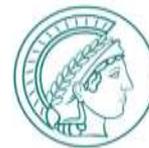
**2. Request to the claimant to complete or rectify the claim form.** Unless the court takes the view from the outset that the claim is unfounded or completely inadmissible, in which case it can dismiss the claim, the court can request the claimant to complete or rectify the Claim Form or to supply supplementary information or documents (EC PG 4.1.1.). Such a request is to be made using Form B prescribed by the Regulation (EC PG 4.1.3.). In the form, the court sets out the time by which the claimant must provide the information requested or return the rectified form. Art. 14(2) ESCP Reg. provides that this time limit may be extended by the court in exceptional circumstances (EC PG 4.1.3.).

French law does not provide any specific rule regarding the court's request to the claimant to complete or rectify the claim form. Therefore, French law does not provide any particular requirement as to how Form B should be filled out, nor does it provide a specific time limit for the claimant's reply or any rule for its extension.

**3. Dismissal of the initial claim.** Where the claim appears to be clearly unfounded or the application inadmissible or where the claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed. The court or tribunal shall inform the claimant of such dismissal and whether an appeal is available against such dismissal (Art. 4(4) ESCP Reg.). The effect of dismissal on [the ground that the claimant did not provide the information requested or return the rectified form in due time, or the fact that the form is still filled in incorrectly or in the wrong language] is not to decide the substance of the claim which could be re-made as a European small claim or under the appropriate national procedure (EC PG 4.1.3.).

Art. 1385 CCP provides that: "Where the court rejects the application on the grounds that it appears to be manifestly unfounded or inadmissible or that the applicant has not completed or rectified the application form within the time limit set, the decision rendered is not subject to appeal. However, the applicant may file a lawsuit according to the ordinary rules of civil procedure".

In order to avoid the dismissal of their ESCP application, claimants before the French civil courts should pay particular attention to the general obligation to attempt to



settle the claim amicably and should take care to offer evidence of such an attempt or to explain why this obligation should not apply to their dispute (see above, III.9).

**4. Communication of the claim to the defendant.** The court sends to the defendant a copy of the Claim Form and the supporting documents along with Answer Form C of which the court has to complete the first part (EC PG 4.2.1.). According to Art. 13(1) ESCP Reg., the court has to send Form C with the copy of the Claim Form and supporting documents in one of the following ways: (a) by postal service, or (b) by electronic means (EC PG 4.2.3.)<sup>8</sup> (provided that the requirements set out in Art. 13(1) ESCP Reg. are fulfilled).

In France, the notification of the claim to the defendant is carried out by the court clerk either by registered mail with acknowledgement of receipt or by delivery of the document to the addressee against signature or receipt (see Art. 667 CCP).

Furthermore, Art. 1387 CCP provides that, in case of return of a letter whose notice of receipt has not been signed according to Art. 670 CCP, service shall be made by a judicial officer at the behest of the registry. The same provision states that the Public Treasury shall bear the advance of service costs.

**5. Electronic communications.** In accordance with Art. 13(2) ESCP Reg., other written communications between the court and the parties or other persons involved in the proceedings shall be carried out by electronic means attested by an acknowledgment of receipt, where such means are technically available and admissible in the Member State where the procedure is conducted, provided that the party or person has accepted in advance such means of communication or is, in accordance with the procedural rules of the Member State in which that party or person is domiciled or habitually resident, under a legal obligation to accept such means of communication (EC PG 4.2.3.2.). If service by post or

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<sup>8</sup> Please note that the Service Regulation applies to cross-border notifications.



electronically, within the meaning of Art. 13(1) ESCP Reg., is not possible, Art. 13(4) prescribes the rules of Art. 13 or 14 EOP Reg (EC PG 4.2.3.3.).

According to the communication made by the French Government under Art. 25(1)(d) ESCP Reg.: “Service of the documents in question by electronic means is not authorised. There are therefore no technical means available” and “Communication with the French courts with competence to handle claims lodged under the Small Claims Regulation is by post only”.

However, where the parties are represented by a lawyer, communications between them and the court is normally carried out electronically through the lawyers’ virtual private network (*réseau privé virtuel des avocats*, “RPVA”). The legal bases for this means of communication are the provisions of Arts 748-1 ff CCP, which are applicable both before civil and commercial courts.

**6. Defendant’s response.** The defendant shall submit his response within 30 days of service of the claim form and answer form, by filling in Part II of standard answer Form C, accompanied, where appropriate, by any relevant supporting documents, and returning it to the court or tribunal, or in any other appropriate way not using the answer form (Art. 5(3) ESCP Reg.).

In the absence of any specific implementing provisions, the rules applicable to the filing of the initial claim should also apply, *mutatis mutandis*, to the defendant’s response. Even though the Regulation itself does not require it, the use of standard Form C should nonetheless be encouraged.

**7. Counterclaim.** If the defendant states a counterclaim then, as provided by Art. 5(7) ESCP Reg., all the provisions of the Regulation, specifically Art. 4, and



5(3) to 5(5) as well as Art. 2, will apply to the counterclaim as to the principal claim (EC PG 4.5.).

In France, Art. 1386(1) CCP sets out the rules that should apply when a counterclaim falls outside the scope of the ESCP Reg. by stating that: “Where a counterclaim falls outside the scope of the European Small Claims Procedure, the court shall notify the parties by registered letter with advice of delivery. It shall inform them that unless the counterclaimant withdraws his claim within a given time limit, the case will be heard and decided in accordance with the procedure on the merits applicable before it. On expiry of this time limit, if the claimant has not withdrawn his claim, the court shall find that the dispute is not covered by the European Small Claims Procedure”.

Furthermore, given that both parties have already appeared before the court, Art. 1386(2) CCP provides for an automatic transfer of the case to the ordinary procedure. Specifically, when the court decides that the dispute does not fall within the scope of the ESCP because a counterclaim does not fall within the scope of that procedure, it shall order that the case be remitted to a hearing to be decided according to the domestic procedure on the merits. The court clerk notifies this decision to the parties and summons them to the hearing by registered letter with acknowledgement of receipt.

Finally, Art. 1386(3) provides that the court to which the case has been transferred retains the power to determine its jurisdiction under the ordinary domestic procedural rules.



**8. Enforcement of court settlements.** Article 12(3) provides that the court or tribunal shall make efforts to reach a settlement between the parties in the course of the proceedings. In accordance with Article 23a ESCP Regulation a settlement that is either approved by or concluded before a court or tribunal in the course of the ESCP and that is enforceable in the Member State where the procedure was conducted shall be recognised and enforced in other Member States on the same basis as a judgment in the ESCP.

In the absence of any specific rule governing settlements concluded in the context of an ESCP, the general rules applicable to court settlements concluded under French law should also apply to Art. 23a ESCP Reg.

Accordingly, the notion of “court settlement” should cover both out-of-court settlement agreements that have later been declared enforceable by a court (Art. L111-3 1° CCEP) and agreements resulting from in-court conciliation and signed by the judge and the parties (Art. L111-3 3° CCEP). These court settlements may give rise to enforcement measures if they contain an obligation capable of being enforced (Art. L111-2 CCEP).

Out-of-court settlements, including settlements resulting from alternative dispute resolution mechanisms other than arbitration, are declared enforceable following the rules set out in Arts 1565 to 1567 CCP (*homologation*). The application may be filed by one of the parties, and the judge shall decide on it without a hearing of the parties unless it deems it necessary. If the application is granted, any interested party may then file for reconsideration before the same judge.

The judge’s verification does not extend to the validity of the settlement but only to its compliance with public policy.

An appeal may be lodged against a decision refusing to approve the agreement. This appeal is lodged by declaration at the registry of the court of appeal. It is decided according to the procedure applicable to non-contentious matters.



## V. Establishing the facts

When France is the Member State of origin

**1. Evidence.** Art. 9 ESCP Reg. provides that the court is to specify the means of taking evidence, that it shall use the simplest and least burdensome method of taking evidence, and will hear oral evidence and evidence from expert witnesses only if it is necessary to do so in order to be able to give a judgment (EC PG 5.1.2.). Expert evidence or oral testimony may only be taken if it is not possible to give the judgment on the basis of other evidence, in accordance with Article 9(4) (EC PG 5.4.).

In France, the legislature has not enacted any specific provision governing the taking and the administration of evidence in the course of the ESCP. Therefore, the ordinary rules of procedure available under domestic law remain applicable to disputes decided under the ESCP Reg. (see in particular Arts 132 to 322 CCP), but they should be interpreted in light of the principles set out in Art. 9 ESCP Reg.

Furthermore, it should also be mentioned that the provisions of the Evidence Regulation (Reg. No 2020/1783) may also be used to gather evidence located in another Member State.

**2. Additional information.** Art. 7(1)(a) ESCP Reg. also enables the court to request further details concerning the claim once a response has been received regarding the claim or counterclaim after service. The court sets a time limit within which the information has to be provided and, as provided by Art. 14(2) ESCP Reg., that time limit can also be extended in exceptional circumstances. Under Art. 7(3) ESCP Reg., as read with Art. 14(1), the court has to inform the party to whom the request is made about what the consequences will be if the time limit is not complied with (EC PG 5.2.)<sup>9</sup>.

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<sup>9</sup> On time limits, cf also Art. 14(2) ESCP Reg., which provides that certain time limits can be extended but only in exceptional circumstances and that also applies to the 30-day periods set out in Art. 7 ESCP Reg (EC PG 5.7.; see also 6.2.).



French law does not provide any specific rule with respect to Art. 7(1)(a) ESCP Reg. Nonetheless, the CCP grants the judge wide authority to invite the parties to provide explanations on the facts or the law that he or she deems necessary to resolve the dispute (Arts 8 and 13), to order *ex officio* all legally admissible measures of inquiry and enjoin the litigants or third parties to produce any evidence in their possession (Arts 10 and 11).

**3. Hearing.** It is for the court to decide whether to have a hearing to determine the facts. This follows the principle set out in Article 5(1) that the ESCP shall be a written procedure (EC PG 5.3.1.). If the court refuses a request for an oral hearing, it must give its reasons in writing (EC PG 5.3.2.).

By exception to the ordinary rules of domestic civil procedure, the ESCP in France should in principle be conducted without a hearing. Nonetheless, Art. 1388 CCP provides that if the tribunal considers the conduct of a hearing to be necessary, the hearing should be conducted in accordance with the domestic rules that would ordinarily be applicable before the court.

**4. Use of ICT technologies in hearing and taking of evidence.** As the actual use depends on the technology available in the court seised, the use of ICT during the procedure is not compulsory (EC PG 5.5).

In France, the requirements applicable to the use of ICT technologies in hearings and taking of evidence are set out in Arts L111-12-1 and R111-7-1 CJO (enacted by Law No 2021-1729 of 22 December 2021 and Decree No 2022-79 of 27 January 2022, respectively). In essence, these articles provide that the presiding judge may authorise a party, a witness, an expert or any other person to participate to a hearing



remotely through the use of electronic means, provided that the interested person so requests<sup>10</sup>.

In order to be admissible, remote participation should be compatible with the nature of the debates as well as with the adversarial principle. Furthermore, the technical means must make it possible to identify the persons participating remotely and ensure the quality of the transmission and, where applicable, the confidentiality of the exchanges.

Art. R111-7-1(4) CJO also provides that the members of the court and, if necessary, the public prosecutor and the court clerk must be physically present in the hearing room. During the hearing, the presiding judge must also check that remote participation is compatible with respect for the dignity and serenity of the proceedings.

Finally, it should be noted that these provisions also apply to persons located outside French territory, since Art. R111-7-1(4) CJO explicitly mentions that remote participation may take place from a lawyer's professional premises in France or abroad.

**5. Conduct of the procedure and information of the parties.** The court has generally to manage the procedure in accordance with the principles of adversarial process and the right to a fair trial of the case (EC PG 5.6.1.). The duty of the court to control and determine the procedure in the ESCP is reinforced by Art. 12(2) ESCP Reg. whereby the court also has the duty to support the parties as regards procedural matters by informing them about procedural questions, and it follows from Recital (9) that the court in so doing must be even-handed as between the parties in order to ensure the fairness of the procedure. The duty to inform the parties about procedural questions can be carried out in various ways depending on national procedures (EC PG 5.6.2.).

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<sup>10</sup> For more details on this mechanism, see Corinne Bléry and Jean-Paul Teboul, “‘Visioaudience’, ‘téléaudience’,... : nouvelle présence à l’audience’ (2022) 1048–1049 JCP G.



In France, the principles of due process and the right to an adversarial procedure are enshrined in Art. 16(1) CCP, which provides that the judge should, in all circumstances, abide by the adversarial principle and make sure that the same rule is complied with by the parties. Interestingly, this provision has recently given rise to two decisions by the French Court of Cassation.

In the first judgment (Civ. 1, 10.04.2019, No 17-13.307), the Court held that the lower court violated the defendant's right to be heard endowed in Art. 16 CCP by upholding a claim that the plaintiff had raised for the first time in response to the defendant's counterclaims without first allowing the latter to object to the plaintiff's arguments.

In the second judgment (Civ. 1, 27.11.2019, No 18-14.985), the Court held that a court of first instance could not *ex officio* change the characterisation of the substantive relationship between the parties laid out in the claimant's application and hold that the ESCP Reg. does not apply without first allowing the claimant to raise their objections.



## VI. The judgment

**1. Default judgment.** If the defendant does not answer the claim within the period of 30 days from service of the Claim Form and the Answer Form, Form C, the court shall issue the judgment (EC PG 6.1.1.). Where the default concerns a counterclaim, it is to be presumed that the claimant will wish to pursue the principal claim (see EC PG 6.1.2.).

In the absence of any specific provisions governing default judgments issued under the ESCP Reg., the ordinary rules on default should apply.

First of all, Art. 471 CCP provides that the initial application may be served again on the defendant if the document instituting the proceedings was not personally notified to him/her (i.e., in the case of service by registered mail with acknowledgement of receipt, if the defendant did not sign the receipt – see Art. 670 CCP).

Secondly, Art. 472 CCP provides that if the defendant does not appear, the court may issue a judgment in favour of the claimant only after checking that the claim is regular, admissible and well-founded.

Thirdly, Art. 476 CCP provides that the defendant may file an opposition to challenge the default judgment.

Fourthly, Art. 478 CCP provides that a default judgment becomes void if the creditor has not served it on the debtor within six months.

Finally, Art. 479 CCP provides that a default judgment entered against a defendant domiciled abroad must expressly mention the steps taken to give notice of the document initiating the proceedings to the defendant.

**2. Form and language of the judgment.** It is implicit from the fact that the judgment in a European Small Claim has to be served on the parties that it should be in written form. Otherwise there is no particular form and content of the judgment specified in the Regulation and, following Art. 19 ESCP Reg., these will therefore be determined by the law of the Member State in which the court hearing the claim is situated (EC PG 6.3.1.). The Regulation does not specify that the judgment should be written in a language other than the language of the court which issues it given that the judgment is to be served on the parties, however, it



will be necessary for the appropriate language version to be available for service in order to meet the terms of the relevant EU law on the subject (EC PG 6.3.2.).

In the absence of any specific provision on these points, judgments issued at the end of an ESCP shall be issued in writing and in French. Furthermore, according to Art. 455 CCP, the judgment must be reasoned, must succinctly state the parties' claims and arguments, and the decision should take the form of an explicit ruling.

**3. Service of the judgment.** Once the judgment has been issued, Art. 7(2) ESCP Reg. provides that it must be served on the parties using one of the methods of service specified in the Regulation (EC PG 6.3.3.).

According to Art. 1389 CCP, the judgment must be served by the court clerk to the parties by registered letter with acknowledgement of receipt. Furthermore, Art. 1387 CCP does not apply to the notification of the judgment.

**4. Costs.** The judgment will contain an order for payment of costs (EC PG 6.4.). Art. 16 ESCP Reg. provides that costs should not be awarded if they are unnecessarily incurred or are disproportionate to the claim (*ibid.*). Subject to that principle, the rule to be applied following Art. 16 of the Regulation is that the unsuccessful party should be ordered in the judgment to meet the costs of the proceedings and these are to be determined under the relevant national law (*ibid.*).

Regarding costs, the French Court of Cassation (Civ. 1, 10.04.2019, No 17-13.307) held that a successful claimant may only recover costs under Art. 700 CCP and may not seek additional damages related to the hassle and expenses of the procedure based on the provisions of extra-contractual liability.

Concerning the allocation of costs, French courts have consistently held that the defendant should bear the costs of the proceedings if the claim has been upheld. The same solution seems to apply in a slightly different context, where the court has



granted the claim concerning the principal amount but ejected the claimant's request to apply the higher interest rate that had been contractually agreed upon by the parties instead of the legal interest rate<sup>11</sup>.

Conversely, the claimant should bear the costs of the procedure if the claim has been dismissed. This solution, however, has not been applied in a case where the claimant withdrew its claim following an out-of-court payment by the defendant<sup>12</sup>.

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<sup>11</sup> Tribunal de commerce de Rennes, 1<sup>re</sup> chambre, 12.07.2016, No 2016F00232.

<sup>12</sup> Tribunal de commerce de Chalon-sur-Saône, 30.05.2016, No 2016002318.



## VII. Review and appeal

**1. Review under the ESCP.** Art. 18 ESCP Reg. sets out the minimum standards for review of the judgment. The defendant who did not enter an appearance shall be entitled to apply for a review of the judgment – using the available procedure under national law (EC PG 7.1.1.).

According to Art. 1391 CCP: “The right to review provided for in Article 18 of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure shall be exercised in accordance with the opposition procedure, where this is open, or, if not, in accordance with similar procedural arrangements”.

Under Art. 476 CCP, the opposition is available where the judgment has been issued in a case where the defendant did not personally receive the service of the document instituting the proceedings. The rules applicable to the opposition proceedings are set out in Arts 571-578 CCP.

**2. Appeal.** Under Art. 17 ESCP Reg., the question of whether or not an appeal against the judgment is available in the Member State where the judgment is issued is a matter regulated under the national law of the Member States (EC PG 7.2.). The information on whether an appeal is available and if so which court is competent is available on the e-Justice Portal (*ibid.*). The question of whether legal representation remains optional at the appeal stage is not explicitly settled by the ESCP Reg. However, the provisions of Art. 16 ESCP Reg. on costs also apply to appeals of an ESCP judgment (see EC PG 7.3.).

The communication made by the French Government under Art. 25(1)(g) and published on the *e-Justice Portal* states:

*“The following appeals can be brought under French law in accordance with Article 17 of the Regulation:*

*- An appeal (appel), when the judgment is given at first instance, i.e. when the claim exceeds EUR 5 000. An appeal may be lodged by any party within a month*



*from the day on which the judgment is notified (Articles 528 and 538 of the Code of Civil Procedure).*

*- An objection (opposition) can be lodged by a defendant on whom the judgment has not been served personally in accordance with Article 5(2), and who has not responded in the forms laid down in Article 5(3) ('judgement rendered by default'). Such an objection is lodged before the court that delivered the judgment being challenged (Articles 571 to 578 of the Code of Civil Procedure)<sup>13</sup>.*

In practice, however, the appeal will be precluded by the fact that claims exceeding 5,000 euros in value fall outside the scope of the ESCP Reg., while default judgments will sometimes be challengeable under the specific review procedure set out in Art. 18 ESCP Reg.

Nevertheless, it might be that a judgment issued pursuant to the ESCP Reg. falling outside the scope of the ESCP might nonetheless be subject to opposition under French domestic law rules.

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<sup>13</sup> 'European e-Justice Portal - Small claims' (cit n 2).



## VIII. Recognition and enforcement

**1. Request and issuance of the certificate of enforceability.** Art. 20(2) ESCP Reg. provides that at the request of one of the parties, the court or tribunal shall issue a judgment certificate using the standard Form D (Annex IV) at no extra cost (EC PG 8.1.1). This certificate has to be issued by the court which gave the judgment under the ESCP at the request of one of the parties. Such a request can be made at the outset of the procedure, for which there is space provided in paragraph 9 of the Claim Form, Form A and, although this is not specified expressly in the Regulation, at any stage after the judgment has been issued (EC PG 8.3.1.).

According to Art. 1390 CCP, the court clerk issues certificates of enforceability under the ESCP Reg.

In the absence of any specific procedure, Arts 509-1 ff CCP could potentially apply by analogy to the request.

**2. Language.** Upon request, the court or tribunal shall provide that party with the certificate in any other official language of the institutions of the Union by making use of the multilingual dynamic standard form available on the European e-Justice Portal. The court is not obliged to provide a translation and/or transliteration of the text entered in the free-text fields of that certificate (EC PG 8.1.1).

French law does not seem to allow for the delivery of a copy of the content of the certificate in another language than French.



**3. Enforcement procedure.** By virtue of Art. 21 ESCP Reg., the procedure for enforcement is governed by the law of the Member State of enforcement, subject to the provisions of the Regulation on enforcement (EC PG 8.1.2).

**a. Required documents:** the person seeking enforcement shall provide an authentic copy of the judgment, and the judgment certificate (EC PG 8.2.). In order to secure execution of the judgment, it is necessary to instruct the authorities or agencies in the Member State of enforcement which are competent to take measures of execution (EC PG 8.5.2., see *Addendum*).

**b. Translations:** Member States have to provide information as to which languages other than the official language(s) are acceptable (Art. 21a(1) ESCP Reg.). The translation of the information on the substance of a judgment in the certificate of Art. 20(2) ESCP Reg. shall be done by a qualified translator (Art. 21a(2)). Information on which languages are accepted for the purpose of the enforcement is available on the European e-Justice Portal(*ibid.*).

In France, Art. R123-5 CJO grants the authority to deliver **authentic copies** to the chief clerk (*directeur de greffe*) of the court that issued the judgment. Nevertheless, the chief clerk may delegate this authority to a director of the registry services of the same court (*directeur des services de greffe*) in accordance with Art. R. 123-7 CJO.

According to Art. 1435 CCP, these officers are obliged to deliver, without fees, a copy of the documents to the parties themselves, their heirs or assignees. In case of enforceable decisions, each party has also the right to obtain a copy of the judgment bearing the execution formula (Art. 465(1) CCP).

The request can be submitted using a standard form accessible online<sup>14</sup>. The form can then be transmitted by post to the competent authority.

When the request concerns a judgment bearing the execution formula, a second copy can be delivered provided the applicant shows a legitimate reason for the request. If the application for a second copy is granted, this information must appear on the copy itself. Before commercial courts, the issuance of the second enforceable

<sup>14</sup> See *Formulaire Cerfa No 11808\*06*, available at <https://www.service-public.fr/simulateur/calcul/11808>. Use of the form is not mandatory.



copy may be subject to a small fee (generally under 10 euros), which is collected by the court registry.

If the request for a second enforceable copy is denied, Art. 465(2) CCP provides for an *ex parte* remedy before the president of the court that issued the decision. The procedure to be followed in this case is governed by Arts 493 to 498 CCP, as well as the special rules applicable to each court<sup>15</sup>.

Finally, it should also be mentioned that when a party has been assisted by a lawyer, a copy of the decision is systematically given to the lawyer and can be requested by the client.

With respect to **translations**, the information published on the *e-Justice Portal*<sup>16</sup> states that the enforcement certificate mentioned in Article 21(2)(b) of the ESCP Reg. could be submitted in French, English, German, Italian and Spanish. In practice, however, all five languages do not seem to be always accepted in France. Parties who need a translation of the certificate's contents or a translation of the judgment must therefore contact an accredited translator. An updated list of the accredited translators is maintained by each Court of Appeal and is accessible online on the French Ministry of Justice website<sup>17</sup>.

The costs of translation vary depending on the length of the document and the languages involved. If the translation concerns the contents of a foreign judgment or certificate into French and is necessary to enforce the creditor's rights, the creditor may recover translation costs during the enforcement proceedings.

Regarding the **enforcement procedure**, the communication made by the French Government under Art. 25(1)(j) and published on the *e-Justice Portal* states that:

*"The competent authorities with respect to enforcement are judicial officers (huissiers de justice) and, in the case of attachment of remuneration (saisie des rémunérations) authorised by the enforcing court, the director of the registry (directeur du greffe) of the Combined Court"*<sup>18</sup>.

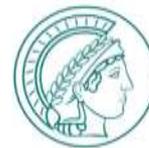
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<sup>15</sup> See eg Arts. 812 ff (Regional Court – *tribunal judiciaire*); Arts. 874 ff (Commercial Court – *tribunal de commerce*); Arts. 958 ff (Court of Appeal – *cour d'appel*).

<sup>16</sup> 'European e-Justice Portal - Small claims' (cit n 2).

<sup>17</sup> 'Traduction d'un document : comment trouver un traducteur agréé ? | Justice.fr', <<https://www.justice.fr/fiche/traduction-document-trouver-traducteur-agree>> accessed 16 June 2022.

<sup>18</sup> 'European e-Justice Portal - Small claims' (cit n 2).



**4. Procedure to challenge enforcement.** The Regulation does not provide a procedure for an application to the court to challenge the enforcement of the judgment on the grounds of irreconcilability, and this is a matter to be regulated under the procedural law of the Member State concerned. Similarly it is normally also possible for the court in that Member State under the national law to refuse or stop enforcement if and to the extent that the sums awarded in the ESCP judgment have been paid or the judgment has otherwise been satisfied (EC PG 8.4.2.).

In France, applications for refusal of enforcement brought after the first enforcement measure must be filed before the enforcement judge. This rule applies with respect to both judgments issued in another Member State and ESCPs conducted in France.

The procedural rules applicable before the enforcement judge are laid out in the French CCEP (see in particular Arts L121-1 ff and R121-1 ff CCEP). In general, the debtor has to raise claims for opposition to enforcement and procedural irregularities against an existing enforcement measure brought against him/her. Since enforcement is, in principle, extrajudicial, the debtor must raise the challenge by filing a lawsuit against the creditor before the enforcement judge. The procedure is adversarial, and the decision of the enforcement judge may be subject to appeal and recourse in Cassation under the ordinary rules. The enforcement judge's decisions acquire *res judicata* once the time limits for appeal have expired.

For more details, see the *Annex on Enforcement of Titles in France*.

**5. Stay or limitation of enforcement.** These matters are regulated by Art. 23 ESCP Reg. (see EC PG 8.4.3.).

According to the communication made by the French Government under Art. 25(1)(j) and published on the *e-Justice Portal*, the following rules might be relevant within the context of Art. 23 ESCP Reg.:

“- in the case of a judgment by default, the court with which an objection is lodged can, before examining the substance of the case again, withdraw any provisional



*enforcement order it has granted, which has the effect of staying enforcement (Article 514-3 of the Code of Civil Procedure);*

*- in all cases, the enforcing judge, after service of a notice of distraint (commandement) or distraining order (acte de saisie), may defer enforcement by granting a period of grace to the debtor (Article 510 of the Code of Civil Procedure)<sup>19</sup>.*

With regard to this declaration, it should nevertheless be stressed that the withdrawal of the provisional enforcement provided for in Art. 514-3 CCP should only be available in cases where the judgment has been issued in France. In fact, the jurisdiction to withdraw the provisional enforcement of a default judgment lies with the court that issued the judgment on the merits.

On the other hand, it should also be noted that there might be some additional rules which may have the effect of staying or suspending the enforcement procedure within the context of specific enforcement measures (see, e.g., Art. L211-5 CCEP – third-party debt order – and Art. R221-56 CCEP – seizure and sale of movable property).

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<sup>19</sup> 'European e-Justice Portal - Small claims' (cit n 2).