



UNIVERSITÀ DEGLI STUDI DI MILANO

DIPARTIMENTO DI STUDI INTERNAZIONALI,  
GIURIDICI E STORICO-POLITICI



Towards more Effective  
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# **EFFORTS Practice Guide for the application in Italy of the Regulation on the European Small Claims Procedure**

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### List of abbreviations

“It c.p.c.” – Italian Code of Civil Procedure

“It c.c.” – Italian Civil Code

“d.P.R.” – Regulatory Decree of the President of the Italian Republic

“d.l.” – Urgent or Extraordinary Law Decree (adopted by the Government)

“d.lgs.” – Delegate Legislative Decree (adopted by the Government)

Laws and other legislative or regulatory acts, such as d.P.R.s, are cited “[*act*] no. [*number*]/[*year of issuance*]”.



## 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 [Italy. 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 (IV), the rules applicable to the establishing of the facts (V), the ESCP judgment (VI), the review and appeal mechanisms (VII), and the recognition and enforcement of ESCP judgments (VIII).*

## II. The ESCP: Scope of application

When Italy 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.*).

The evaluation of a non-monetary claim is made on what is alleged by the parties. In case the value is contested, the court shall decide on what results from the records and without a taking of evidence, in application of Art. 14 It c.p.c.(<sup>2</sup>).

**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

<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.

<sup>2</sup> M. Mellone, A. Pancaldi, *Il nuovo regolamento comunitario sulle controversie di lieve entità*, in *Dir. Un. Europea*, 2008, 281 ff.



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.

Art. 43 of It c.c. defines the domicile as the place where a person has established the centre of her/his business and personal affairs and residence the place where a person has his/her usual living.

### III. Commencing the Procedure

When Italy 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.*).

Most website of Italian courts provide the link to the e-Justice Portal (for the Court of appeal of Milan, see [https://www.ca.milano.giustizia.it/GDP\\_milano/gdp\\_mi\\_comefareper.aspx?cfp\\_id\\_scheda=3710](https://www.ca.milano.giustizia.it/GDP_milano/gdp_mi_comefareper.aspx?cfp_id_scheda=3710); for Genova, see [https://www.ufficijudiziarigenova.it/comefare.aspx?cfp\\_id\\_scheda=1776](https://www.ufficijudiziarigenova.it/comefare.aspx?cfp_id_scheda=1776)).

**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 Article 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 under Art. 25(1)(c), ESCP Reg. the assistance is given by

- i) ECC-NET Italy (<https://www.ecc-netitalia.it/en/>), which provides assistance to consumers only, within the scope of its competence;
- ii) For matters beyond the competence of ECC-NET Italy, the Ministry of Justice (*Ministero della Giustizia*), Department of Judicial Affairs (*Dipartimento per gli Affari di Giustizia*), Directorate-General for International Affairs and Judicial Cooperation (*Direzione Generale degli Affari internazionali e della Cooperazione giudiziaria*), Office I - International Judicial Cooperation (*Ufficio I - Cooperazione giudiziaria internazionale*), Via Arenula 70 - 00186 Rome Tel. (+39) 06 68852480, e-mail: [cooperation.dginternazionale.dag@giustizia.it](mailto:cooperation.dginternazionale.dag@giustizia.it)

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

The legal aid that a party can ask is the legal representation at State's expenses ("*Patrocinio a spese dello Stato*"), that can be obtained by those who have a year income under 11,493.82 Euros (plus € 1,032.91 for each family member). The granting entails that the legal fees of the lawyer are anticipated by the State and the court fees are not immediately due.

The request has to be filed before the Bar Association of the place of the competent court, which authorizes the party if the claim is not manifestly unfounded. In case the request is rejected, the party can represent it before the competent court.

**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 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.).

The courts with jurisdiction for the European small claims procedure are: the *Giudice di pace*), which is competent for claims up to 5.000 EUR, including interests and



expenses at the moment of the claim or in cases in which Italian legislation provides for exclusive jurisdiction over the subject-matter, the ordinary courts (*Tribunale*).

As indicated by communication under Art. 25(1)(a) ESCP Reg., competence lies with the ordinary court in the following cases:

(1) monetary claims in respect of rentals of immovable property and of businesses (Article 447 bis It c.p.c.);

(2) claims relating to agricultural contracts (in this case jurisdiction lies with the specialised agricultural divisions of the ordinary court within the meaning of Act No 29 of 14 February 1990);

(3) claims relating to patents and trademarks, company law and antitrust issues, or concerning public contracts for work, services or supplies of Community significance (in this case jurisdiction lies with the divisions of the ordinary court specialising in business cases within the meaning of d.lgs. no. 168/2003);

(4) claims under shipping law, in particular for damage in connection with the collision of vessels; damage caused by vessels when anchoring or mooring or performing any other maneuvers in ports and other stopping places; damage caused by the use of loading and unloading gear and the handling of goods in ports; damage caused by vessels to nets and other fishing equipment; charges and compensation for assistance, rescue and recovery; and reimbursement of expenditure and awards for recovering wreckage under Article 589 of the Navigation Code.

The territorial competence is regulated by Arts. 18 ff. of It c.p.c. The general rule is the territorial competence is of the court of the place where the defendant has his residence domicile or office. For claims regarding obligations the alternative competence belongs to the judge of the place where the obligation arose or of the place where it is to be fulfilled.

In the event the request is presented to a court without competence the judge shall decline the competence by an order and it shall indicate the competent court. The party which started the proceedings before the incompetent court can be ordered to pay costs. Parties can resume within three months the proceedings before the court indicated in the order or challenge the decision on the competence. Having none of these steps taken, the claim can be presented again.



**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 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.).

The court cannot grant *ex officio* interests if the party does not claim them. The possibility for the court to grant interests without the express request of the party is limited by jurisprudence to claims regarding damages <sup>(3)</sup>.

**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.). Are there any applicable court fees related to the ESCP in your jurisdiction? If so, how should such payments be settled? Please include specific references and links to the relevant sections of the e-Justice portal and/or national websites dealing with these issues.

As indicated in the communication under art. 25(1)(f) ESCP Reg. the court fees applying are governed by d.P.R. no. 115/2002.

They are made up of three parts: (A) a standard fee; (B) a flat-rate advance for costs; and (C) a fixed duty for the registration of judicial documents, payable only for cases before the *Corte di Cassazione*.

<sup>3</sup> See, amongst others, Cass. 10.12.2021, no. 39376.





(A) The level of the standard fee varies depending on the amount of the claim and whether the case is being heard at first instance or on appeal. Specifically:

(a) for claims up to EUR 1,100.00 the fee is: EUR 43.00 if the court proceedings are at first instance; EUR 64.50 if the court proceedings go to appeal; EUR 86.00 in the case of a plea before the *Corte di Cassazione*;

(b) for claims between EUR 1,100.00 and EUR 5,200.00 the fee is: EUR 98.00 if the court proceedings are at first instance; EUR 147.00 if the court proceedings go to appeal; EUR 196.00 in the case of plea before the *Corte di Cassazione*.

(B) In addition to the standard fee, an amount of EUR 27 is payable as a flat-rate advance for the court costs.

Exception: for cases before the justice of the peace and attempts a settlement prior to litigation where the value of the claim is less than EUR 1,033.00, and the corresponding acts and measures, only the standard fee is payable (thus excluding the advance under this point (B)).

(C) If the case goes before the Court of Cassation, a further payment of EUR 200 is payable, irrespective of the value of the claim, being the fixed duty for the registration of judicial documents.

As for the methods of payment accepted:

(A) payment of the standard fee can be made:

(a) at Italian post offices using a post office payslip (*bollettino di conto corrente personale*);

(b) at Italian banks using form F23;

(c) at vendors of revenue stamps in Italy using the appropriate form to notify payment;

(d) by bank transfer:

BIC code: BITAITRRENT

IBAN: IT 04 0 01000 03245 350008332100,

which is a method available to persons who are not resident in Italy and do not have a current account with a bank under contract to the Revenue Agency (*Agenzia delle Entrate*).

(B) Payment of the flat-rate advance for costs can be made:

(a) at vendors of revenue stamps in Italy using the appropriate form to notify payment;



(b) electronically, but only for cases before the ordinary courts.

(C) Payment of the fixed registration fee can be made:

(a) at Italian banks using form F23;

(b) by bank transfer.

For further information: [https://pst.giustizia.it/PST/it/pst\\_1\\_8.wp](https://pst.giustizia.it/PST/it/pst_1_8.wp)

**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).

The form, together with the accompanying documents, can be filed in person at the registry of the court.

According to communication under Art. 25(1)(b) Reg. ESCP, other means of communication are accepted, namely the postal service and, for proceedings before *Tribunale*, electronic communication. Users may find useful technical information at the dedicated webpage; [https://pst.giustizia.it/PST/it/pst\\_1\\_2.wp](https://pst.giustizia.it/PST/it/pst_1_2.wp).

On this aspect, the implementation of Reg. (EU) 2022/850 on e-CODEX system may have an impact.



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).

The communication under art. 25(1)(i) ESCP Reg. indicates Italian.

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 Giudice di pace, Art. 320 It c.p.c. provides that the judge will try to mediate and offer a settlement to the parties. Under art. 185-*bis* It c.p.c. the Tribunale may try to mediate as well. Such attempts are possible only in case an hearing takes place.

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

When Italy 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.).

The judge to which the proceedings is assigned will proceed with the initial evaluation.

Under national rules, a party can withdraw a claim without the consent of the counterparty if this latter has not yet appeared in court (see Art. 306 It c.p.c.).



If the claim falls outside the scope of ESCP, according to one opinion the court will issue an order mutating the proceeding in the ordinary one, applying by analogy Art. 427 It c.p.c.<sup>(4)</sup>.

**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.).

There are no specific rules on the point. The court might, however, resort by analogy to the provision of Art. 307, co. 3 It c.p.c. and assign a term between one to three months.

**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(5) 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.).

There are no conditions of admissibility of the claims.

<sup>4</sup> A. Frassinetti, *Le regole procedurali del Regolamento (CE) sulle controversie di modesta entità*, in *Riv. dir. proc.*, 2021, 973.



Procedures for attempt an amicable settlement are mandatory (mediation procedure regulated by d.lgs. no 28/2010 or negotiation assisted by lawyers under l. no. 134/2014) in certain matters or for claims of value up to EUR 50,000.00. A claim may be dismissed in case such conditions are not met.

In case of dismissal of the claim, the decision is not subject to any appeal, but it will be possible to re-file the claim. Art. 640, co. 3 It c.p.c. (that regulated the dismissal of a request for summary order) has been considered applicable by analogy <sup>(5)</sup>.

**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>(6)</sup> (provided that the requirements set out in Art. 13(1) ESCP Reg. are fulfilled).

The court will proceed by registered letter or, if it is not possible, according to one opinion, pursuant Arts. 13 or 14 of REG. no. 805/2004 <sup>(7)</sup>.

There is no provision for use of electronic communication in cases before *Giudice di pace*. Electronic service and communication may, however, be used for cases before the ordinary courts. More detailed technical information is available via the following link: [https://pst.giustizia.it/PST/it/pst\\_1\\_7.wp](https://pst.giustizia.it/PST/it/pst_1_7.wp)

<sup>5</sup> A. Frassinetti, *Le regole procedimentali del Regolamento (CE) sulle controversie di modesta entità*, in *Riv. dir. proc.*, 2021, 975.

<sup>6</sup> Please note that the Service Regulation applies to cross-border notifications.

<sup>7</sup> E. D'Alessandro, *Il procedimento europeo per le controversie di modesta à entità. Caratteri generali e ambito di applicazione, riconoscimento ed esecuzione delle decisioni*, in F.C. Villata (ed.), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milano, 2021, 111.



**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 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 under art. 25(1)(e) ESCP Reg. the lawyers of the parties, but only for cases heard by *Tribunale*, are obliged to accept electronic communication.

**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.).

The defendant can submit the response by the same ways the claimant can submit the request. As a general rule, all the documents of the proceedings have to be in Italian.

**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.).



It has been said that the counterclaim needs to be based on the same fact or contract of the claim of the plaintiff <sup>(8)</sup>. In this perspective, an issue to be addressed is to determine what happens if the counterclaim does not arise from such fact or contract. In this last scenario, it has been sustained that the judge shall separate the claims and the counterclaim will be decided following the applicable procedural rules of the code of civil procedure <sup>(9)</sup>.

**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.

Court settlements concluded both before the *Giudice di pace* and before *Tribunale* are enforceable pursuant Art. 185 co. 3 It c.p.c.

## V. Establishing the facts

When Italy 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.).

<sup>8</sup> E. D'Alessandro, *Il procedimento europeo per le controversie di modesta entità. Caratteri generali e ambito di applicazione, riconoscimento ed esecuzione delle decisioni*, in F.C. Villata (ed.), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milano, 2021, 114 ff.

<sup>9</sup> E. D'Alessandro, *Il procedimento europeo per le controversie di modesta entità. Caratteri generali e ambito di applicazione, riconoscimento ed esecuzione delle decisioni*, in F.C. Villata (ed.), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milano, 2021, 115. On this issue, see also A. Frassinetti, *Le regole procedurali del Regolamento (CE) sulle controversie di modesta entità*, in *Riv. dir. proc.*, 2021, 978.



The witness statement as regulated by Art. 257-*bis* It c.p.c. can be applicable. As Art. 9(2) ESCP Reg. provides the possibility to admit witness statements, the national provision has been considered applicable only in the part it regulates the way of the statement has to be given and not also in that regulating the admissibility of such kind of evidence, which would be the consent of the parties <sup>(10)</sup>.

**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 \(EC PG 5.2.\).](#)

Under Italian law a time limit which is not expressly provided as peremptory (“*perentorio*”) is to be considered “*ordinatorio*”, that is a term that can be prorogated by the court. It is open the issue regarding the consequences of the non-fulfilment of “*ordinatorio*” time limit <sup>(11)</sup>.

**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 \(EC PG 5.3.2.\).](#)

The date of the hearing is fixed by decree of the judge, who shall direct it. The code of civil procedure provides the presence of the registrar, but this last provision does not find application in practice.

<sup>10</sup> E. D’Alessandro, *Il procedimento europeo per le controversie di modesta à entità. Caratteri generali e ambito di applicazione, riconoscimento ed esecuzione delle decisioni*, in F.C. Villata (ed.), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milano, 2021, 119.

<sup>11</sup> On this issue, see D. Grossi, *Termine (dir. proc. civ.)*, in *Enc. dir.*, XLIV, Milano, 1992, 244 ff.





**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).

Law no. 206/21 delegated the Government to pass a statute providing the possibility for the judge, if there is no objection by the parties, to hold videoconference hearings in case it is not necessary the presence of subjects different from lawyers, parties and court officers. Technical aspects will be determined by the Ministry of Justice <sup>(12)</sup>.

Until 31.12.2022 a similar possibility of online hearings is provided by pandemic emergency legislation and courts opted for hearings through Microsoft Teams.

**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.).

Art 101, co. 2 It c.p.c. provides that if the judge wants to base the decision on a issue raised *ex officio* has to submit it in advance to the parties. Jurisprudence limits this provision to factual issues <sup>(13)</sup>.

## VI. The judgment

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<sup>12</sup> This provision has been implemented in the draft legislative decree approved by Government and transmitted for parliamentary opinion to the Chamber of Deputies on 2 August 2022, in Art. 3 co. 11.

<sup>13</sup> See, amongst others, Cass. 01.03.2022, no. 6732.



**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.).

Under Italian law, the default of a party does not have a direct consequence on the judgement. The fact of the default gives only the right to the party to be personally informed of when new claims or signed documents are lodged (see Art. 292 It c.p.c.).

**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.).

Art. 132 It c.p.c. regulates the content of a judgment providing that it shall include the court, the name of parties and their attorneys, the conclusions of the parties (or of the public attorney in cases he/she is present), a brief reasoning in fact and law, the decision and the signature of the judge.

**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.).



Under Art. 133 It c.p.c. judgments in full are *communicated* <sup>(14)</sup> by the registrar of the court to the parties who appeared before the court.

According to the Communication under Art. 25(1)(d) Reg. ESCP, electronic means of communication are available for proceedings pending before *Tribunale*, but not for those pending before *Giudice di Pace* <sup>(15)</sup>. Thus, if the small claims procedure is pending before the *Tribunale*, and the parties are represented by a registered lawyer, the judgment is communicated to the parties via electronic means. Otherwise, if the small claims procedure is pending before the *Giudice di pace* or if the parties have opted for self-representation before the *Tribunale* (in such case they would not be able to access the IT court system), the communication of the judgment should occur via postal service.

**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.*).

Legal fees are determined in the amount according to D.M. no. 44/2014 and depends on the value of the claim (legal fees in a small claim procedure can vary in average before *Giudice di pace* from EUR 330.00 to 1,205.00 and before *Tribunale* from EUR 630.00 to EUR 2,430.00). It is debated among Italian legal writers if such costs have to be included in the cost under Art. 16 ESCP Reg.<sup>(16)</sup>.

<sup>14</sup> Such is not technically considered “service” under Italian law. Service of the judgment, in a strict technical sense, may be carried out by one of the parties on the other(s). Such service would have the effect, under Italian law, to shorten the deadline for the appeals against the judgment.

<sup>15</sup> The setting up of a system for electronic communications regarding proceedings before the local courts *Giudice di pace* is currently under implementation in Italy and the parties should take into account that usually communications from and to the court in such proceedings occur in non-electronical ways.

<sup>16</sup> On this issue, cf. E. D’Alessandro, *Il procedimento europeo per le controversie di modesta entità. Caratteri generali e ambito di applicazione, riconoscimento ed esecuzione delle decisioni*, and A. Giussani, *Controversie di modesta entità, accesso alla giustizia e rifusione dei compensi di difesa*, in F.C. Villata (ed.), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milano, 2021, 121 and 138 ff.



Art. 91 It c.p.c. provides that the judge orders, with the same judgment, to the losing party to pay costs even in absence of specific request of the winning party. Under Italian law costs include legal fees, court fees and expenses incurred by the winning party.

## 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 the communication under Art. 25(1)(h) ESCP Reg. the bodies competent for review are (a) for decisions by the justice of the peace - the ordinary court; (b) for decisions by the ordinary court - the court of appeal.

In terms of procedure, the rules that apply are those governing appeals and legal challenges in general (Arts. 323 ff. It c.p.c.).

**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 decisions of the *Giudice di pace* can be challenged before the ordinary courts. The decisions of the *Tribunale* can be challenged before the *Corte di appello*.



The time-limit for lodging a challenge is 30 days from notification of the judgment (Art. 325 It c.p.c.) or six months from its publication in the event of the judgment not being notified (Art. 327 It c.p.c.).

Under Art. 83 It c.p.c. legal representation is mandatory before the *Tribunale* and before the *Corte d'appello*.

## 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.).

The certificate is issued by the judge who pronounced the judgement.

There are no special rules governing the issuance of the certificate and no particular applicable fees are provided.

**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).

Courts do not translate the certificate.

**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 Italy, it is possible to request a copy of any judicial act, document or order. The request should be filed at the competent desk of the judicial office before which the act is lodged (for the localization, see the [Ministry's website Map](#)). In general, the right to obtain a copy belongs to the parties to the proceedings to which the act belongs and to anyone else who is interested.

Copies may be of different types.

- (i) *Plain*: they are requested for the sole purpose of knowing the content of the document. Copies obtained in this way have no legal value, lacking the certification of conformity with the original.
- (ii) *Authentic*: they are certified as being in conformity with the original and therefore have the same legal value as the original document.
- (iii) *Enforceable* <sup>(17)</sup>: for judgments and other measures of the judicial authority that are final or provisionally enforceable. They are endorsed with the so-called "enforcement formula". They may be requested only by the party in whose favour the order was pronounced (the winning party) or by her/his successors. No more than one enforceable copy of the same document may be issued to the same party.

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<sup>17</sup> Pursuant to art. 1 par. 12 lit. a) of Law no. 206/2021 on the reform of the civil process, it is provided that the legislative provisions referring to the enforcement formula and the delivery in a form of execution are repealed; in order to be valid as an enforcement title, judgments and other judicial measures, as well as authentic instruments, it is sufficient that they are made in a certified copy conforming to the original. This provision has been implemented in the [draft legislative decree transmitted for parliamentary opinion to the Chamber of Deputies on 2 August 2022](#), in Art. 3 co. 34.



Plain copies are subject to copy fees (Art. 267 d.P.R. no. 115/2002). Certified copies are subject to copy fees and, in addition, to certification fees (Art. 268 d.p.r. no. 115/2002). Amounts are listed in the Annex to the d.P.R. 115/2002 ([here the table published by the Tribunale of Milan](#)) and, as of June 2022 <sup>(18)</sup>, they may vary from 1.00 to 23.00 Euros for copy fees (plus 9.00 Euros for every other 100 pages) plus approximately 10.00 Euros for certification fees. Payment of such fees is made by means of a tax stamp (“*marca da bollo*”) applied on the request or on the original.

However, it should be noted that, in civil proceedings, copies of judgments and court orders may also be downloaded from the online court file and certified as conforming to the original by the lawyer with power of attorney who downloaded the copy <sup>(19)</sup>. Such certification is regulated by Art. 16-*bis* of Law Decree no. 172/2012 and consists of a declaration of conformity of the copy with the computerised original under the responsibility of the lawyer, who is considered a public authority in this respect (Art. 16-*undecies* of Law Decree no. 172/2012). This declaration of conformity is exempt from copying and certification fees.

The language accepted is Italian.

<sup>18</sup> According to Art. 274 d.p.r. 115/2002, the measure of the amounts of the copy fee and the certificate fee is adjusted every three years by executive decree of the Ministry of Justice, in agreement with the Ministry of Economy and Finance.

<sup>19</sup> The formalities relating to the authentication of judgments are governed by the law of the Member State of origin. As regards, in particular, the certification of authenticity carried out by the lawyer pursuant to Article 16-*bis* of Law Decree No. 172/2012 when Italy is the Member State of origin, this method of authentication has been explicitly mentioned among the appropriate ones by leading scholars: " Art 37(1)(a) requires the interested party to produce 'a copy of the judgment which satisfies the conditions necessary to establish its authenticity'. The provision must be understood to refer to the conditions provided for in the legal order of the country of origin. Normally, a copy of a judgment is legally considered to be authentic if it bears a seal or stamp issued by the particular authority designated to this effect by the law of the State of origin. However, where less formal means of authentication are provided for in that State, these are sufficient to establish the authenticity of the judgment for the purposes of Art 37 in all Member States, regardless of whether, in the Member State addressed, authentication is subject to more rigorous standards. *Thus, for example, the electronic copy of an Italian judgment authenticated by the lawyer of one of the parties in the way prescribed by Art 16bis of the Italian Decree-Law No 179/2012, should be deemed to satisfy the conditions necessary to establish its authenticity in all other Member States, including in those Member States where only court clerks have the power to issue certified true copies of judicial decisions.*", DICKINSON-LEIN, *The Brussels I Regulation Recast*, Oxford, 2015, p. 393 (*emphasis added*).



**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.).

The procedure to challenge the enforcement is the opposition to enforcement regulated under Arts. 615 ff. It c.p.c. See *Annex on Enforcement*.

Legal representation is always mandatory before *Tribunale* and it is mandatory for claims of value higher than EUR 1,100.00 before *Giudice di pace*. In proceedings before *Giudice di pace*, in which legal representation is mandatory, the justice of the peace has the discretion to authorize the party not to be legally represented by a qualified lawyer.

**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 under Art. 25(1)(j) ESCP Reg. the authorities competent to stay or limit enforcement of a decision within the meaning of Article 23 of the Regulation are the ordinary courts (*Tribunale*). It has been said that the reference is to the *Tribunale* acting as enforcement judge <sup>(20)</sup>.

The procedure applicable should be the opposition to enforcement regulated by Art. 615 co. 2 It c.p.c.

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<sup>20</sup> P.C. Ruggieri, *La European Small Claim Procedure (Reg. CE 861/2007) in Italia: un (rimediabile?) insuccesso?*, in *Federalismi*, 2020, 285.