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Template for the EFFORTS Practice Guide for the application of the Regulation on the European Small Claims Procedure

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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 Germany. 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](#)⁽¹⁾.

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 Germany 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.*).

Cases of non-monetary claims are rarely relevant in respect to the ESCPR. However, if one occurs, the value of the claim will be determined by the court, which has to take into account all circumstances of the case, including the financial situation of the parties and the importance of the subject-matter (§ 48 Gerichtskostengesetz – GKG).

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

¹ 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> accessed 21 April 2022.

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.

The German national rules on how to determine a person's domicile are laid down in §§ 7 et seq. ZPO. Generally, a person who settles permanently in a place establishes his domicile in that place (§ 7 (1) ZPO. According to German law, a person may have more than one domicile (§ 7 (2) ZPO). Special rules exist in regard to persons lacking full capacity, soldiers and children.

III. Commencing the Procedure

When [BE, DE, FR, HR, IT, LT, LU] 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 application form may be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German). Please note that the form has to be completed in German.

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.).

The German legislator has not yet created any rules implementing Art. 11 ESCPR. Factually, the practical assistance will be provided by the information desks of the competent local courts.

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

The general rules on legal aid in Germany may be found in §§ 114 et seq. ZPO. Generally, legal aid will be granted in case the claimant is financially unable to bear the costs of the proceedings, if his claim has sufficient prospects of success and if it does not seem frivolous.

4. Competent court or tribunal. National rules of the Member State seised 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.).

In Germany, the different courts are competent for the ESCP in different states. Five of 16 states (Länder) have made use of the possibility to concentrate the competence for proceedings pursuant to the ESCPR at one court which meets the technical requirements necessary for facilitating oral hearings via means of distance communication (§ 1104a ZPO). These are:

- Baden-Württemberg: local courts (Amtsgerichte) Heidelberg and Heilbronn
- Hesse: local court (Amtsgericht) and regional court (Landgericht) Frankfurt/Main.
- Northrhine-Westfalia: local court (Amtsgericht) Essen
- Saxony-Anhalt: local court (Amtsgericht) Halle/Saale
- Schleswig-Holstein: the local courts (Amtsgerichte) at the seat of every regional court (Landgericht) for the respective regional court's district, i.e. with the exclusion of all

the other local courts within the district of the relevant regional court. In practice, these are four regional courts in Schleswig-Holstein and, therefore, four competent local courts, namely in Flensburg, Itzehoe, Kiel and Lübeck.

In all other states, the general German rules on jurisdiction are applicable (§§ 12 et seqq. ZPO). As the value of the dispute is already limited by the ESCP, German local courts (*Amtsgerichte*) will usually be competent. However, German regional courts may still be competent in some exceptional cases, e.g. for claims based on false, misleading or omitted public capital market information (§ 71 (2) No. 3 GVG).

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.). Which procedural rules in [BE, DE, FR, HR, IT, LT, LU] govern the calculation of interest? Please address, amongst others, issues such as the possibility and conditions to claim for interests accrued after the issuance of the payment order. Please take into account the answer given in EOP Practice Guide III.A.1.b.

Interests are calculated according to the general rules of German law (§§ 246 et seq. and §§ 288 et seq. German Civil Code (*Bürgerliches Gesetzbuch*), hereinafter: BGB). It is possible to claim the accrued interest until the time of the decision, even though it is still unforeseeable when exactly the future decision will be.

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.).

The general national provisions governing costs apply accordingly to the distribution of costs pursuant to Art. 15a, 16 ESCPR. Therefore, the unsuccessful party has to bear the costs of the proceedings, including those of the opposing party to the extent that these were necessary to pursue the claim (§ 91 (1) ZPO). In case a party is only partially successful/not wholly successful, the court distributes the costs in relation to the parties' partial success/loss (§ 92 ZPO).

Note that the obligation for an advance payment of the fees (§ 12 (2) No. 2 GKG) does not apply in an ESCP.

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 standard claim forms as well as other applications or declarations may be submitted to the court in writing, by telefax or, provided that they are machine readable and are signed with a qualified electronic signature (§ 130a ZPO), in the form of an electronic document (§ 1097 (1) ZPO).

Note that the application has to be completed in German.

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).

No, applications have to be filed in German.

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.*).

German civil procedure law knows a very similar rule about seeking a court settlement (§ 278 (1) ZPO). Therefore, the general practices of German courts also apply for the ESCPR. There are no further, special rules or practices regarding the duty to seek a court settlement under the ESCPR.

IV. Procedure after the Court receives the claim

When Germany 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 competence for the initial evaluation lies with the courts as described above. In case the evaluation finds the claim to be outside the scope of the ESCPR, the claimant will be informed by the court.

In the case provided for by Art. 4 (3) ESCPR, the court proceeds with the claim without applying the rules of the ESCPR (§ 1097 (2) ZPO). Consequently, the proceedings are continued under national procedural law.

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.).

The time limit may especially be extended in case the claimant is otherwise prohibited from presenting his case effectively. This includes, for example, legally complex cases or cases requiring evidence which proves difficult to obtain. Delays which result from a party's own fault never justify an extension of the time limit.

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.).

In the case provided for by Art. 4 (3) ESCPR, the court proceeds with the claim without applying the rules of the ESCPR (§ 1097 (2) ZPO). Consequently, the proceedings are continued under national procedural law. There is no possibility of an appeal.

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.)² (provided that the requirements set out in Art. 13(1) ESCP Reg. are fulfilled).

The claim will be served in accordance with the general German rules on service.

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.).

² Please note that the Service Regulation applies to cross-border notifications.

Under German law, electronic communication at least to a lawyer is permitted by using the special electronic lawyer's mailbox (*elektronisches Anwaltspostfach*).

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 same means of communication as permitted for the submission of the application (as described above) are also allowed for submitting the defendant's response. It has to be submitted in German.

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.).

Any counterclaim that is not in accordance with the rule laid down in the ESCPR is inadmissible before German courts (§ 1099 (1) ZPO). If a counterclaim leads to the value in dispute exceeding the EUR 2000 limit covered by the ESCPR, the proceedings shall continue for the action and the counterclaim according to the national German law. The plaintiff has to pay an advance on the costs of the proceedings (§ 12 (4) GKG). The proceedings are taken over in the position they were in before the counterclaim was filed. The procedural acts and procedurally relevant declarations of the parties as well as decisions of the court and the results of evidence made under German law up to that point remain effective (§ 1099 (2) ZPO).

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.

From a procedural point of view, a court settlement requires certain formalities, such as an appropriate protocol drawn up by the court, the reading of such protocol to the parties, its approval by the parties and the judge's signature (§§ 160 (3), 162, 163 ZPO). Alternatively, the parties may submit a written settlement agreement to the court or the court itself may provide the parties with a written proposal for a settlement, which the parties may subsequently accept (§ 278 (6) ZPO). Further, a settlement agreement is only possible if all material requirements are met necessary to conclude a valid contract under German law. A court settlement is immediately enforceable.

V. Establishing the facts

When Germany 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.).

German law holds that in case the court may find an oral hearing necessary, it may permit the parties, witnesses as well as their attorneys to not be physically present at the courtroom but to take part in an oral hearing by means of a video-conference (§§ 1100 (1), 128a (1) ZPO).

Besides this special implementation rule, a German court may take evidence in the manner it deems suitable (*Freibeweisverfahren*; § 1101 (1) ZPO).

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.)

If a party does not participate in the proceedings despite a time limit set by the court, it may simply proceed and take its decision on the basis of the record as it stands (*nach Lage der Akten*) (§ 1103 ZPO). However, German law also contains various rules on the proceedings pursuant to Art. 18 (1), (2) ESCPR, which provide for a review in extraordinary circumstances. The belated party has to demonstrate the grounds for its application to the satisfaction of the court. The standard of proof is lowered (Glaubhaftmachung) (§ 1104 (2) in conjunction with § 294 ZPO). The application may be filed as an electronic document (§ 1097 (1) in conjunction with § 130a ZPO).

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.).

As described above, hearings may be conducted remotely.

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).

See answer provided above.

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.).

The parties must participate in the proceedings and comply with the time limits set by the court in order to avoid a decision on the basis of the record as it stands (*nach Lage der Akten*) (§ 1103 ZPO).

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.).

Note that lacking participation in the procedure does not lead to a default judgement within the meaning of German civil procedure law, but to a decision on the basis of the record as it stands (*nach Lage der Akten*) (§ 1103 ZPO). For potential remedies against such judgement, see above.

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.).

A judgement will be delivered in German and with sufficient reasoning.

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.).

Judgements will be served according to the general German rules on service. In domestic cases, service per mail against return confirmation of receipt is common. Service within the EU is governed by the EU Service Regulation.

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.*).

The general national provisions governing costs apply accordingly to the distribution of costs pursuant to Art. 15a, 16 ESCPR. Therefore, the unsuccessful party has to bear the costs of the proceedings, including those of the opposing party to the extent that these were necessary to pursue the claim (§ 91 (1) ZPO). In case a party is only partially successful/not wholly successful, the court distributes the costs in relation to the parties' partial success/loss (§ 92 ZPO).

Note that the obligation for an advance payment of the fees (§ 12 (2) No. 2 GKG) does not apply in an ESCP.

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.).

In case the reasons for a review in extraordinary circumstances pursuant to Art. 18 (1), (2) ESCPR are given, the procedure before the German court shall be continued (§ 1104 (1) ZPO). However, the status of the proceedings prior to the judgement will be reinstated (§ 1104 (1) ZPO). The belated party has to demonstrate the grounds for its application to the satisfaction of the court. Also here, the standard of proof is lowered (*Glaubhaftmachung*) (§ 1104 (2) in conjunction with § 294 ZPO). The application may be filed as an electronic document (§ 1097 (1) in conjunction with § 130a ZPO).

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.).

Judgments given in the European Small Claims Procedure can be appealed in the same way as judgments given in a regular national procedure. Therefore, appeals pursuant to § 511 ZPO (against decisions of the local court (Amtsgericht) to the regional court (Landgericht)) and § 542 ZPO (against decisions of the court of second instance, i.e. the regional court (Landgericht), to the Supreme Court (Bundesgerichtshof) apply to the European Small Claims Procedure *mutatis mutandis*. In order to file an appeal against a judgment given by the court of first instance, the value of the claim generally has to exceed the amount of EUR 600 (§ 511 (2) No. 1 ZPO). The appeal has to be filed within a time period of one month. The time period starts when the judgment is served. However, it cannot be filed later than five months after the judgment was handed down (§ 517 ZPO). This also applies to the appeal against a judgment given by the court in second instance (§ 548 ZPO).

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 domestic enforcement title pursuant to Art. 20 (2) ESCPR will be issued by the same court competent for the issuance of the enforceable legal title (§ 1106 ZPO). This will be the same court competent for the main proceedings (see above). Practically, the certificate is issued by the records clerk of the registry (Urkundsbeamter der Geschäftsstelle) of the court of first instance and, should the legal dispute be pending with a court of higher instance, by the records clerk of that court's registry (§ 724 (2) ZPO). The judicial officer is functionally competent (§ 20 (1) No. 11 RPflG).

Before the execution of the title, the defendant is to be heard (§ 1106 (2) ZPO).

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).

The court will not provide a translation.

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.*).

Enforcement documents have to be provided in German. For all further information, see the template on German national rules of enforcement.

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 defendant may apply to the local court (*Amtsgericht*) for refusal of enforcement. In terms of local jurisdiction, either the local court at the place of enforcement (§ 764 (2) ZPO) or the local court at the debtor's place of residence (§§ 828 (2), 12, 13 ZPO) is competent. In case the debtor does not have a residency within Germany, the local jurisdiction lies with every local court where assets of the debtor are located (§§ 828 (2), 23 ZPO). If these rules lead to more than one competent court, the debtor may choose freely with which of the competent courts he wishes to file his application (§ 35 ZPO). The functional competence lies exclusively with the judge.

The decision on the application for a refusal of enforcement as to the application pursuant to Art. 22 ESCPR is delivered by court order (§§ 1109 (1), 1084 (2) ZPO). Following the general procedural requirements under German law, the creditor has a right to be heard and is therefore entitled to explain his point of view to the court. Nonetheless, full oral proceedings are merely optional (§ 128 (4) ZPO). Before deciding on the request for refusal, the court can make a temporary arrangement by means of an interim order (§§ 1109 (2), 769 (1) ZPO).

Furthermore, the defendant may apply for a termination of the enforcement proceedings by arguing that substantive objections to the claim have arisen after the judgment was handed down (§§ 1096 (2), 1086, 795, 767 ZPO). An example could be that the defendant, in the meantime, has fulfilled its obligation. Such substantive objections for reasons of chronology cannot have been considered by the court in the Member State of origin. Pre-existing substantive objections, however, cannot be brought forward by means of this remedy (§§ 1096 (2), 1086 (2), 767 (2) ZPO). Local jurisdiction again lies with the courts of first instance at the place of enforcement or at the place of the debtor's place of residence (§§ 1096 (2), 1086 (1), 767 ZPO).

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

The defendant may apply to the local court (*Amtsgericht*) for stay or limitation of enforcement based on the grounds provided in 23 ESCPR. In terms of local jurisdiction, either the local court at the place of enforcement (§ 764 (2) ZPO) or the local court at the debtor's place of residence (§§ 828 (2), 12, 13 ZPO) is competent. In case the debtor does not have a residency within Germany, the local jurisdiction lies with every local court where assets of the debtor are located (§§ 828 (2), 23 ZPO). If these rules lead to more than one competent court, the debtor may choose freely with which of the competent courts he wishes to file his application (§ 35 ZPO). The functional competence lies exclusively with the judge.

Applications regarding the suspension or limitation of enforcement pursuant to Art. 23 ESCPR shall be decided by the court by way of an order after hearing the creditor. These orders are not appealable (§ 707 (2) ZPO).

