



Towards more Effective
enFORcemenT of claimS
in civil and commercial
matters within the EU
EFFORTS

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

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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 Belgium. 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 Belgium 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 monetary value (including the matters related to interests and evaluation of non-monetary claims) of the ESCP claims are governed by Articles 557 to 562 of the Belgian Judicial Code (BJC) as indicated below:

“**Art. 557.** When the amount of the claim determines the jurisdiction of attribution, it means the amount claimed in the introductory document, excluding legal interest and all costs (as well as penalties.)

Art. 558. If the request has several heads, they are combined to determine jurisdiction.

Art. 559. When the amount claimed is part of a larger claim that is disputed, the amount recovered under or, where applicable, the remainder of the said claim, determines jurisdiction even if the amount requested is lower.

Art. 560. When one or more plaintiffs act against one or more defendants, the total sum claimed determines jurisdiction, without regard to the share of each of them in this sum.

Art. 561. When the title of an alimony, a perpetual or life annuity is disputed, the value of the claim is set at the amount of the annuity or twelve monthly installments multiplied by ten.

Art. 562. The amount of the request relating to foreign currencies, public funds and listed securities is established on the basis of the last official spot rate stopped before the day of the request, in

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 10 August 2022.

accordance with the rules of the Brussels public funds and foreign exchange stock exchange.

When a transferable security is not listed on the Brussels stock exchange, but on only one other stock exchange in the Kingdom, reference will be made to the price realized there.

When a transferable security is not listed on the Brussels stock exchange, but on several other stock exchanges in the Kingdom, reference will be made to the last price stopped before the day of the request or, if the stock exchange quotations were stopped on the same day, at the highest price.”

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.

As a general rule, Articles 62 and 63 of Brussels *Ibis*-Regulation (recast) are directly applicable for determining whether a party has his/her domicile in Belgium. However, the parties can deviate from this general rule by concluding forum choice agreements provided that the subject of the dispute falls out of the scope of Article 24 of the recast Regulation where mandatory and exclusive forum are imposed.²

In addition, the determination of domicile in relation to the services, notifications, filings, and communications are governed by [Articles 32 to 47bis of the Belgian Judicial Code](#).

Pursuant to **Article 32 (3) BJC**, the domicile is determined by taking into consideration the place where the person is principally registered in the population registrar.

Further, **Article 32 (6) BJC** refers to the electronic domicile election address. Accordingly, the electronic domicile of a person is any electronic address at which service may be affected in accordance with the provisions of Article 32quarter/1³ following the express and prior consent of the recipient for each service in question.

² Piet Taelman and Claudia van Severen, *Civil Procedure in Belgium* (2nd edition, Wolters Kluwer 2021) 82.

³ Article 32quarter/1 BJC: “§ 1. Service is made electronically to the electronic judicial address. In the absence of an electronic court address, said service may also be made at the address of election of electronic domicile, provided that the recipient has consented thereto, each time for the service in question, expressly and in advance according to the terms set by the King, after consultation with the Commission for the protection of privacy. Each time service is performed by electronic means, the recipient will be kept informed, in the manner determined by the King, after consulting the Commission for the protection of privacy: 1° of the data which concerns him and which is recorded in the register referred to in Article 32quarter/2; 2° the categories of persons who have access to the data referred to in 1°; 3° the retention period for the data referred to in 1°; 4° the data controller referred to in Article 32quarter/2, § 2;

In the absence of any international treaty or the EU regulations, the domicile will be determined in accordance with **Article 4 of the Belgian Code of Private International Law**.

According to Article 4: “§ 1. For the purposes of this law, domicile is understood to be

1° the place where a natural person is registered as his or her principal occupation in Belgium in the population registers, in the aliens' registers or in the waiting register;

2° the place where a legal person has its registered office in Belgium.

§ 2. For the application of this law, habitual residence is understood as:

1° the place where a natural person is principally established, even in the absence of any registration and independently of an authorisation to reside or to establish himself; to determine this place, account is taken, in particular, of circumstances of a personal or professional nature which reveal lasting links with this place or the desire to establish such links;

2° the place where a legal person has its principal place of business.

§ 3. For the purposes of this law, the principal place of business of a legal person is determined by taking into account, in particular, the centre of management, the centre of business or activities and, subsidiarily, the registered office.”

III. Commencing the Procedure

When Belgium 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.*).

5° the way in which he can receive communication of the data referred to in 1°.

§ 2. Within twenty-four hours of sending the notice of service by electronic means or the request for consent to service by electronic means to the addressee, the register referred to in Article 32quater/2 sends a notice of confirmation of service to the bailiff who served the document. In such case, service is deemed to have taken place on the date of sending of the aforesaid notice or of the aforesaid demand. In the absence of notice of confirmation of service within the period referred to in the first paragraph, service by electronic means is considered impossible within the meaning of Article 32quater/3, § 3. When the document is opened by the addressee, the register sends a notice of opening by the addressee to the bailiff who served the document. In the absence of receipt of a notice of opening by the addressee within twenty-four hours following the sending to the addressee of the notice referred to or of the request referred to in the first paragraph, the judicial officer addresses, on the next business day, an ordinary letter to the addressee informing him of the service by electronic means.”

In Belgium, the claimants can obtain the ESCP Claim Form A by downloading it directly from the EU e-Justice Portal (https://e-justice.europa.eu/content_small_claims_forms-177-en.do).

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.).

In Belgium, the registry of the competent court can provide practical assistance in filling in the ESCP Forms and provide general information about the procedure.⁴

There are also consumer protection agencies – e.g., European Consumer Centre (ECC) Belgium⁵ and Test-achats⁶ – that provide consumers with practical and individual (essential) legal assistance such as help with filling the ESCP Forms, identifying the relevant jurisdiction, and the necessary steps to be taken by consumers in initiating the Procedure. The consumers who are willing to use the ESCP to proceed with their low-value claims can directly contact these entities and seek practical assistance.

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

In Belgium, the justice system has provided legal aid available to people (both claimants and defendants) with insufficient financial resources to cover the costs of civil proceedings.

The rules concerning legal aid are governed by Articles 664 to 668 of the Belgian Judicial Code.

“**Article 664.** Legal aid consists in exempting, in whole or in part, those who do not have the means of existence necessary to meet the costs of a procedure, even an extrajudicial one, from paying the registration, court registry and dispatch fees and the other costs which it involves. It also ensures to the interested parties the free ministry of public and ministerial officers, under the conditions hereafter

⁴European e-Justice Portal, ‘Small Claims; (August 2022) <https://e-justice.europa.eu/354/EN/small_claims?BELGIUM&member=1> accessed 10 August 2022.

⁵ Consumers can contact the European Consumer Center Belgium (ECC-Net Belgium) by phone or filling a contact form. For more information visit the ECC-Net Belgium website <<https://www.eccbelgium.be/contact>> accessed 10 August 2022.

⁶ For more information on the offered assistance by Test-Achat visit <<https://www.test-achats.be>> accessed 10 August 2022.

determined. (It also allows the interested parties to benefit from the free assistance of a technical advisor during judicial expertises).

Article 665. Legal aid is applicable:

1° to all acts relating to claims to be brought or pending before a judge of the judicial or administrative order or before arbitrators;

2° to acts relating to the execution of judgments and decisions;

3° proceedings on request;

4° to procedural acts that fall within the competence of a member of the judiciary or require the intervention of a public or ministerial officer.

(5) (to mediation, [extrajudicial] or judicial proceedings conducted by a mediator approved by the commission referred to in section 1727.)

(6° to all extrajudicial procedures imposed by law or the judge;

(7° for the enforcement of authentic instruments in another Member State of the European Union within the framework of Article 11 of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, under the conditions laid down in that Directive).

(8° to the assistance of a technical advisor in judicial expertises.)

Article 666. When the assets of a bankruptcy are presumed to be insufficient to cover the initial costs of liquidation, the judge seized shall order, ex officio or at the request of the curator, that the proceedings be free of charge.

The proceedings are also free of charge for conservatory acts and procedures until the expiry of the period of forty days from the judgment declaring the bankruptcy.

Article 667. [Legal aid is granted to persons of Belgian nationality who can prove that their means of support are insufficient. [For the purpose of determining that persons have insufficient means of support, Articles 508/13/1 and 508/13/2 shall apply by analogy, it being understood that the words "the legal aid office" shall be read as "the legal aid office" or "the judge", as the case may be.] Applications relating to cases that appear to be manifestly inadmissible or manifestly ill-founded shall be dismissed.

The decision of the legal aid office granting second-line legal aid, partially or entirely free of charge, constitutes proof of insufficient means of subsistence.

One year after the decision of the legal aid office, the legal aid office or the judge granting legal aid can check whether the conditions of insufficient means of subsistence are still met.

In the event that the legal aid office terminates the second-line legal aid because the beneficiary no longer meets the conditions provided for in Article 508/13, the lawyer shall immediately forward this decision to the legal aid office or the competent judge.]

Article 668. The benefit of legal aid may be granted under the same conditions:

a) to foreigners, in accordance with international treaties;

b) to any national of a member state of the Council of Europe;

c) to any foreigner who has, in a regular manner, his habitual residence in Belgium (or who is in a regular situation of residence in one of the Member States of the European Union);

d) to any foreigner in the procedures provided for by the law on access to the territory, stay, settlement and removal of foreigners;

[e) to all foreigners who have irregular residence in Belgium, provided that they have tried to regularize their stay in Belgium, that their request is urgent and that the procedure concerns matters related to the exercise of a fundamental right].”

The request for legal aid is lodged with the court competent to decide on the merits of the case. There is a bureau⁷ within each court that decides upon the requests for granting legal aid. Nevertheless, in the Justices of the Peace, where this bureau does not exist, this request is dealt with the judge to decide whether to grant such aid or reject it. This decision must be made within eight days (from the filing of the request) and the applicant will be notified within three days. The negative decision on granting the legal aid can be appealed within 30 days from this notification.⁸

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.).

According to the Belgian Judicial Code, the courts with the material and territorial jurisdiction over issuing a judgment in the European Small Claims Procedure include: the Justice of the Peace; the Court of First Instance; and the Business Court.

Pursuant to **Article 590 BJC**, the Justices of the Peace retain general jurisdiction over all civil and commercial matters in amounts not exceeding the threshold of 5,000 euros. There are 162 Justices of Peace across the country (as of August 2022). On the basis of their territorial jurisdiction, each Justice of the Peace has competence to deal with cases referred under the ESCP.

As regards to the Court of First Instance (Civil Court), **Article 568 BJC** states: “The Court of First Instance hears all claims except those that are directly devolved to the Court of Appeal and the Court of Cassation. If the defendant disputes the jurisdiction of the court of first instance, the plaintiff may, before the closing of the proceedings, request the referral of the case to the district court which will rule as stated in articles 641 and 642...”

Article 573 BJC refers to the Business Courts as the court which “hears in the first instance disputes between companies referred to in Article I.1, 1°, of the Code of Economic Law, which do not fall within the special jurisdiction of other courts. and which, as far as natural persons are concerned, relate to an act which is manifestly not unrelated to the company] The claim directed against a company may also be brought, under the conditions referred to in [the paragraph 1st] , before the [Business Court], even if the applicant is not a business. Is, in this respect, null, any clause conferring jurisdiction prior to the birth of the dispute.]”

The competence of Business Court is irrespective of the monetary value of the claim.⁹

⁷ In French (*bureau d'assistance judiciaire*) and in Dutch (*bureau voor rechtsbijstand*).

⁸ Taelman and Severen (n 2) 97.

⁹ *ibid*, 76.

Under the Belgian civil justice system, jurisdictional conflicts are handled and resolved by the District Court. This special nonpermanent court consists of four members: the presidents (or an appointee judge by them) of the Court of First Instance, the Labour Court, the Business Court, Justice of the Peace Courts, and Police Courts (**Article 74 BJC**). Decisions of the District Court are binding on the court and/or the parties.

According to **Article 854 BJC**: “Except where it is a matter of public policy, the lack of jurisdiction of the court seized must be proposed before any plea or defence.” In addition, a party may decline the jurisdiction of the court seized only in so far as s/he designates the court which, in his/her opinion, has jurisdiction (**Article 855 BJC**).

As regards the referral of the case to the competent court, **Article 639 BJC** stipulates that: “Where the jurisdiction of the court seized is challenged, the plaintiff may, before the close of the hearing, request that the case be referred to the district court for a decision on the plea. The case shall be brought before this court without any other formalities than the mention of the transfer [on the hearing sheet] and the transmission of the file of the proceedings [with, if applicable, the family file referred to in **article 725bis** which includes the file of the proceedings,] to the president of the court by the care of the clerk.

In the absence of a request for referral by the plaintiff, on the defendant's declination, as stated in the first paragraph, the judge seized shall rule on jurisdiction.

This provision shall likewise apply where an appeal against a decision of the justice of the peace is brought before the court of first instance or the [business court] sitting as a court of appeal and the jurisdiction of the court is challenged. The transfer to the district court is ordered at the request of the appellant.

The district court shall not have jurisdiction to rule on the jurisdiction of the courts and tribunals.”

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 monetary value (including the matters related to the interest) of ESCP claims are governed by **Articles 557 to 562 of the Belgian Judicial Code** (See Section II. 1).

By virtue of **Article 562 BJC**, the value of the claim is assessed based upon the claimed amount of the money in the act commencing the proceedings at the competent court.

As stipulated in Article 2 of the ESCP Regulation, interest, fees and expenses are not calculated in determining the value of a claim.¹⁰ In this respect, **Article 557 BJC** has a similar approach to this provision of this Regulation by excluding judicial interests and other costs from the value of the claim.

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.).

Yes. In Belgium, the court fees are fixed and vary depending on the court before which the proceedings are brought and the stage of the proceedings (first instance or appeal).¹¹ As regards the ESCP, the court fee to lodge an application at first instance is 50 euro.¹² The litigation costs and the court fees must be paid at the end of the proceeding by the losing party. To make an appeal against an ESCP judgement, the applicant must pay 165 euro before the Court of First Instance or the Business Court (where applicable).¹³

The ESCP court fee can be paid by either credit transfer, payment order form, electronic transfer, in cash or by cheque (only reserved to lawyers and bailiffs) to the order of the registry of the relevant court.¹⁴

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

¹⁰ Xandra E. Kramer, 'A Major Step in The Harmonization Of Procedural Law in Europe: The European Small Claims Procedure Accomplishments, New Features And Some Fundamental Questions Of European Harmonization' [2007] SSRN Electronic Journal, 6 <<https://ssrn.com/abstract=1314727>> accessed 10 August 2022.

¹¹ See European e-Justice Portal, 'Costs; (August 2022) <<https://e-justice.europa.eu/37/EN/costs?BELGIUM&member=1>> accessed 10 August 2022.

¹² Article 2, Loi modifiant le Code des droits d'enregistrement, d'hypothèque et de greffe en vue de réformer les droits de greffe, 14 OCTOBRE 2018. For more information visit https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2018101418&table_name=loi, accessed 10 August 2022.

¹³ *ibid.* Also for more details on the litigation costs in Belgium visit the Belgian Federal Public Service (Justice), 'Legal Costs'; (August 2022) <https://justice.belgium.be/fr/services_en_ligne/registre_national_et_frais_de_justice/frais_de_justice> accessed 10 August 2022.

¹⁴ See European e-Justice Portal (n 4).

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).

Any lodgement or communication accepted for the purposes of the ESCP – that are available to the courts or tribunals – in accordance with Article 4(1) of the Regulation may take place in Belgium. Currently, the Claim Form A and the supporting documentations must be sent by a registered mail or directly (physically) lodged with the registry of the competent court with territorial jurisdiction. The electronic lodgment of the ESCP Claim Form A is not currently available; however, it will be soon possible.¹⁵

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. In Belgium, the Claim Form A must be submitted in one of the official languages of the country namely French, Dutch, or German.¹⁶ If the Form is not in any of these languages, the claimant must provide the translation to the court. Where the claimant wins the case, the incurred necessary procedural costs, including the translation of documents can be reimbursed through the bailiff from the losing party at the enforcement stage.

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.*).

In Belgium, the courts have been encouraged to promote the use of amicable models of dispute resolution in civil proceedings – also applicable to the ESCP proceedings – in order to enable parties reach a settlement.

On this account, **Articles 730/1 BJC** specifies that:

“§ 1. The judge favors in all stages of the procedure a mode of amicable resolution of disputes.
§ 2. Except in summary proceedings, the judge may, at the introductory hearing or at a hearing set

¹⁵ *ibid.*

¹⁶ The conduct of the proceedings in Dutch, French, or German are subject to the rules conducted in Dutch, French or German is subject to the rules specified in the Act of 15 June 1935 on the Use of Languages in Judicial Matters. For more information see Taelman and Severen (n 2) 100.

for a close date, question the parties on the way in which they attempted to resolve the dispute amicably before the introduction of the case and inform them of the possibilities of still resolving the dispute amicably. To this end, the judge may order the personal appearance of the parties. At the request of one of the parties or if he deems it useful, the judge, if he finds that a reconciliation is possible, may, at this same introductory hearing or at a hearing set for a close date, postpone the case to a fixed date, which cannot exceed one month unless agreed by the parties, in order to allow them to check whether their dispute can be totally or partially resolved amicably and to gather all useful information in the matter. The measure referred to in paragraph 2 cannot be ordered if it has already been ordered in the context of the same dispute.]’

In a similar vein, **Article 731 BJC** provides that ‘‘It is part of the judge's mission to reconcile the parties. Without prejudice to the provisions of Articles 1724 to 1737, any main claim instituting proceedings between parties capable of settling and on matters likely to be settled by settlement, may be submitted beforehand, at the request of one of the parties or their mutual agreement, for the purpose of conciliation, to the judge competent to hear it at the first level of jurisdiction. Except in the cases provided for by law, the preliminary conciliation cannot be imposed.]’’

Article 733 BJC specifies that where a report of the conciliation appearance is drawn up and an agreement is reached, the report records the terms and the shipment is covered by the enforceable formula.

IV. Procedure after the Court receives the claim

When Belgium 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 Belgium, the admissibility of the submitted claim is evaluated by the court before which the action is brought.¹⁷ Where the claim falls out of the scope of the ESCP Regulation, the claim will be dismissed and the claimant will be notified accordingly. However, where the claim is dismissed by a judge without providing any reasons, the claimant can lodge an appeal to the Court of the First Instance and inquire about the grounds for refusal and request explanations in this regard.

¹⁷ Taelman and Severen (n 2) 85.

Under national civil procedural rules in Belgium, where the claim is not eligible under the ESCP Regulation and the claimant wishes to carry on the case, the national ordinary civil procedural rules are applicable.

Under the Belgian Judicial Code, there is a national alternative track available for small and simple claims. This specific procedure is known as the summary order for payment procedure which is a voluntary redress mechanism with the aim to provide a more expedited and efficient method of dealing with low-value claims. This procedure also establishes a solution for saving the overburdened courts time and labour in dealing with simple and small claims. The summary order for payment is governed by Articles 1338 to 1344 BJC:

“**Article 1338.** Any request for the jurisdiction of the justice of the peace, tending to the payment of a liquid debt which has as its object a sum of money the amount of which does not exceed ((1,860 EUR)), may be introduced, investigated and judged in accordance with the provisions of this chapter, (if it appears justified by a written document from the debtor.), (The writing which serves as the basis for the request does not necessarily have to constitute an acknowledgment of debt.) [These provisions also apply to any claim within the jurisdiction of the [Business Court] when it hears the disputes referred to in Article 573 [regardless of the amount of the claim]. (These provisions also apply to any request for the jurisdiction of the police court when it hears the disputes referred to in Article 601bis.)

Article 1339. The request is preceded by a request to pay either served on the debtor by bailiff's writ or sent by registered letter with acknowledgment of receipt. The letter or document must contain, in addition to the reproduction of the articles of this chapter, the formal notice to have to pay within fifteen days of the sending of the letter or of the service, the amount requested and the indication of the court that, in case the debtor fails to pay, will hear the case. All is stated under sanction of nullity.

Article 1340. Within the fifteen days following the expiry of the period provided for in article 1339, the request shall be sent to the judge by request in two copies containing:

- 1 ° the indication of the day, month and year;
- 2 ° the surname, first name [...] and domicile of the applicant, as well as, where applicable, [his national register number or company number and] the surname, first name, domicile and position of his legal representatives;
- 3 ° (the subject of the request and the precise indication of the amount of the sum claimed with the statement of the various elements of the claim as well as the basis of this claim;)
- 4 ° the designation of the judge who must hear it;
- 5 ° the signature of the party's lawyer.

If appropriate, the applicant indicates the grounds for his opposition to the granting of (grace periods). (The following are annexed to the request:

- 1 ° a photocopy of the writing which serves as the basis for the request;
- 2 ° either the document, or the copy of the registered letter to which the acknowledgment of receipt is attached, or the original of this letter to which are attached the proof of the refusal of receipt or of the non-complaint by post and a certificate establishing that the debtor is registered at the address indicated in the population registers.)

Article 1341. The request is filed at the court, stamped on its date by the registrar and entered in a register kept for that purpose. It is included in the proceedings file as well as, where applicable, any communication sent to the judge by the debtor.

It can also be sent under cover by the lawyer to the clerk.

Article 1342. Within fifteen days of the filing of the request; the judge accepts it or rejects it by an order made in chambers. It can partially grant it. He may also grant grace periods as stated in chapter XIV of this book.

A copy of the order is sent, by simple letter, to the applicant's lawyer.

Article 1343. §1. When the judge grants the motion, in whole or in part, his order has the effects of a default judgment.

§ 2. “Under penalty of nullity, the act of service of this ordinance contains, in addition to a copy of the request, an indication of the time limit within which the debtor can lodge an opposition, of the judge before whom it must be brought as well as forms in which it must be made.

Under the same sanction, the act of service warns the debtor that in the absence of recourse within the time limit indicated, he may be forced by all legal means to pay the sums claimed.

§ 3. The order for payment may be opposed or appealed by the debtor, in accordance with the provisions of Titles II and III of Book III of this part.

By way of derogation from Article 1047, the opposition may be formed by request filed at the court registry in as many copies as there are parties involved and lawyers, and notified by the clerk, under judicial cover. , the creditor and his lawyer.

Under penalty of nullity, the request contains:

1 ° the indication of the days, months and year;

2 ° the surname, first name [...] and domicile of the opponent [and, where applicable, his national register number or company number];

3 ° the surname, first name and domicile of the creditor and the indication of the name of the latter's lawyer;

4 ° the determination of the prescription undertaken;

5 ° the opponent's means.

The parties are summoned by the clerk to appear at the hearing fixed by the judge.

§ 4. If the request provided for in Article 1340 is rejected, the request may be introduced by ordinary means.

The order which partially grants it in accordance with Article 1342, first paragraph, is not subject to opposition or appeal by the applicant, except for the latter not to serve the order and to submit the request for the whole by the ordinary way.

Article 1344. The rules set out in this Chapter are only applicable if the debtor has his domicile or residence in Belgium.’

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.).

Under the Belgian law, there are not any particular rules concerning the court's request to the applicant in order to complete or rectify the Claim Form A (using Form B). Nor there are any specific provisions on time limit (or its extension) for completing or rectifying the claim form.

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.).

As regards the admissibility requirements, Articles 17 and 18 BJC require the existence of two elements as the main conditions of each submitted action:

“**Article 17.** The action cannot be admitted if the plaintiff does not have the capacity and interest to form it.

[The action of a legal person, aimed at protecting human rights or fundamental freedoms recognized in the Constitution and in the international instruments which bind Belgium, is also admissible under the following conditions:

1° the object of the legal person is of a particular nature, distinct from the pursuit of the general interest;

2° the legal person pursues this corporate object in a sustainable and effective manner;

3° the legal person takes legal action within the framework of this corporate object, with a view to ensuring the defense of an interest related to this object;

4° only a collective interest is pursued by the legal person through its action.]

Article 18. The interest must be born and current. The action may be admitted when it has been brought, even on a declaratory basis, with a view to preventing the violation of a seriously threatened right.”

If the ESCP claim is dismissed by a judge without providing any reasons, the claimant can lodge an appeal to the Court of the First Instance and inquire about the grounds for refusal and request explanations in this regard.

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.)¹⁸ (provided that the requirements set out in Art. 13(1) ESCP Reg. are fulfilled).

Where the defendant is domiciled in Belgium, the registry of the competent court – i.e., in Justice of the Peace, the Court of First Instance, and Business Court – will serve the Claim Form A (and other supporting documentations) and Form C to the defendant. This process is conducted by sending a registered judicial letter in accordance with **Article 46 of the Belgian Judicial Code.**

“**Article 46.** [§ 1]. [In the cases provided for by law, the clerk or, where applicable, the public prosecutor shall have the notification carried out by judicial letter.] [When the judicial letter is transmitted in printed form, it is delivered by the postal services to the person of the addressee or to his domicile as provided for in Articles 33 to 35 and 39. The person to whom the letter is delivered signs and date the acknowledgment of receipt which is returned by the postal services to the sender. The acknowledgment of receipt in printed form may be replaced by an acknowledgment of receipt in electronic format. The refusal of the person to sign or date is reported by the postal services at the bottom of the notice of receipt or by means of an electronic application in the case of an electronic notice of receipt.] When the judicial letter cannot be delivered to the person of the addressee or to his domicile,. The envelope is kept in deposit [at the place designated on the notice] for eight days. It can be withdrawn during this period by the addressee in person or by the bearer of a written power of attorney. However, when the addressee of the judicial letter has requested the forwarding of his correspondence or when he has asked for it to be kept at the post office, the letter is, during the period covered by the request, returned or kept at the address that the named recipient. The letter addressed to a bankrupt is given to the curator. The King regulates the methods of application [of paragraphs 2 to 5]. [§ 2.] The Minister who has (LA POSTE) in his attributions determines the format and the service instructions which must appear on the envelope and on [the advice of receipt]. If the place of destination is located abroad, the judicial letter is replaced by [a registered post], without prejudice to the modes of transmission provided for by international conventions. [§ 3.] Nevertheless, when one of the plaintiffs or petitioners expresses the will either in the writ instituting proceedings or in the request, or in writing, at the latest at the time of the first appearance before the judge, the notifications by letter are replaced by service, made at the request of the party responsible for having it done.”

Where the defendant has domicile in another Member State than Belgium, the registry of the competent court shall transmit the documents to be served in accordance with the rules of Regulation (EU) 2020/1784 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).

¹⁸ Please note that the Service Regulation applies to cross-border notifications.

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.).

In Belgium, documents and decisions are served by court bailiffs. Service by electronic means should become possible in the near future. Notification takes place by registered post or, where provided for by law, by fax. Notification should become possible by electronic means in the near future.¹⁹

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.).

Although Belgium has not formally indicated the means of communication available to the defendant to transmit the Answer Form C, it is considered that he can use the same means as those indicated for the introduction of the Claim Form A: to the direct submission of the standard claim form to the registry of the Court with territorial jurisdiction and the posting by registered letter. Transmission of documents are governed by the rules of Regulation (EU) 2020/1784 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).

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.).

¹⁹ See European e-Justice Portal (n 4).

In the framework of the ESCP proceeding, the defendant can initiate a counterclaim (*demande reconventionnelle – tegenvordering*). The rules on counterclaim are governed by Articles 563 to 566 BJC.

“**Article 563.** The court of first instance hears counterclaims whatever their nature and amount.

The labor court, the [business court] and the justice of the peace hear counterclaims which, whatever their amount, fall within their jurisdiction of attribution or derive either from the contract, or from the fact which serves basis for the original claim.

Counterclaims based on the vexatious or reckless nature of a request are brought before the judge who has been seized of this request.

Article 564 . The court seized of an application is competent to hear the application for intervention.

Article 565. In the event of *lis pendens*, legal claims are joined, either *ex officio* or at the request of one of the parties.

[Referral takes place according to the following order of preference:

1° the family court [referred to in Article 629bis, § 1] is always preferred;

2° the justice of the peace [referred to in Articles 628, 3°, and 629quater] is always preferred;

3° the court which rendered a judgment on the case other than an internal order is always preferred;

4° the court of first instance is preferred to other courts;

5° the labor court is preferred to [business court];

6° the labor court and the [business court] are preferred to the justice of the peace;

7° the justice of the peace is preferred to the police court;

8° the court first seized is preferred to the one seized subsequently.]

However, when one of the claims falls within the exclusive jurisdiction of a court, only that court is competent to hear all of the claims.

Where two or more claims fall within the exclusive jurisdiction of two separate courts, referral may occur in accordance with the order of preference determined above.

The provisions of Articles 661 and 662 are applicable in the event of dismissal on the grounds of *lis pendens*.

Article 566. Various legal claims or various heads of claim between two or more parties, which presented separately should be brought before different courts, may, if they are related, be united before the same court by observing the order of preference indicated. [to Article 565, paragraph 2, 1° and 2° and 4° to 8°].

However, if the parties are not the same in all the claims and if one of the courts has rendered a judgment which does not have the effect of removing the dispute from its knowledge, the reference to this court cannot be pronounced if those who were not party to this judgment oppose it. The provisions of Articles 661 and 662 are applicable in the event of dismissal on grounds of connection.”

Where a counterclaim (which has a value that exceeds the limit of 5,000 euros) is submitted as a response to the ESCP claimant, both the claim and counterclaim are not eligible to be dealt with in accordance with the rules of the ESCP Regulation. Nevertheless, they can be further proceeded on the basis of the national rules on counterclaims under the Belgian Judicial Code.

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.

Under Belgian law, where the parties reach a settlement during the court proceeding, they may request the judge to issue the consent judgement (*jugement d'accord – akkoordvonnis*). The consent judgement is an authentic and enforceable document with the same weight as any other judgement.²⁰

In this regard, **Article 1043 BJC** stipulates that: “The parties may ask the court to record the agreement they have reached on the resolution of the dispute which is properly before it.

This judgment may not be appealed against by the disputing parties, unless the agreement has not been legally formed and except for the remedies of interpretation and rectification provided for in Articles 793 to [1801/1]1, if applicable.”

V. Establishing the facts

When Belgium 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.).

As provided by Art. 9 (1) of the ESCP Regulation, the courts shall facilitate the taking of evidence through technological means of communications. It is important to note however, that the admission of digital evidence is subject to availability of technological facilities in

²⁰ Taelman and Severen (n 2) 98.

courts as indicated within Art. 9 of the ESCP Regulation. In terms of admissibility of an e-evidence in civil proceedings in Belgium, since 1st November 2020 new rules have been entered in force. Accordingly, where the law does not require the production of a signed writing between the parties, evidence may be given by digital means (e.g., e-mails or/and text messages). In this sense, the Belgian legislator by the Act of 13 April 2019 that establishes new rules on evidence within the Belgian Civil Code, Book 8 (Chapter 2, Sections 1 and 2, Art. 8.8, 8.9 (§ 1), and 8.11 (§ 1))²¹ allows the admission of digital evidence if it is submitted in a claim²²:

- in relation to a party who is not a trader, and the cause of action does not have to be proved by a written document signed by the parties, provided that the value of the claims does not exceed 3,500 euros²³, or;
- between companies, or against a company, regardless of the value of the claim.²⁴

Therefore, digital evidence is admitted at courts, for the claims whose value is under the threshold of 3,500 euros.²⁵ As a result, in the capacity of the ESCP proceedings, parties are allowed to present their means of proof in written or electronic (e.g., e-mail, text messages, etc.) format.²⁶

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](#)

²¹ Act of 13 April 2019 introducing Civil Code, Book 8 ‘Evidence’ (Art. 1 –75), Belgian Official Gazette, 14 May 2019. For more information visit http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2019041328&table_name=wet accessed 10 August 2022.

²² Article 8.8 provides that “*Free Evidence Except in cases where the law provides otherwise, evidence may be provided by any means.*”

²³ According to Article 8.9 (§ 1); “*Regulated Evidence*”

§ 1. *A legal act involving a sum or value equal to or greater than 3,500 euros must be proven by the parties in a signed writing.*

This amount can be adapted by Royal Decree deliberated in the Council of Ministers, according to the evolution of the cost of living or social necessities.

It can only be proven in addition to or against a signed writing, even if the sum or value does not exceed this amount, by another signed writing.”

²⁴ Article 8.11 (§ 1) stipulated that “*Evidence by and against companies*

§ 1. *Against companies or between companies, as defined in article I.1, paragraph 1, of the Code of Economic Law, evidence can be given by any means, except in special cases.*

The rule stated in paragraph 1 does not apply to companies when they intend to prove against a party that is not a company. Non-enterprise parties who wish to prove against an enterprise may use any mode of evidence.

The rule set out in paragraph 1 shall also not apply, in respect of natural persons carrying on a business, to the proof of legal acts that are clearly unrelated to the business.”

²⁵ Currently, any claim with a value of more than 3,500 euros must be in writing (according to Art. 1341 of the Belgian Civil Code), and the digital evidence is not admissible.

²⁶ As far as the amount of the claim does not exceed 3,500 euros.

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.)⁽²⁷⁾.

Sanctions for non-compliance with the time limits in civil proceedings are governed by Articles 860 to 866 of the Belgian Judicial Code.

“**Article 860.** Regardless of the formality omitted or improperly completed, no procedural act may be declared void, no breach of a prescribed time limit on pain of nullity may be sanctioned, if the sanction is not formally pronounced by the law.]. The time limits provided for lodging an appeal are prescribed on pain of forfeiture. The other deadlines are established on pain of forfeiture only if the law so provides.

Article 861. [The judge may only declare a pleading void or sanction non-compliance with a prescribed time limit on pain of nullity if the omission or irregularity complained of harms the interests of the party invoking the exception.] [When he finds that the grievance established can be remedied, the judge makes the rejection of the exception of nullity conditional, at the expense of the author of the irregular act, on the performance of measures, the content and time limit of which he determines. beyond which the nullity will be acquired.]

Article 863. In all cases where the signature is necessary for a procedural document to be valid, the absence of signature can be regularized at the hearing or within a time limit set by the judge.

Article 864. [Nullity that would taint a procedural act or non-compliance with a prescribed time limit on pain of nullity are covered if they are not proposed simultaneously and before any other means.]”

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.).

For a defendant who has his/her domicile in Belgium, according to **Article 707 BJC**, there is a one-week time frame – from the date of receiving the Claim Form A and the preliminary hearing date – to provide his/her defence and any other supporting materials. The ESCP claims are usually considered as claims to be resolved within a short preliminary hearing. At the preliminary hearing session, the parties (or their attorneys) must be physically present (**Article 728 BJC**) to provide their arguments and defences. If the nature of the case is complex and requires a major hearing, the parties should agree on a calendar trial date, otherwise the court will fix a date and notify the parties (**Article 747 BJC**). At the main trial

²⁷ 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.).

session, the counterparts or/and their lawyers will present their pleadings orally to the court. Once the court announces the termination of hearings, it is supposed to render the judgement within one month (**Article 770 BJC**).

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 Belgium, in terms of civil cases, there is not any transparent record for the use of modern technologies in holding ESCP hearings.

As regards the taking of evidence and admissibility of e-evidence in civil proceedings in Belgium, as of November 2020 all forms of (e-) evidence are admitted at courts, provided that the amount of the claim remains within the threshold of 3,500 euros.²⁸ In the capacity of the ESCP proceedings, parties are allowed to present their evidences in written or electronic (e.g., e-mail, text messages, etc.) formats.²⁹ Considering that most consumer small claims are disputes relating to online purchases, many evidences are then inevitably created in an electronic format.

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.).

Under Belgian law, the principle of party disposition indicates that the parties have the responsibility to present the relevant evidence and information to their allegations. It should be noted that although the judge might not introduce any new facts at his/her own initiative; she/he has (to some extent) the power to adopt an inquisitorial role in obtaining evidence and facts in the course of the proceedings. Therefore, the judge has the power to ask the parties appropriate questions – only within the claim and main facts of the case – in order to seek

²⁸ See (n 20).

²⁹ Provided that the threshold of the claim falls under 3,500 euros.

the truth. This power should be however limited to the extent where it does not jeopardize the impartiality of the judge.³⁰

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 Belgium, Articles 802 to 806 BJC refer to the rules on default judgements.

“**Article 802.** If one of the parties does not appear at the introductory hearing, there may be default against it

Article 803. The defaulting party against whom the default was not taken at the introductory hearing, is summoned, by judicial letter, by the clerk, at the written request of the opposing party, for the hearing at which the cause has been postponed or subsequently fixed.

[when at the introductory hearing there is a reasonable doubt that the introductory document has put the defaulting defendant in a position to defend himself, the judge may order that this document be served by writ of bailiff.]

Article 804. If, at the hearing at which the case has been set or postponed, one of the parties does not appear, judgment by default may be required against it.

However, if one of the parties has [submitted submissions], the procedure is adversarial with respect to that party.

Article 805. The pronouncement of the judgment by default cannot take place before the end of the hearing or the default has been noted, and insofar as it has not been previously reduced.

The default will be dismissed and the proceedings pursued adversarially if the parties jointly request it [before the case is taken under advisement].

Article 806. [In the judgment by default, the judge grants the claims or defenses of the appearing party, except insofar as the procedure, these claims or pleas are contrary to public order [including the rules of law which the judge may, under the law, apply ex officio].]”

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

³⁰ Taelman and Severen (n 2) 30.

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 Belgium, the only accepted language (s) in relation to the content of the ESCP judgements is one of the official languages of the country namely French, Dutch, and German.³¹

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.).

The service of documents requires the clerk or the bailiff sending a registered judicial letter to the defendant domiciled in Belgium. In order to serve the defendant domiciled in another Member State, the clerk transmits the document to be served to the competent agency in the Member State of the defendant, in accordance with Regulation (EU) 2020/1784 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast). The service of documents can be done through bailiff: the applicant (and not the court) has to select and appoint a bailiff for the purpose. Service by bailiff is made in accordance with the Belgian law, if the defendant is in Belgium. If the defendant is in another Member State, the bailiff transmits documents to be served again to the agency provided under Regulation (EU) 2020/1784. The choice between these two options belongs to the court. This choice will obviously have consequences regarding legal certainty: the service of the forms through a bailiff guarantees that procedure complies with minimal standards required by the ESCP Regulation. The cost of the bailiff service depends on the value of the case and some aspects connected to the subject-matter of the case. In cross border service of documents, the addressee may refuse the served document on the ground of unintelligibility because it is not written in, or accompanied by a translation into, either a language which the addressee understands, or the official language of the Member State addressed.³² So, documents must be translated if necessary. The dynamic multilingual Forms that are available in the different languages of the European Union on the website of the European Judicial Atlas can be used.

³¹ See n (16).

³² For more information on the service of documents in Belgium visit European e-Justice Portal, 'Service of documents: official transmission of documents'; (August 2022) <https://e-justice.europa.eu/371/EN/service_of_documents_official_transmission_of_legal_documents?BELGIUM&member=1> accessed 10 August 2022.

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 costs (including the calculation of litigation costs) of the civil litigation in Belgium are governed by Articles 1017 to 1022 of the Belgian Judicial Code.

“**Article 1017.** Every final judgment shall order, even of its own motion, that costs be paid by the unsuccessful party, unless specific laws provide otherwise, and without prejudice to the agreement of the parties which, if applicable, the judgment shall decree. [However, unnecessary costs, including the procedural indemnity referred to in Article 1022, shall be borne, even ex officio, by the party who has wrongfully caused them.]

[An order for costs is, however, always made, except in the case of a reckless or vexatious claim, against the authority or body required to apply the laws and regulations:

1° referred to in articles 579, 6°, [3 579, 7°,]3 580, 581 and 582, 1° and 2°, with respect to claims brought by or against the insured persons personally;

2° relating to the social security of statutory civil servants, which are analogous to the laws and regulations relating to the social security of salaried employees referred to in paragraph 1, with respect to claims made by or against the insured persons personally.]

The term "insured persons" shall be understood to mean: insured persons within the meaning of Article 2, 7°, of the Act of 11 April 1995 establishing the "Charter" of the insured person).

The costs may be offset to the extent that the judge deems appropriate, either if the parties are each unsuccessful on any ground, or between spouses, [legal or de facto cohabitants,] ascendants, brothers and sisters or relatives to the same degree.

Article 1018. Costs include :

1° (miscellaneous, court and registration fees, and stamp duties that were paid before the repeal of the Stamp Duty Code);

2° the cost and the emoluments and salaries of judicial acts

3° the cost of the dispatch of the judgment;

4° the costs of all investigative measures, in particular the fees of witnesses and experts

5° the travel and living expenses of the magistrates, the clerks and the parties, when their travel has been ordered by the judge, and the costs of the acts, when they have been done for the sole purpose of the trial

6° (the procedural indemnity referred to in article 1022;)

(7°) the fees, emoluments and expenses of the mediator appointed under article 1734;)

[8° the contribution referred to in Article 4, § 2, of the Act of 19 March 2017 establishing a budgetary fund for second-line legal aid.]

(The conversion into (euros) of the sums serving as a basis for calculating the costs referred to in paragraph 1 shall take place on the day on which the judgment or order for costs is issued).

Article 1019. The registration duties that are included in the costs include: the general fixed duty, the specific fixed duties and the duties due on judgments ordering, liquidating or collating sums or securities.

Article 1020. An order for costs is divided by operation of law per head, unless the judgment provides otherwise. It is pronounced jointly and severally, if the principal sentence itself entails joint and several liability.

Article 1021. The parties may file a detailed statement of their respective costs, including (the procedural indemnity as provided for) in Article 1022. In this case, the judgment shall contain the liquidation of these costs.

Where the costs have not been liquidated in the judgment, or have been liquidated only in part, those not adjudicated upon are deemed reserved. In this case, the liquidation is made, at the request of the most diligent party, by the judge who gave the decision, insofar as his decision has not been taken; the proceedings are resumed and continued in accordance with Articles 750 et seq.

Article 1022. The procedural indemnity is a lump-sum contribution to the costs and legal fees of the successful party.

After having taken the opinion of the Order of the French- and German-speaking Bars and the Orde van Vlaamse Balies, the King establishes, by decree deliberated in the Council of Ministers, the basic, minimum and maximum amounts of the procedural indemnity, depending in particular on the nature of the case and the importance of the dispute.

(At the request of one of the parties, possibly formulated upon interpellation by the judge, the judge may, by a specially motivated decision,) either reduce the indemnity or increase it, without exceeding the maximum and minimum amounts provided by the King. In his assessment, the judge shall take into account :

- the financial capacity of the unsuccessful party, in order to reduce the amount of the indemnity
- the complexity of the case;
- the contractual indemnities agreed upon for the successful party
- the manifest unreasonableness of the situation.

If the unsuccessful party receives second line legal aid, the procedural indemnity is set at the minimum established by the King, except in cases of manifest unreasonableness. [In this respect, the judge shall give special reasons for his decision to reduce the amount].

[Where, in the same lawsuit, several parties are entitled to procedural damages at the expense of one or more unsuccessful parties, this amount shall not be more than twice the maximum procedural damages to which the beneficiary entitled to claim the highest damages is entitled. It shall be apportioned between the parties by the judge]

No party may be required to pay compensation for the services of another party's counsel in excess of the amount of the procedural allowance.

[Where a proceeding ends in a default judgment and no unsuccessful party has ever appeared or where all unsuccessful parties appeared at the commencement hearing but did not contest the claim or are seeking terms and time only, the amount of the procedural fee shall be the minimum fee.

No compensation shall be payable by the State when the labor auditorate brings an action before the labor courts pursuant to Article 138a, § 2].

Article 1023. Any contractual clause increasing the claim by reason of its being asserted in court is deemed unwritten.”

To sum up, these costs are all calculated based on the day that the final judgement is rendered by the court. The reimbursement of such costs is also carried out based on the general rule of ‘to be borne by the part who loses the case’. There are, however, two exceptions to this general rule: 1. if there are any specific laws that provide otherwise, and 2. where there is an agreement between the parties about the distribution of costs. In these circumstances, the court will assess the distribution of costs based on the specific law or the existing agreement. It must be stressed that if the claimant loses the case, then in addition to the fees for the proceedings that s/he must pay, the necessary expenses incurred by the defendant during the ESCP proceeding are also the responsibility of the claimant. Regarding the distribution of litigation costs, where each party is partially successful – in accordance with **Article 1017 BJC** – the judge assesses the contribution of each party towards the incurred necessary expenses, in the final judgement. With respect to the enforcement procedure expenses, **Article 1024 BJC** provides that the costs of enforcement shall be borne by the party against whom the enforcement is sought.

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 \(EC PG 7.1.1.\).](#)

Depending on the specific circumstances of the case, under the Belgian law there are several courses that may be open to a party wishing to secure a review of a decision.

Firstly, there is a possibility for review under **Article 1051 BJC** by lodging an appeal against an ESCP judgment within one month from service of the judgment or, in some cases, within one month from notification of the judgment in accordance with the second and third paragraphs of **Article 792 BJC**. This applies whether or not both parties appeared in the proceedings.

Secondly, in accordance with **Article 1048 BJC**, a motion to have a default judgment set aside may be filed within one month from service of the judgment or, in some cases, within one month from its notification pursuant to **Article 792 BJC**.

The time-limits indicated above for lodging an appeal or filing a motion to aside apply:

- subject to the time-limits laid down in mandatory provisions of supranational and international law;
- without prejudice to the possibility offered by **Article 50 BJC** of extending a time-limit set on pain of default under certain conditions laid down by law;
- Without prejudice to the possibility of applying the general principle of law, repeatedly confirmed by the Belgian Court of Cassation, according to which the time-limits set for the performance of an act are extended in favour of a party who has been prevented by force majeure from performing the before the time-limit expires.³³

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.).

In accordance with **Article 617 BJC**, an appeal against an ESCP judgement is possible provided that the monetary threshold of the claim exceeds 2,000 euros for the Justices of the Peace courts and 2,500 euros for the judgements issued by the Court of First Instance and/or Business Courts.

The request for an appeal against an ESCP judgement must be lodged with the Court of First Instance, the Business Court, or the Court of Appeal with subject-matter jurisdiction under the Belgian Judicial Code.³⁴ Pursuant to **Article 1051 BJC**, the request for an appeal must be lodged within one month from the service of the judgement or the notification thereof made in accordance with **Article 792 BJC**.

For judgements falling below the threshold of 2,000 euros – where the appeal is not heard – there is still a possibility of lodging an opposition to the ruling.³⁵ Nonetheless, one should note that the Belgian courts rarely accept the review request from the interested party in the ESCP cases as it requires the courts to spend a considerable amount of time to reconsider the case.

³³ See European e-Justice Portal (n 4).

³⁴ Pursuant to Article 101 BJC, the competent court to deal with the appeals against the rulings of the Justice of the Peace Courts is the Court of First Instance. The appeal against the judgements issued by the Court of First Instance or/and Business Courts must be lodged with the Court of Appeal.

³⁵The review requests for the ESCP cases through the opposition proceeding in Belgium are very seldom accepted by the Justices of Peace. The judicial review is discussed under Art. 807 and 808 of the Belgian Judicial Code.

In general, legal representation is not mandatory under Belgian civil justice system, and any party has the right to choose to self-represent within the civil proceedings. With respect to the rules on voluntary legal representation, **Article 728 BJC** provides that: “§ 1. At the introduction of the cause and subsequently, the parties are required to appear in person or by lawyer.

§ 2. Before the justice of the peace, the [business court] and the labor courts, the parties may also be represented by their spouse [by their legal cohabitant] or by a parent or ally a written power of attorney and specially approved by the judge.

(§ 2bis. At the express request of the taxpayer or his lawyer, formed by way of conclusions, the judge can hear in his written or verbal explanations at the hearing the chartered accountant, the professional accountant or the auditor chosen by the taxpayer. The use of a chartered accountant, professional accountant or company auditor is subject to the discretion of the judge who assesses the advisability of carrying out such a consultation which can only relate to elements of fact or on matters relating to the application of accounting law...”

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 creditor can ask for the issuance of the certificate of enforceability from the registry office of the competent court that has rendered the decision. A written request to the clerk of the jurisdiction is sufficient. This request can be made directly during the procedure. The respective judge may accept to issue the certificate when making its decision. Either way, there is no time limit for such an application. Consequently, this request for issuance of certificate can be made even after the decision has been issued.

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).

No. The content of the certificate is only issued in one of the official languages of Belgium namely French, Dutch, and German.

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.*).

a) In Belgium, the registry of the Court that has rendered the decision is the competent authority to certify the authenticity of an ESCP judgment.³⁶ A written request to the clerk of the jurisdiction is sufficient. This request can be made directly during the procedure. The respective judge may accept to issue the certificate when making its decision. Either way, there is no time limit for such an application. Consequently, this request for issuance of certificate can be made even after the decision has been issued.

Pursuant to **Article 1018 BJC**, the applicable fees include:

1° Miscellaneous court and registration fees and stamp duty paid before the Stamp Duty Code was repealed; court fees include listing fees, drafting fees and copy fees (Art. 268 et seq. of the Code of Registration, Mortgage and Court Registry Fees³⁷ (RMCRF)).

- In principle, a listing fee (*droit de mise au rôle/rolrecht*) ranging from 100 euros to 500 euros (attachments judge) or from 210 euros to 800 euros (Court of Appeal) is charged, depending on the value of the application (Art. 269/1 of the of RMCRF Code). This fee is payable when the case is listed.
- In principle, a drafting fee (*droit de rédaction/opstelrecht*) of 35 euros is charged on court registrars' documents or documents submitted to them without judicial intervention (Art. 270/1 of the of RMCRF Code).
- In principle, a copy fee (*droit d'expédition/expeditierecht*) ranging between 0.85 euro and 3 euros per page is charged on copies or excerpts issued by a court registry (Art. 271 and 272 of the of RMCRF Code).

³⁶ Stefaan Voet and Pieter Gillaerts, 'Cross border Enforcement of Monetary Claims - Interplay of Brussels I A Regulation and National Rules. National Report: Belgium' (University of Maribor Press 2018) 4..

³⁷In French (*Code des droits d'enregistrement, d'hypothèque et de greffe*) and in Dutch (*Wetboek registratie-, hypotheek- en griffierechten*). For more information on the Code, see <<https://eservices.minfin.fgov.be/myminfweb/pages/public/fisconet/document/f69ba9be-c9a9-48fe-aca6-6636654d1490>> accessed 10 August 2022.

Registration fees (3% of principal) are charged on decisions concerning a principal sum of more than 12,500 euros (excluding legal costs).

2° The cost of judicial documents and related emoluments and salaries.

3° The cost of providing a copy of a judgement: between 0.85 euro and 3 euros per page.

4° The costs of any measures of inquiry, particularly witness and expert fees.

5° Travel and subsistence expenses for judges, registrars and parties required to travel by order of the court, and costs of documents drawn up solely for the proceedings.

6° The procedural fee referred to in Art. 1022 BJC; in principle, this is paid by the unsuccessful party and represents compensation for the lawyer's fees and expenses incurred by the successful party. The amount of this procedural fee is calculated in accordance with the value of the claim. The Royal Order of 26 October 2007 lays down a basic amount, a minimum amount, and a maximum amount. The judge can reduce or increase the basic amount subject to the maximum and minimum amounts. These amounts are linked to the consumer price index.

7° The fees, emoluments and costs of a mediator appointed pursuant to Art. 1734 BJC.

8° The contribution referred to in Art. 4 §2 of the Act of 19 March 2017 setting up a budget fund for second-line legal assistance.³⁸

(The conversion into (euros) of the sums serving as a basis for calculating the costs referred to in paragraph 1 shall take place on the day on which the judgment or order for costs is issued).’’

b) The only accepted languages in Belgium (within the context of the State of enforcement) are the official languages of the country namely French, Dutch, and German.

Pursuant to **Article 555/6 BJC**: ‘‘...only persons who, by decision of the Minister of Justice or the official delegated by him and this, on the advice of the approval commission, are registered in the national register of experts legal experts and sworn translators, interpreters and translator-interpreters are authorized to use the title of legal expert and authorized to accept and carry out assignments as legal expert or to use the title of sworn translator, interpreter or translator-interpreter and authorized to carry out translation or interpretation work entrusted to them by law.]’’

In Belgium, each Court of First Instance has a list of the sworn translators. The costs of translation are to be born by the claimant in advance. These costs may be recovered from the debtor at the enforcement stage.

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

³⁸ European e-Justice Portal, ‘EAPO’ (August 2022) <https://e-justice.europa.eu/379/EN/european_account_preservation_order?BELGIUM&member=1> accessed 10 August 2022.

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.).

Pursuant to **Article 569 (5) BJC**, the Court of First Instance is competent to deal with disputes raised from the enforcement of judgments and rulings.

This Court has sitting in each city of Belgium. The Belgian legal system, in general, has a strict approach towards admitting the grounds for refusal of enforcement of a foreign judgement.³⁹ However, there is a possibility for a debtor to request for suspension of the enforcement procedure under **Article 1414 BJC** in justification of taking precautionary measures for the property subject to enforcement procedure.

According to **Article 1414 BJC**: “Any judgment, even non-enforceable notwithstanding opposition or appeal, takes the place of authorization to seize conservatorily for the judgments pronounced, unless it has been decided otherwise.”

As regards the precautionary measures, in accordance with **Article 1395 BJC**, the judge of attachments has competence in respect of all actions for precautionary attachment and the means of enforcement.

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

The competent authority to deal with the stay or limitation of the enforcement of the ESCP court decisions is the judge of attachment with territorial jurisdiction. Each Court of First Instance, in Belgium, accommodates one or several judges of attachment (s). As provided by **Article 1395 BJC**: “All requests relating to precautionary seizures (, enforcement proceedings ((...) and interventions by the Maintenance Claims Department covered by the law of 21 February 2003 creating a Maintenance Claims Department within the FPS Finances)), are brought before the judge of attachment. (The release of the seizure practiced before the granting of the suspension of payment can on the other hand be granted by the court (competent in matters of requests for judicial reorganization)).

These requests are introduced and investigated according to the forms of summary proceedings, except in cases where the law provides that they are made by request.

[Subject to Article 46 of Title XVII of Book III of the Civil Code, all requests relating to movable real securities and the register of pledges are brought before the attachment judge.]”

³⁹ Voet and Gillaerts (n 36) 56.