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Small Claims, Big Impact: Five Barriers to Justice in the European Small Claims Process

Position Paper



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Executive Summary

The European Small Claims Procedure (ESCP), established by Regulation (EC) No 861/2007 and later amended in 2015, aimed to simplify cross-border dispute resolution for low-value claims, primarily benefiting consumers and small businesses. Despite initial reforms, the ESCP remains underutilised, often due to structural, procedural, and practical hurdles that inhibit consumers' access to this justice pathway. When amounts at stake are so small, the procedure must be fluid, fast, intuitive, and inexpensive. Ultimately, it must be as simple as the purchase that gave rise to the dispute.

This paper addresses the challenges collected via case handling and individual exchanges with consumers by ECC-Net. As an observer of the single market and as an intermediary in cross-border disputes, ECC-Net has spotted several aspects that could be improved. ECCs inform and signpost consumers to the ESCP, when applicable, if a case cannot be positively closed by ECC-Net intervention. In some instances, ECCs also assist consumers in different parts of the ESCP procedure and while doing this, they have identified various problematic areas that prevent the successful development of the procedure.

About the publisher

ECC-Net offers consumers advice on their rights and legal protections when shopping and travelling in another European Union Member State and some European Economic Area countries. As the network is in direct contact with consumers across Europe (almost 134 000 cases in 2024), it can identify the challenges citizens face in countries across the single market and raise these issues with policymakers. From the offices in 29 countries, 150+ legal experts provide free advice and assistance in 24 different languages. ECC-Net is funded by the European Commission and by national governments.

Five barriers to justice



1. Awareness and usage challenges

The ESCP suffers from low visibility among consumers and legal practitioners, with surveys indicating that few citizens are aware of its existence or benefits. As seen in the complaints reaching the ECC-Net, awareness of the ESCP hovers at minimal levels, with only a small fraction of eligible claimants utilising the procedure. ECC-Net experience shows that some judges are not familiar with the ESCP either. As a result, judges sometimes convert an ESCP into a national civil case.

The information available on the European e-Justice Portal is detailed, but it is not easy to understand for non-lawyer citizens. Many questions arise, some of them highly complex from a legal point of view. Without the external assistance of a specialised adviser, the consumer may make mistakes that could have been avoided or simply abandon a procedure that seems too complicated.

- A notable case from Italy involved a judge taking two years to accept an ESCP case due to unfamiliarity with the procedure. Although the consumer eventually won, the trader had closed down, making enforcement impossible.
- ECC-Net received multiple cases against a Hungarian company. As an amicable solution was not possible with this company, ECC-Net advised the consumers to start an ESCP. They started an ESCP in Hungary. They received a positive judgement. However, the procedure to enforce the judgement was very difficult. Belgian consumers were unable to follow it. Finally, the company executed the judgement without the official execution procedure.

2. Procedural complexities and language barriers

The procedural demands of the ESCP, particularly around translation and document submission, pose significant barriers for consumers. Although standardised forms are available in all EU languages, open-ended sections, such as «Details of claim», often require translation into the competent court's language. Article 6.3¹ allows courts to request additional translations, causing delays and additional costs, which frequently deter claimants. Consumers are demotivated by the forms, and they may find some legal terms difficult to understand. For example, many of them do not know how to calculate the legal interest rate.

Besides the role that ECCs can play to help consumers navigate through the complex forms, redesigning ESCP forms with clearer language and interactive digital versions that guide consumers step-by-step could make the process much more appealing to consumers. The latest EU projects, such as SCANII, have started digitalising forms, but simplification is still needed.

3. Court fees, payment accessibility and recovery costs

Court fees for ESCP claims vary across Member States, with significant disparities based on local legal practices. Some Member States waive ESCP fees, while others impose charges that are often disproportionate to the claim value. Additionally, cross-border payment options remain limited, creating accessibility issues for foreign claimants unfamiliar with the local payment systems. Consumers often face uncertainty about what constitutes 'legal costs', including whether translation fees, administrative expenses, or court-related costs will be recoverable. Consumers often decide not to proceed with a small claims procedure due to uncertainty about the exact fees involved.

The rules for cost recovery vary significantly. While some countries allow the winning party to recover all legal expenses, others may limit reimbursement to only certain categories, such as court fees, but not translation or administrative costs. This disparity creates uncertainty for consumers who may hesitate to initiate a claim without clear expectations of whether they will recoup their expenses if successful.

1. Consolidated text: Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure

This uncertainty about the legal expenses could be addressed by:

- harmonising court fee structures across Member States,
- introducing fee caps tied to the claim value,
- ensuring cost recovery for all reasonable legal expenses, including translations.

4. Execution and enforcement of judgements

Even when claimants successfully navigate through the ESCP, enforcing judgements across borders remains problematic, especially if businesses evade accountability through bankruptcy. ECCs in various Member States report considerable challenges in supporting consumers with enforcement, as different national standards and enforcement practices complicate cross-border execution.

Identifying the competent enforcement authority

Consumers often struggle to determine which authority is responsible for enforcing judgements in the defendant's country.

- For instance, enforcement authorities differ across Member States (e.g. bailiffs in France vs. Sheriffs in Ireland), and finding the correct contact information is often a challenge.
- Even though databases like the European Judicial Atlas exist, the information provided is sometimes insufficient or overly technical.

Translation requirements

Enforcement authorities in some Member States demand certified translations of judgements or enforcement certificates, significantly increasing the costs for consumers.

Practical barriers in enforcement

Each Member State has its own rules about the enforcement process. Consumers must navigate these unfamiliar legal systems without assistance, causing frustration and confusion. In some Member States it is necessary to

fill in long, complicated forms to start an enforcement procedure in the language of the country of the enforcement authority. The terms used in the forms are so legalistic that only lawyers specialising in enforcement law understand them.

- Example: In some cases, like in Ireland, consumers must directly contact court offices to initiate enforcement. This is particularly difficult if the consumer is unfamiliar with the local language or administrative procedures
- Another issue that has been identified is that complainants tend to tick their own language instead of the vendor's language in question 11.2. So, if the proceeding is in Dutch but the vendor is Spanish, they cannot enforce the judgement because the certificate is in Dutch and not in Spanish.

Costs and insolvency risks

Consumers often face additional enforcement costs (e.g. bailiff fees), which may not be recoverable if the defendant is insolvent or uncooperative. This makes enforcement disproportionately expensive for small claims.

5. Digital access and procedural efficiency

The ESCP's reliance on traditional, paper-based procedures contrasts with the digital advancements seen in other civil justice mechanisms. While the 2015 amendments mandated electronic communication, adoption has been inconsistent. Jurisdictions with established digital small claims platforms demonstrate the efficiency gains of fully digitalised procedures. However, not all judicial systems in the EU are up to speed with digitalisation.

Limited appeal options

The ESCP was designed to minimise delays by limiting the right to appeal decisions. However, appeal rules vary across Member States, creating confusion for consumers:

For example, in Germany, an appeal is permitted if the claim exceeds €600. However, different thresholds apply in other Member States.

Learning from the neighbour's experience



Estonia

Estonia's success with ESCP can be attributed to several key factors that distinguish it from other EU Member States:

1. Advanced Digital Infrastructure

Estonia's robust digital justice system allows for seamless electronic filing and case management based on e-Files, significantly reducing procedural delays common in paper-based systems. Unlike many other EU countries with decentralised systems, Estonia uses a single competent court to handle ESCP cases, ensuring that cases are handled by experienced judges familiar with ESCP specifics, which minimises procedural inconsistencies and enhances judicial efficiency.

2. Awareness and Accessibility

Estonia has promoted public awareness of its digital legal services, making citizens more knowledgeable about accessing the ESCP and other online judicial tools. This contrasts with the generally low awareness of the ESCP across most EU countries, where citizens often cannot find information on available cross-border dispute mechanisms.

3. Language and Management

Estonia has implemented practical solutions to reduce language barriers in cross-border cases. By supporting streamlined digital translations and using English as a secondary procedural language, Estonia mitigates translation costs and processing delays that typically burden consumers elsewhere.

These factors highlight Estonia as a potential model for other EU countries to improve their ESCP systems by prioritising digital integration, centralisation, consumer accessibility, and efficient language handling.

French-German border region

People living in border regions frequently face significant hurdles when seeking cross-border justice. Complex procedural requirements, language barriers, and uncertainty about jurisdiction and costs often deter consumers from pursuing legitimate claims.

The innovative Interreg pilot project “JUSTICE WITHOUT BORDERS” (Justiz ohne Grenzen / Justice sans frontière), launched by the Centre for Consumer Protection in Europe (Zentrum für Europäischen Verbraucherschutz e.V. / Centre Européen de la Consommation)² in February 2023, directly addresses these challenges. The project offers free monthly consultations with bilingual legal experts – lawyers, notaries, and bailiffs – specialising in cross-border legal matters relevant to residents, including consumer, family, inheritance, labour, and criminal law.

This project provides consumers with assistance throughout the European Small Claims Procedure (ESCP) too. Residents receive step-by-step support – from assessing eligibility and determining the competent court to clarifying procedural costs and completing necessary documentation. Crucially, this guidance continues even after the case is lodged, assisting consumers with interpreting responses and advising on further action.

Moreover, “JUSTICE WITHOUT BORDERS” simplifies enforcement of ESCP rulings by offering free consultations with bilingual bailiffs, helping consumers navigate the complexities of cross-border enforcement effectively.

2. The Centre hosts ECC France and ECC Germany.

Given the project's proven success until now and its continuation until 31 December 2025, extending this initiative across the EU could transform access to justice for all European citizens. Building on ECC-Net's existing experience, establishing European Justice Centres (EJC) throughout Member States would provide invaluable services, including personalised legal consultations, procedural guidance (for the European Small Claims Procedure & European Payment Order among others), and multilingual digital resources.

This integration of ECC and EJC services could establish a seamless link between out-of-court and judicial dispute resolutions, substantially enhancing consumer protection across Europe.

Conclusion



The ESCP was designed to make justice accessible for EU citizens with cross-border small claims. Yet, its potential remains underutilised due to awareness gaps, procedural complexities, cost barriers, and enforcement difficulties. With targeted reforms, including streamlined court fees, and improved enforcement support, the ESCP can fulfil its original promise as a swift, affordable, and consumer-friendly pathway to justice.

ECCs and contact points have already demonstrated their value in supporting consumers with the ESCP. However, their role can be significantly enhanced by increasing their visibility, expanding their advisory scope, and integrating them more effectively as an EU-wide network of contact points. This would make the ESCP more accessible, especially for consumers facing procedural, linguistic, or administrative challenges.

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