EU debt recovery in Finland

Maarit Leppänen and Asko Välimaa

1. Main features of the Finnish summary procedure for recovery of monetary claims

In Finland recovery of debts in judicial proceedings is usually done according to a simplified procedure leading to a default judgment. The simplified procedure is applicable if the claim relates to a debt of a specific sum and it – according to the view of the claimant – is not under dispute. The amount of the monetary claim is irrelevant.

An ordinary civil case becomes pending when a written application for a summons is delivered to the registry of a district court. [1] The application for a summons shall contain certain information. It shall indicate the specified claim of the plaintiff, the circumstances on which the claim is based, the evidence that the plaintiff intends to present and what he or she intends to prove with each piece of evidence, the claim for compensation of legal costs, if the plaintiff deems this necessary, and the basis for jurisdiction of the court, unless jurisdiction can be inferred from the application for a summons or the documents enclosed to it. The application shall also contain relevant contact information of the parties to the proceedings. Representation by a lawyer is not required.

However, if the case relates to a debt of a specific sum as referred to above and the plaintiff states that the matter is undisputed, only a brief description of the circumstances on which the claim is immediately based need to be included in the application for a summons. Evidence need not to be included. The application is thus very simple since it only contains the information necessary for the defendant to be able to contest the claim and for the court to be able to issue a judgment in default. Generally, these applications do not exceed a sheet of A4 in length.

The court considers the application for a summons on the merits only on a very general level. However, if the application is so incomplete, that it can not constitute a basis for a judgment in default and the plaintiff fails to supplement the application, the application for a summons is to be

[1] A translation to English of the Finnish Code of Judicial Procedure is available on the Internet; http://www.finlex.fi/en/laki/kaannokset/1734/

dismissed. The court shall also refrain from issuing a summons and at once dismiss the action on the merits by a judgment if the claim of the plaintiff is manifestly without a basis.

The application for a summons is served on the defendant by the court *ex officio*. In the summons the defendant is required to respond to the claim in writing. However, as is stated in the summons, the defendant need not to respond to the claim if he or she finds the claims correct. If the claim is undisputed, the defendant needs only to return the acknowledgement of service. Once the set time limit for the response expires, [2] the court issues a default judgment in favour of the plaintiff. A judgment in default can not be issued, unless verifiable service of the summons has been affected on the defendant.

A default judgment is immediately enforceable, but it is not final. The party against whom a default judgment has been issued has the right to get the judgment reviewed by the court that has delivered the judgment within thirty (30) days from the date when he or she received verifiable notice of the judgment. Such verifiable notice may for instance be given in the context of the enforcement proceedings. If the party against whom a default judgment has been issued does not apply for review within the set timeframe the judgment in default becomes final.

When the consideration of the matter has been concluded, i.e. a judgment in default has been issued; the district court collects a charge from the plaintiff. The trial fee for a judgment given in default is 80 euros. If the default judgment has been issued on the basis of an application for a summons and the particulars of the claim have been entered directly in the data system of the court, the fee is 60 euros.

The amount of legal costs, i.e. costs that the losing party has to reimburse the plaintiff, is pre-fixed. The reimbursable costs caused by the court proceedings vary between 134 euros and 168 euros, depending on the amount of the debt. The trail fee may be added to these costs. The plaintiff may also demand separate compensation for pre-trial debt collection expenses. Also the amount of these expenses is pre-fixed. For example the reimbursable cost of a written reminder is five (5) euros.

[2] The time limit is usually thirty (30) days from effected service.

The average duration of a simplified procedure is two (2) months. The procedure is thus expedient, simple and cost effective for both the plaintiff and the defendant. Last year (2010) more than 300 000 application for a summons were filed in accordance with the simplified procedure.[3]

The simplified procedure is incorporated in the ordinary civil procedure. If the defendant challenges the claim, the claim is no longer undisputed and the consideration of the matter will continue according to ordinary rules on civil procedure.

There are no other special procedures for certain types of claims, for example small claims or similar matters. However, the Code of Judicial Procedure contains different simplified alternatives to full-length ordinary proceedings applied on case-by-case basis. A civil claim may for instance be decided in a written procedure.

Judgments are in Finland enforced by an enforcement authority. The courts and the enforcement authorities are public entities. Thus both courts and enforcement authorities are to protect the interests of the creditors as well as the debtors.

As stated above, judgments given in default are immediately enforceable. However, a judgment given in default will not result in enforcement as a matter of course. To collect the debt the creditor must file an enforcement request with the enforcement authority and attach the pertinent court decision or other documentary proof of an enforceable obligation to it. The collection methods used in enforcement include the sending of collection letters, the garnishment of wages and salaries, and the distraint of assets.

The creditor will be liable to pay a disbursement fee for each amount that the enforcement authority disburses to him or her. The fee amounts to 1.45 per cent of the disbursed amount, but is in any event not more than 500 euros.

It is not possible to acquire information on the assets of a debtor before an enforceable judgment is obtained. Also, only the enforcement authority may as a part of the enforcement proceedings request such information from a debtor. When an inquiry has been made, the debtor has to provide

[3] Official Statistics of Finland (OSF): Decisions by district courts in civil cases [e-publication]. Helsinki: Statistics Finland [referred: 1.9.2011]. Access method: http://www.stat.fi/til/koikrs/tau_en.html.

comprehensive information on his or her current and past assets. The debtor may be compelled to provide this information under threat of a fine. Provision of false information and concealment of information are criminal offences.

2. Use of electronic communication in court proceedings

Actions on monetary claims may be lodged electronically according to the Act on Electronic Services and Communication in the Public Sector.[4] If the document instituting proceedings is filed with the court electronically, the required written form is met. When a signed document is required – as is the case concerning an application for a summons in civil proceedings - an electronic signature meets the requirements for signature. However, an electronic document delivered to the court registry does not have to be signed if the document includes adequate sender information and there is no uncertainty about the originality or integrity of the document.

An application for a summons is deemed to have arrived, when the court is capable to technical processing of the document. A document whose sender is unknown or which cannot be opened is not deemed to have arrived. Electronic transmission of documents to the court is done at the risk of the sender. However, if an electronic system used by the authority malfunctions or is off line, or if the time of arrival of the document cannot be ascertained for some other corresponding reason, the electronic document is deemed to have arrived at the time when it was sent. In order for the time of sending to be accepted as the time of arrival, credible proof as to the time of sending must be provided.

All courts have official e-mail addresses, which can be found on the contact information internet pages of the court. A message sent to an official address will be auto-replied in acknowledgement of receipt.

Use of attachments is not recommended. The contents of the document should appear in the body of the message. However, if the document for some reason must be sent as an attachment, the file format should not be specific to platform or software application.[5]

[4] A translation to English of the Act is available on the Internet; www.finlex.fi/en/laki/kaannokset/2003/en20030013
[5] For more information, see www.oikeus.fi/8922.htm

Professional debt collection agencies may on application to the Ministry of Justice be granted permission to deliver the information in an application for a summons concerning an undisputed claim by way of a special, machine code message exchange system operating over the Internet. The applicant requesting such permission must develop, at its own cost, software for its own information system for the compilation of application records that meet the set format criteria. The plaintiff, i.e. the debt collection agency which has been granted permission, sends the electronic applications for a summons as a file transfer from its own system to the mainframe, which distributes the applications to the mailboxes of the various district courts. When the application for a summons has been filed through the system, the district court may also send the decision data through the system to the plaintiffs, so that they have it directly in their information systems. However, official paper copies of the judgments by default are still sent by the district court to the plaintiffs.

At present more than 60 per cent of the applications for a summons are filed electronically with the district courts.

During summer 2011 it has become possible for ordinary plaintiffs to file an application for a summons concerning an uncontested monetary claim with the district court through the Internet in a similar manner as professional debt collection agencies. The application is sent direct to the operation system of the district court.[6]

Summonses and other judicial documents may with the consent of the party be served as an electronic message. Electronic communication is not mandatory.

A request for enforcement may be filed electronically through the internet buy using standardised forms.

3. The relationship between national and supranational procedures on debt recovery

Due to the simplicity and efficiency of the Finnish domestic debt recovery system and the fact that the procedure is equally available to foreign creditors, the added value given by separate cross-

[6] See https://asiointi.oikeus.fi/web/asiointi/karajaoikeus (in Finnish and Swedish)

border procedures is not that substantial. Even though the Regulations on Small Claims[7] and the European Order for Payment Procedure[8] have only been applied for a few years, it seems evident that these new systems do not supersede or replace the national system in international debt recovery situations.

From a Finnish point of view, the new regulations usually come to play when a Finnish plaintiff files a claim in another Member State. Still, this does not mean that the instruments are dead letters in Helsinki District Court, which is the only court in Finland with jurisdiction to issue a European Order for Payment and to consider a matter in the European Small Claims Procedure. However, the Small Claims Procedure is very rarely used in Finland. Year 2009 Helsinki District Court received thirteen (13) applications according to the Small Claims Procedure and year 2010 there were only seven (7) applications. According to information gained from Helsinki District Court the amount of Small Claims applications is still deteriorating. In respect of the European Order for Payment the trend is the opposite. In 2009 there were 16 applications for a European Order for Payment. In 2010 the amount of applications had increased to 71.[9] However, compared to the amount of judgments given in default, also the Order for Payment Procedure is in the margins of the Finnish judicial system.[10]

4. Implementation of the Order for Payment Procedure Regulation in Finland

As indicated above the Finnish system is centralised. Only Helsinki District Court is competent to issue a European Order for Payment.

There are no special rules on communication in respect of the European Order for Payment. The same rules apply as in national procedures. This means that an application for a European Order for Payment may be filed with the competent district court in writing or electronically. According to information from Helsinki District Court approximately half or the applications are filed with the court electronically using the standard form available on the internet pages of the European

---

[7] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1-22).
[8] Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European Order for payment procedure (OJ L 399, 30.12.2006, p. 1-32).
[9] The statistical information was received on 13.6.2011.
[10] Year 2010 approximately 250 000 judgments in default was given, see Official Statistics of Finland (OSF): Decisions by district courts in civil cases [e-publication]. Helsinki: Statistics Finland [referred: 1.9.2011].
Access method: www.stat.fi/til/koikrs/tau_en.html.

Commission.[11] When the application is filed electronically, the completed form is sent to the Court as an attachment to an e-mail message. Equivalent rules apply to the statement of opposition.

The application may be done in Finnish or Swedish. No additional copies of the application are needed.

Deliberate false statements referred to in Article 7(3) of the Regulation may lead to criminal responsibility, if the action of the claimant fulfils the essential elements of procedural fraud. The application for a European Order for Payment is examined in respect of the requirements set out in Article 8 of the Regulation in the same manner as an application for a summons made according to the simplified procedure applicable to undisputed debts of a specific sum. The procedure is not automated. A judge issues a European Order for Payment.

Service of summonses and applications are usually done by post. The summons may be sent either to the post office, to be signed for as received, or directly to the recipient, in which event the certificate of receipt contained in the envelope must be returned to the district court. With the consent of the recipient, service may also be effected electronically. In that case, the recipient is notified that the document can be retrieved on a server indicated by the district court.

If it is likely that postal service will not be successful, the process servers of the district court deliver the notice to the recipient in person. When the claim is undisputed, the service of summons may also be effected via telephone.

If it may be assumed that a person is evading service, the process server may serve the document by delivering it to a household member who has attained fifteen years of age, or, if the recipient conducts a business, to a person employed in this business. When service has been affected as described, the process server shall notify the recipient of the service by a letter sent to the home address of the recipient. The service shall be deemed to have taken place when the letter has been given to be delivered by post.

If the defendant is abroad, service will be effected in accordance with the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in

[11] Information received on 13.6.2011.

the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)[12] or the Hague Convention on of 15 November 1965 on the Service of Judicial and Extrajudicial Documents in Civil and Commercial Matters.

If the defendant lodges an opposition within the period provided for in the Order for Payment Procedure Regulation, the district court notifies the applicant that the application for a European Order for Payment is deemed an application for a summons according to the relevant rules in Finnish Code of Judicial Procedure. If necessary, the district court will request the plaintiff to supplement the application. The ordinary procedure continues on the basis of the application for a European Order for Payment. Thus, no explicit decision on revoking or annulling the order is needed. If the plaintiff does withdraw the claim, the case will be discontinued.

The decision to transfer the case for consideration as a civil case is not subject to appeal.

If the defendant does not lodge an opposition within the set time, the court will declare the European Order for Payment enforceable in accordance to the provision in Article 18(1) of the Regulation. This is done *ex officio* without additional formal requirements as referred to in Article 18(2). Contrary to a decision given in default in accordance with national rules on a simplified procedure applicable in respect of undisputed monetary claims or in accordance with the Small Claims Procedure, a European Order for Payment becomes final when it has been declared enforceable by the court. The national rules on review are not applied in respect of European Payment Orders, since the rules on review in Article 20 of the Regulation are exclusive. However, because the rules on review in Article 20(2) of the regulation are quite flexible, it may be argued, that an enforceable European Order for Payment is not final in the traditional meaning of the concept. Only when the defendant has applied for review according to Article 20 of the Regulation and the competent court has rejected the defendant's application, the Order becomes *res judicata*. Since only Helsinki District Court is competent to issue European Orders for Payment, it is also the court competent to consider an application for review. The application for review is considered by the court without giving the plaintiff an opportunity to respond to the application. If the court finds the review justified, the European Order for Payment will be annulled. Since the Regulation does not contain rules on transfer of an annulled European Order for Payment to be considered in

[12] Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79–120).

ordinary civil proceedings, the consideration of the matter will not continue in case of annulment. However from the decision to annul the order does not follow that the claim can no longer be brought to court for consideration. The claimant may still institute ordinary civil proceedings in respect of the claim.

If a European Order for Payment is issued, the trial fee is 80 euros. If a trial fee has been charged in the European Order for Payment Procedure and the same claim is subsequently submitted to the court for consideration as a civil case, the trial fee that has been charged in connection with the Order for Payment Procedure shall be deducted from the trial fee for the civil case. Thus, if the matter is decided in a main hearing with a single judge, the trail fee will be 147 euros irrespective of whether an application for a European Order for Payment has preceded the ordinary proceedings.

The legislation on reimbursable legal costs applied in respect of judgments in default concerning undisputed claims apply accordingly to legal costs decided in connection with a European Order for Payment. Thus the reimbursable legal costs caused directly by the court proceedings in the context of a European Order for Payment may not exceed 168 euros.

In Finland the authority responsible for enforcement of a European Order for Payment is the enforcement authority. The district bailiff is the director of the local enforcement agency. He or she is responsible for enforcement of judgments within the district of the local agency. The bailiff is also the competent authority in matters concerning a stay or limitation of enforcement according to the Regulation and refusal of enforcement according to Article 22(2) of the Regulation.

No additional court proceedings are required following the declaration of enforceability of the European Order for Payment. However, as is the case in respect of other judgments, the creditor must file an enforcement request with the local enforcement authority and attach the European Order for Payment and the declaration of enforceability to the request. The initiation of enforcement is governed by Chapter 3 of the Enforcement Code (705/2007). [13] The request for enforcement may be done in writing, by e-mail or through the Internet.

The enforcement begins immediately when the application is filed with the enforcement authority. According to the available statistics more than 60 per cent of the applications for enforcement have

[13] A translation to English of the Finnish Enforcement Code is available on the internet: www.finlex.fi/fi/laki/kaannokset/2007/en20070705

been concluded in less than three months.[14] No separate statistics are available in respect of European Orders for Payment. When enforcement of a European Order for Payment issued in another Member State in accordance with the Regulation is sought from the bailiff in Finland, the applicant shall provide the bailiff a translation of the European Order for Payment in Finnish, Swedish or English. The application itself has to be done in Finnish or Swedish. A standard form is available on the Internet.

In Finland a judgment, a court decision or a similar enforcement title is no longer enforceable, if the claim has expired owing to payment, the statute of limitations or some other similar reason. The enforcement authority – the bailiff in charge of the matter - shall *ex officio* ensure that the receivable has not become time-barred and shall request supplementary information from the parties if there is doubt as to the expiration of the right. When applicable, these rules apply also in respect of European Orders for Payment. However, in respect of a European Order for Payment, the defendant has to apply for refusal of enforcement on the basis of payment according to Article 22(2) of the Regulation. The application should preferably be done in writing and the defendant has to prove that he or she has paid the amount awarded in the European Order for Payment. If the application has been done in writing, the bailiff shall give a written, reasoned decision on the matter.

An application on refusal of enforcement due to irreconcilable judgments according to article 22(1) of the Regulation shall be filed with Helsinki District Court. The matter shall be considered according to ordinary rules on civil proceedings in non-contentious matters.

5. Implementation of Small Claims Regulation in Finland

As indicated above the Finnish system is centralised. Helsinki District Court has jurisdiction in European Small Claims Procedure.

There are no special rules on communication in respect of the European Small Claims Procedure. The same rules apply as in national procedures. This means that an application according to the European Small Claims Procedure may be filed with the competent district court in writing or electronically. According to information from Helsinki District Court approximately half or the

[14] Tilastot kertyvät... Tilastot kertovat, Ulosottotoimen tilastoja vuodelta 2010, Valtakunnanvoudinviraston julkaisu 2011:1, p. 45, Access method: www.oikeus.fi/vvv/uploads/27gne401z_2.pdf

applications made are filed with the court electronically using the standard form available on the internet pages of the European Commission. When the application is filed electronically, the completed form is sent to the Court as an attachment to an e-mail message. Equivalent rules apply to the statement of opposition.

The application may be done in Finnish or Swedish. No additional copies of the application are needed.

Service of summonses and applications are usually done by post. The summons may be sent either to the post office, to be signed for as received, or directly to the recipient, in which event the certificate of receipt contained in the envelope must be returned to the district court. With the consent of the recipient, service may also be effected electronically. In that case, the recipient is notified that the document can be retrieved on a server indicated by the district court.

If it is likely that postal service will not be successful, the process servers of the district court deliver the notice to the recipient in person. In connection with undisputed claims, the service of summons may also be effected via telephone.

If it may be assumed that a person is evading service, the process server may serve the document by delivering it to a household member who has attained fifteen years of age, or, if the recipient conducts a business, to a person employed in this business. When service has been affected as described, the process server shall notify the recipient of the service by a letter sent to the home address of the recipient. The service shall be deemed to have taken place when the letter has been given to be delivered by post.

If the service is to be effected outside Finland the Regulation (EC) No 1393/2007 on service of documents or the Hague 1965 Convention on Service of Documents apply respectively.

Helsinki District Court will give the judgment either within 30 days of any oral hearing or after having received all information necessary for giving the judgement. There is no provision in the Regulation or standard form in the annex of the Regulation for the judgment, so the content of the judgment will follow the ordinary rules of the Finnish civil procedure.

According to Chapter 24 Section 7 of the Code of Judicial Procedure[15] a judgment shall be drawn up as follows: The judgment of a district court shall be drawn up as a separate document. It shall contain: (1) the name of the court and the date of the judgment; (2) the names of the parties; (3) an account on the claims and responses of the parties, with the reasons for them; (4) a list of the persons heard for probative purposes and the other evidence presented; (5) a statement of reasons for the judgment; (6) the legal provisions and authorities applied; (7) the operative part of the judgment; and (8) the names and titles of the members participating in the decision, and a statement of whether a vote has been taken on the judgment. If a vote has been taken, the opinions of the dissenting members shall be attached to the judgment.

The account to be contained in the judgment may be replaced, in full or in part, by annexing a copy of the application for a summons, the response or another document to the judgment, provided that the clarity of the judgment is not thereby compromised.

The judgment is given by the judge. According to the rules on *quorum,* the district court shall have a *quorum* with three legally trained members present. However, the district court shall have a *quorum* with only the chairman present in the preparation of a case, and in a main hearing of a civil case if the judge is the same as the one who considered the preparation of the case and the nature or scope of the case do not require that it be considered with the full composition. The district court shall reserve the parties an opportunity to state their views on the necessity of the full three-judge-composition. If a party considers the full composition necessary, the case may be decided in a main hearing with only the chairman present for a special reason only. In practice the Small Claims Procedure is always conducted by a single judge.

If the defendant does not respond to the claim, the district court will issue a judgment according to Article 7(3) of the Regulation. This judgment is a default judgment and does not have to contain as much information as a regular judgment, because the claim will be accepted on the basis of the defendant not responding to it.

As previously stated only Helsinki District Court is competent in to consider matters in accordance with the European Small Claims Procedure. At the request of one of the parties, the Helsinki District Court shall issue a certificate concerning a judgment in the European Small Claims

[15] See footnote 1 *supra*.

Procedure. There is no special procedure for this. Usually the claimant ticks box 9 (Certificate) and indicates "Yes" in the Claims Form A. The District Court simply issues the certificate using standard form D at the same time as the judgment is issued. No extra cost is charged for the issuing of the certificate.

A judgment given in the European Small Claim Procedure may be appealed. An appeal against a judgment given in the European Small Claims Procedure is considered by the Helsinki Court of Appeal as provided for in Chapter 25 of the Code of Judicial Procedure (Appeal from the District Court to the Court of Appeal). There are no special rules for appealing judgments given in the Small Claims Procedure.

Under Section 5 of Chapter 25 of the Code of Judicial Procedure, a party who wishes to appeal a decision of the district court is required to declare an intention to appeal, under threat of forfeiting his or her right to be heard. A declaration of an intention to appeal must be filed, at the latest, on the seventh day after the day on which the decision of the district court was handed down or made available to the parties.

Under Section 11 of Chapter 25 of the Code of Judicial Procedure, when a declaration of an intention to appeal has been filed and accepted, the party concerned is provided with appeal instructions that are annexed to a copy of the decision of the district court. The deadline for lodging the appeal is 30 days from the day on which the decision of the district court was handed down or made available to the parties. [16] The party must deliver the appeal document to the registry of the district court at the latest before the end of office hours on the last day for lodging the appeal. An appeal that is out of time will be ruled inadmissible.

If the Small Claims judgment is given according Article 7(3) of the Regulation,[17] the nature of the judgment is a default judgment. Therefore, in this case, the defendant has also an additional review designated to all default judgments in the Finnish civil procedure. The party against whom a default judgment has been issued has the right to get the judgment reviewed in the court that has delivered the judgment within thirty (30) days from the date when he or she received verifiable notice of the judgment. Such verifiable notice may for instance be given in the context of the enforcement

[16] See Section 12 of Chapter 25 of the Code of Judicial Procedure
[17] The defendant has not at all responded to the claim.

proceedings. If the party against whom a default judgment has been issued does not apply for review within the set timeframe the judgment in default becomes final.

European Small Claims Procedure is a procedure where the rights of the defendant are fully respected. In Form C "the answer of the defendant", he or she may state any opposition against the claim. For example, the defendant may state that the claim is outside the scope of the European Small Claims Procedure. Even if the defendant does not state that the claim is outside the scope of the Small Claims Procedure, the Helsinki District Court examines the question *ex officio*.

If a claim does not fall within the scope of application of the Regulation, the district court shall notify the claimant that the claim made in accordance with the Small Claims Procedure is deemed an application for summons in accordance with Chapter 5, Section 1 of the Code of Judicial Procedure. This means that the claim made is considered to be a normal application for a summons in civil procedure. If necessary, the district court shall request the claimant to supplement the application for a summons in accordance with Chapter 5, Section 5 of the Code of Judicial Procedure.[18]

If under Article 5(5) or 5(7) of the Regulation the claim or counterclaim is not considered in accordance with the Regulation, the district court shall notify the claimant and the defendant that the consideration of the case shall continue in the manner referred to in Chapter 5, Section 15 of the of the Code of Judicial Procedure.[19] This means that the considering of the case will continue as a normal civil procedure. At the same time the district court shall give notice whether the preparation shall continue in writing or orally or whether the case is transferred directly to the main hearing.

---

[18] Supplementing the application for a summons:
"Section 5
(1) If an application for a summons is incomplete, the plaintiff shall be exhorted to supplement it before a deadline, if this is necessary in order to continue the preparation or for the provision of a response. At the same time the plaintiff shall be informed as to how the application is incomplete and that the action may be dismissed without considering the merits or dismissed on the merits, unless the plaintiff heeds the exhortation.
(2) The court may, for a special reason, extend the deadline referred to in subsection 1.
(3) The request for supplementing the application for a summons and the deadline for supplementation may be extended also by telephone or the use of another suitable means of communication. However, the case may not be dismissed without considering the merits on the basis of section 6, subsection 1, even if the plaintiff fails to heed the exhortation communicated to him or her in such a manner."

[19] Continuing the preparation:
"Section 15
Unless the case has been decided in accordance with section 13 or 14, the preparation shall continue in writing or orally in a hearing (preparatory session) or the matter shall be transferred directly to the main hearing, as provided below."

If the court competent to consider the case in the European Small Claims Procedure - Helsinki District Court - according to generally applicable rules on jurisdiction deems that it is not competent to consider the matter as an ordinary civil case, it shall with the consent of the claimant transfer the case to the competent district court. The Helsinki District Court may nonetheless refrain from transferring the case if the competent district court cannot be determined without difficulty.

Decisions and other measures taken in the matter by the transferring Helsinki District Court remain in force until the district court to which the case is transferred decides otherwise. The transfer of the case is not subject to appeal.

If the Helsinki District Court deems the case to be within the scope of application of the Regulation it follows the procedures of the Regulation and decides on the merits of the case. If the defendant is not satisfied with the Courts decision, he or she can appeal against the decision as described above. At this stage the defendant can also appeal against the decision on the scope of application.

Article 18 of the Regulation deals with minimum standards for the review of certain judgments. The Article sets minimum rules for review in some of the cases where the decision and the judgment in the Small Claims Procedure is made in the absence of the defendants´ response. As already described above, in Finland all judgments made in the absence of the defendants´ response, i.e. default judgments, are as described above covered by a special review system. The party against whom a default judgment has been issued has the right to get the judgment reviewed in the court that has delivered the judgment within thirty (30) days from the date when he or she received verifiable notice of the judgment.

The costs of the procedure are covered by the Regulation. According to Article 16 of the Regulation the unsuccessful party shall bear the costs of the proceedings. Such costs are the trial charges collected by the court[20] and other cost caused by proceedings. However, according to the Regulation the court or tribunal shall not award costs to the successful party to the extent that these were unnecessarily incurred or are disproportionate to the claim. Recital 29 of the Regulation

[20] In Finland the trial charge collected by the district court is determined according to the stage of the procedure where the consideration of the claim is concluded. If a case is concluded in written preparation, the trial fee is 80 euros. If the case is concluded in oral preparation, the trial fee is 113 euros. If it is concluded in a main hearing with a single judge, the fee is 147 euros and if in a main hearing with a full court 182 euros. If a case is decided by a default judgment and the claim has been entered directly into the data system of the court, the trial fee is 60 euros. The trial charge collected by the court of appeal is in civil matters 182 euros and 226 euros in the Supreme Court. If the Supreme Court does not grant leave to appeal, the trial fee is 113 euros.

contains an explanation or addition to the referred Article stating that the unsuccessful party should bear the costs of the proceedings. The costs of the proceedings should be determined in accordance with national law. Having regard to the objectives of simplicity and cost-effectiveness, the court or tribunal should order that an unsuccessful party be obliged to pay only the costs of the proceedings, including for example any costs resulting from the fact that the other party was represented by a lawyer or another legal professional, or any costs arising from the service or translation of documents, which are proportionate to the value of the claim or which were necessarily incurred.

In Finland the enforcement authority, i.e. the bailiff, is the competent authority for the enforcement of judgments given in the Small Claims Procedure.[21] The bailiff in the respondent's place of residence or domicile or another local enforcement authority is competent to act. The bailiff is also competent for the purpose of applying Article 23. The district bailiff him/herself decides on the measures referred to in the article.

No additional court proceedings are required following the declaration of enforceability of the judgment. However, as is the case in respect of other judgments, the creditor must file an enforcement request with the local enforcement authority and attach the judgment to the request. The request for enforcement may be done in writing, by e-mail or through the Internet.

The execution begins immediately when the application is files with the enforcement authority. According to the available statistics more than 60 per cent of the applications for enforcement have been concluded in less than three months.[22] No separate statistics are available in respect of judgments given in Small Claims Procedure.

When enforcement of a judgment given in Small Claims Procedure in another Member State is sought from the bailiff in Finland, Chapter III of the Regulation will apply as is stated in the Title of the Chapter. In these cases the applicant shall according to Article 22(2) provide the bailiff a translation of the judgment and the Certificate concerning a judgment in the European Small Claims Procedure (Form D) in Finnish, Swedish or English. The application itself has to be done in Finnish or Swedish. A standard form is available on the Internet.

---

[21] See p. 9 *supra*.
[22] See footnote 14 *supra*.

Finland does not require the party seeking enforcement of a judgment given in other Member State to have an authorised representative or a postal address or not even "any other agent having competence for the enforcement procedure" in Finland. Only if the applicant resides abroad and has not indicated an address for service in Finland or abroad, the applicant shall have an attorney who is resident in Finland and is entitled to accept notifications on his or her behalf relating to the enforcement.[23] This means that the applicant may indicate an address for service also in another Member State. This address can be, for example, the home address of the applicant.

In Finland a judgment, a court decision or a similar title of execution is no longer enforceable, if the claim has expired owing to payment, the statute of limitations or some other similar reason. The enforcement authority – the bailiff in charge of the matter - shall *ex officio* ensure that the receivable has not become time-barred and shall request supplementary information from the parties if there is doubt as to the expiration of the right. When applicable, these rules apply also in respect of judgments given in the Small Claims Procedure.

An application on refusal of enforcement due to irreconcilable judgments according to Article 22(1) of the Regulation shall be filed with Helsinki District Court. The matter shall be considered according to ordinary rules on civil proceedings in non-contentious matters.

6. Critical evaluation of EU Regulations on simplifying Cross-Border Debt Collection

6.1. Added value of the Payment Order and Small Claims instruments

The Regulation on a European Order for Payment does regulate similar situations as the earlier Regulation on a European Enforcement Order (805/2004).[24] Also the European Enforcement Order simplifies and makes it more efficient for the claimant to recover debts form another Member State compared to the Brussels I Regulation.[25] However, the European Enforcement Order Regulation does not necessitate Member States to actually have a debts collecting system that fulfils the requirements of the Regulation. The European Enforcement Order is based solely on national

[23] See Chapter 3 Section 12 of the Enforcement Code.
[24] Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ L 143, 30.4.2004, p. 15-39).
[25] Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1-23).

procedures. If there is no national procedure which fulfils the minimum standards of the European Enforcement Order, the Regulation does not help the claimant.

The European Order for Payment Regulation does away the aforementioned problem. The Regulation assures that in every Member State there is a system for recovery of cross-border debts and that the judgment given according to the procedure is recognised and enforced in other Member State without *exequatur*.

An important added value in both Order for Payment and Small Claims Regulations is also the fact that the litigants or the parties to the procedure do not have to know the specialities of possible domestic debt collecting procedures in a given Member State. Now all claimants can know for sure, that in the other Member State there is available a procedure described in the Order for Payment and Small Claims Regulations. Of course, there can be other procedures available for similar kind of situations in the Member States as well, but the claimant does have to know these domestic procedures. This way it is very simple for the claimant to initiate debt recovery proceedings in another Member State.

In Finland the domestic debt recovery procedures are very efficient and therefore the cost of the procedure can be quite low. It is indeed easily argued that the Finnish domestic procedure is simpler to use than the European Order for Payment Procedure. The procedure is equally available for foreign creditors. There is no discrimination and the foreign creditors do not even need to have a postal address within the borders of Finland. In respect of uncontested claims, the Finnish domestic system does fulfil the minimum standards of the European Enforcement Order Regulation. However, even if the available procedures are simple and cost effective, a foreign creditor has to know the system to be able to make use of it. Knowledge of debt recovery systems in other Member States is not that common among practitioners and even less among ordinary citizens. The Order for Payment and Small Claims Regulations make such knowledge unnecessary and has thus opened up cross-border debt recovery to creditors acting without the assistance of local lawyers or International debt collection agencies.

For Finnish creditors seeking to recover debts in another Member State, the European procedures are equally useful. When a uniform procedure is available, there is no need to have knowledge of local proceedings in another Member State or information on the possible efficiency of these proceedings.

In comparison to the European Order for Payment Procedure the Small Claims Procedure contains important features which are useful in cross-border litigation. First and foremost it covers situations where the claim is disputed. Since the procedure usually is written, it has certain advantages compared to a full scale procedure. The written procedure helps parties residing in different Members States to litigate at low cost. It also lessens the need for international legal assistance between the Member States. In cross-border litigation the use of foreign languages is a burden. In the Small Claims Procedure the use of standard forms reduces this problem.

6.2. Cross-border solutions for cross-border situations

There has been a lot of discussion whether Member States national procedural legislation should be somehow harmonised or at least approximated within the European Union. Harmonisation of procedural law has been the topic for many seminars. The so called *Storme* report[26] was published already in 1993. In the report it was expected that EU legislation would go to the direction of partial approximation. However, during that time the Union was a quite different entity. For example 15 new Member States have joined the Union since then. The current legal basis of the European Union does not give legislative powers to the Union to harmonise procedural legislation applicable to purely national cases. The legal basis requires a cross-border element. Also, approximation of national procedural laws would be very difficult and would not in practice be very helpful for the practitioners. Experience from the negotiations in the European Union also foreshadows that uniform European Union procedural law would in the end be very complicated and burdensome for practitioners and citizens. There is not even a real need for aiming for identical procedural legislation in all Member States. However, the Union can indeed bring added value in cases which have inter-State connection. In respect of cross-border litigation, there is still much that can be done.

Cross-border litigation has its own and unique questions and practical problems compared to purely national procedures. Those problems and the possible solutions are quite different compared to the problems and solutions in national litigation. In cross-border litigation each time the same questions and practical problems has to be solved: international jurisdiction, service of documents across borders, co-operation in taking of evidence abroad, questions on the use of languages and

[26] M. Storme (ed.), Rapprochement du Droit Judiciaire de L'Union européenne/Approximation of Judiciary Law in the European Union, Dordrecht/Boston/Londen: Martinus Nijhoff Publishers 1994

translations, recognition and enforcement of judgments. None of these questions is normally an issue in domestic proceedings and yet there is a need for legislative answers. Cross-border issues cannot be solved satisfactory by national legislation since there is more than one State involved.

It has been discussed whether the Union should have legal basis for legislating not only cross-border situations but also purely domestic procedures. However, regardless of the question on legal basis, the focus should be set on the problems in need of solving. When solving cross-border problems, the legislation should cover cross-border situations. It is obvious that the same legislation cannot work well in both cross-border and domestic litigation. The problems are not the same. Therefore there is a need for European legislation for cross-border litigation.

6.3. Better Linkage and Coherence

There are already quite a lot of European instruments in the field of cross-border procedural law. There is also practical experience in applying these instruments, but in respect of the European Order for Payment Procedure or the Small Claims Procedure, the experience is not that significant. Still, it might already be argued that some important improvements should be made to the legislation already adopted.

So far, the main focus of the European Union legislation in the field of civil procedural law has been adopting individual legislative instruments in specialised matters. Each time a new instrument has been negotiated or drafted the goal has been quite narrow: main focus has been on the individual instrument in question and its adoption. This approach, even though understandable in areas in which there is no pre-existing Union legislation, has led to unwelcome fragmentation and incoherence of procedural legislation.

Most of the adopted instruments deal with mutual recognition of civil judgments. Many of them contain provisions on the service of documents between Member States. Some of the instruments deal with jurisdiction and others contain rules on the taking of evidence. To the understandable surprise of many practitioners, the approaches in different instruments vary. Even though all instruments are applied in civil and commercial matters, in detail the scope of the instruments differ.

The differences in substance of these instruments and their lack of coherence can be explained in part by the relatively narrow subject matter of each instrument. However, at least some of the differences stem from the fact that they have been negotiated at different times and by different persons. Since the focus each time has been on ensuring adoption of each individual instrument, not enough effort has been put into achieving coherence and similarity. One explanation is also the fact that it is possible that in the negotiations for new instruments better solution have been found to one and the same problem. In such situations it not possible to step back and include that solution in the earlier instrument as well.

When the European Union has come this far in respect of legislative achievements, it should also look back on what has been done. From a practical point of view, it is not easy to see the whole picture of European civil procedure law and the logic behind all different instruments. Not only the content of each individual instrument can be difficult to interpret, also regarding the linkage and the coherence between different instruments certain improvements would be of value.

Let's assume that someone would like to recover a debt of 2,000 euro in another Member State with the expectation that the claim will be uncontested. The claimant may choose between different approaches: the European Enforcement Order, the Order for Payment Procedure, the Small Claims Procedure and also last but not least, the Brussels I Regulation. The claimant has to make a choice between the various instruments and the procedure may vary a lot depending on this choice. One might guess that the claimant would appreciate if there was only one single application form for starting a recovery procedure in another Member State. This should not have to be that impossible. *De facto*, in every different type of procedure approximately the same basic information is needed for the commencement of the procedure: The parties, the amount of the claim, the reasons for the claim etc. Only after knowing the reaction of the defendant, differences in procedure are necessary.

At least the instruments on the Order for Payment Procedure and the Small Claims Procedure ought to be somehow connected and harmonised. If a claimant is recovering a debt of 2,000 euro from the defendant in another Member State, how is he or she to know which one of the procedures is more suitable for the case? The claimant does not usually know in advance with any certainty whether the defendant will contest the claim or not. At least the commencement of both procedures could be made identical, and in the case of opposition the Small Claims Procedure would continue whereas in the case of non-opposition the Order for Payment Procedure would continue. Different methods

in service of documents could serve as another example. Why are differences needed in this respect? Also other discrepancies in detail exist between these instruments.

Within the European Union, various opinions prevail as to what is the best content of a particular instrument. The differences of views are not only based on differences in national legislation. Also the way of thinking varies in different legal cultures. This is the main reason for difficulties in reaching commonly accepted solutions. However, this does not mean that there is not enough common ground for European cross-border civil procedure.

It could now be time to consider streamlining existing European procedural law instruments. The work could be based on minimum standards and the aim should be to ensure the consistency and user-friendliness of the relevant provisions. Reducing the number of instruments and integrating different approaches would help practitioners and citizens in applying the legislation and thus enhance access to justice. Such benefits would clearly justify the effort that would have to be invested in negotiations aiming at streamlining already existing substantive provisions.

Also, one should not forget that better quality of legislation is a very important and topical subject in the Union. The discussion on quality also calls for better coherence and linkage between different instruments.

However, the aforementioned does not mean that consolidation of all existing instruments would be sufficient. This has to be emphasised, since the term "to consolidate" is often used as meaning only putting different instruments together in a very technical way. Instead the goal should be to substantially streamline the instruments; putting them together but at the same time making changes necessary for them to be coherent.

On 14 December 2010, the European Commission adopted a proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.[27] The Commission proposes abolishing of the *exequtur* procedure. If the recast proposal would be approved in this respect, the European Enforcement Order Regulation would probably – as proposed by the Commission - be abolished. As has been said above, when several parallel systems apply to one and the same judgment, the system becomes

[27] Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast); Brussels, 14.12.2010 SEC(2010) 1548 final

complicated. Generally applicable legislation is preferable and the Commission proposal is obviously a first step in the right direction.

The next step could be to include into that same piece of legislation - maybe a European Code of Cross-border Civil Procedure – all provisions on service of documents, taking of evidence, use of languages and translations, legal aid, special rules on payment order and small claims procedures. If the legislation would be in a single instrument, the present differences in detail could be reduced and the goal of better linkage and coherence reached. Reducing the number of instruments would also help practitioners and citizens to use this legislation and enhance access to justice. The substance of such an instrument already nearly exists; it is only in bits and pieces. An effort to put these pieces together could be worthwhile.