



Bird & Bird & First for Disputes

Knowhow briefs

A practical guide into comparing key features of EMEA jurisdictions

Summary table comparing key features of EMEA jurisdictions

Region	Legal system	Pre-action/ interim remedies	Disclosure	Evidence	Duration	Cost/Fees	Cross border enforcement/ protective measures
England and Wales	Common law	<p>Wide variety of relief available, eg:</p> <ul style="list-style-type: none"> • pre-action disclosure of documents/ party information; • security for costs; • prohibitory/ mandatory injunctions; • freezing orders; • search/ preservation orders; • orders to support enforcement of judgments. 	<p>General duty to disclose all material documents which help or harm your or another party's case.</p> <p>Established and wide-ranging privilege rules to protect against disclosure of legal advice/ documents prepared in contemplation of litigation.</p>	<p>Full disclosure of relevant documents; witness statements; and expert evidence.</p> <p>Court's permission required to adduce expert evidence – to be limited to what is reasonably required.</p>	<p>Generally 1-2 years – although ways to expedite. Eg, summary judgment, short-form proceedings (Part 8) and expedited proceedings can be available.</p>	<p>Costs generally follow the event – losing party typically ordered to pay 60-70% of winner's costs. Note: effect of 'good' settlement offers, unreasonable conduct and unjustifiable costs.</p> <p>Professional fees range from £100/ hour for a small, local firm to £1,000/ hour for top barristers.</p> <p>Conditional fee arrangements ('no win, no (or discounted) fee' arrangements) ("CFAs") are available. CFAs often involve the payment of an additional fee on success (a "Success Fee").</p> <p>Since 1 April 2013, under the Jackson Reforms, Damages Based Agreements ("DBAs") allowing lawyers to be paid from the damages awarded to their client are also allowed on a "no win, no fee" basis.</p> <p>Third party funding and after-the-event ("ATE") insurance is permitted. However, following the Jackson Reforms, it is not possible for</p>	<p>Generally uphold jurisdiction clauses.</p> <p>Brussels regime for EU states; Courts will enforce judgments of non-EU states in accordance with bi-/ multi-lateral treaties as incorporated into English law.</p> <p>Anti-suit relief only available for proceedings outside the EU – <i>Erich Gasser GmbH v MISAT Srl</i> (Case C-116/02) [2005] QB 1).</p>

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						the successful party to recover the premium/costs of any such arrangements entered into after 1 April 2013. Likewise, it is no longer possible to recover any Success Fee payable under a CFA entered into after 1 April 2013.	
Belgium	Civil law	<p>Various, including:</p> <ul style="list-style-type: none"> • Summary judgment; • Injunctions. <p>The party must be able to show that there is urgency and there is need for the measure so as to avoid imminent and unjustified damage.</p>	<p>No obligation to disclose relevant documents. However, if there are strong suggestions that a party (or third party) has a document relevant to the case, the court may order that party to make the document available.</p> <p>Non-disclosure of such information may have an impact on the court's decision but will not, unless it is fraudulent, lead to a penalty.</p>	<p>There are no discovery proceedings in Belgium.</p> <p>All types of evidence is admissible in commercial matters. In civil matters written evidence overrides other types of evidence.</p> <p>Expert evidence may be presented by the parties and the Court may designate its own expert.</p>	Typically, 'main proceedings' (<i>bodemprocedu re/procédure au fond</i>) will run for between 6 to 18 months.	<p>Comparatively low when considered alongside the rest of Europe.</p> <p>Judgments will provide for the losing party to indemnify the other party for its court costs and its lawyer's costs. The indemnity for lawyer costs is fixed by the Court in accordance with a scale which results in an amount frequently less than the amount of actual fees.</p> <p>Contingent fee arrangements linked exclusively to the outcome of the case are prohibited.</p>	<p>Brussels regime.</p> <p>Reciprocal treaties.</p> <p>Where a judgment has been rendered outside the EU or in a country not bound by a specific treaty, recognition and enforcement is possible in accordance with art. 22 to 25 of the Belgian Code of Private International Law.</p>
Denmark	Civil law	<p>Various, including:</p> <ul style="list-style-type: none"> • Injunctions. • Securing of 	<p>No obligation on parties to disclose relevant documents. However, if there are strong</p>	<p>There are no discovery proceedings in Denmark.</p>	Typically, 'main proceedings' ("hovedforhandling") will run for between 6 to 18	<p>Comparatively low when considered alongside the rest of Europe.</p> <p>Judgments will provide for</p>	<p>Brussels regime.</p> <p>Reciprocal treaties.</p> <p>International</p>

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		<p>evidence and investigations at the premises of an alleged infringer can be ruled by the court if it is likely that an infringement of IPR has occurred or will take place.</p> <ul style="list-style-type: none"> • Enforcement proceedings. <p>The party must be able to show that there is urgency and there is need for the measure so as to avoid imminent and unjustified damage.</p>	<p>suggestions that a party (or third party) has a document relevant to the case, the court may order that party to make the document available.</p> <p>Non-disclosure of such information may have an impact on the court's decision but will not, unless it is fraudulent, lead to a penalty.</p> <p>Third parties are required to disclose relevant documents or ordered to do so by the court, and non-disclosure can be sanctioned with daily penalties.</p>	<p>As a general rule, all types of evidence are admissible in commercial matters.</p> <p>Expert evidence may be presented only if agreed by the parties, or if obtained prior to the filing of the law suit.</p> <p>The Court may upon request from a party appoint an expert surveyor.</p>	<p>months in the first instance.</p>	<p>the losing party to compensate the prevailing party for its court costs and its lawyer's costs.</p> <p>The compensation for lawyer and court costs is fixed by the Court in accordance with a scale which results in an amount frequently less than the amount of actual fees.</p> <p>Contingent fee arrangements granting a certain proportion of the outcome of the case are prohibited. Success fees are however allowed.</p>	<p>Arbitration decisions.</p>
Finland	Civil law.	<p>The courts may grant injunctions and seizures.</p> <p>The applicant must demonstrate that it is probable that he or she holds a debt, has a prior right to property or has any other right that is enforceable by a</p>	<p>No general duty to disclose relevant documents and no discovery proceedings.</p> <p>However, the court may order a document to be disclosed at a party's request if the document is in the</p>	<p>Mainly written and oral evidence.</p> <p>The parties may also present expert reports and expert witnesses.</p> <p>The court does not accept written witness statements.</p> <p>Also an inspection</p>	<p>In commercial litigation, generally 9–24 months in the first instance.</p>	<p>The costs mainly comprise of attorneys' fees.</p> <p>The losing party is typically ordered to pay the winner's necessary and reasonable costs and legal fees.</p> <p>Contingency fees are only allowed in special circumstances and they are rarely used.</p>	<p>Brussels regime for EU states.</p> <p>Reciprocal treaties with several other states.</p>

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		court decision. In addition, the applicant must demonstrate that there is a danger that the opposing party takes actions endangering the right of the applicant.	possession of the opposing party and the document is of significance as evidence in the case.	of real estate or an object that cannot be brought to court is possible.			
France	Civil Law – Code Commerce for procedural rules.	<p>The courts have wide discretion as to the types of injunctions they can grant, which includes:</p> <ul style="list-style-type: none"> • freezing and seizing orders (“<i>mesures conservatoires</i>”); • orders to preserve evidence or establish proof (“<i>référé probatoire</i>”). • Provisional orders (in cases of deadlock in a corporation/ appointment of a provisional administrator or a corporation etc). 	<p>Parties to litigation are not obliged to disclose all documents relevant to the case, but they need to disclose documentary evidence substantiating their claims for the success of such claims.</p> <p>Parties are also not obliged to refer to any facts or evidence during the litigation if it is not in their interests to do so. However, a party may be ordered by the court to disclose information.</p>	<p>Evidence is mainly documentary. Although allowed, oral evidence is very rare. Testimonies are usually produced in writing.</p> <p>Expert evidence is common and parties may produce private expertise or request the appointment of a court expert, which generally has stronger probative value.</p>	<p>On average a case will run for about 8 to 15 months. However, urgent cases can be decided on the merits according to a fast track procedure (“<i>Bref délai</i>”) in 2 to 3 months. Appeal proceedings usually take between 15 to 18 months.</p> <p>There is also a possibility for expedited proceedings “<i>référé provision</i>” in the absence of serious dispute as to the facts, which last 3</p>	<p>The unsuccessful party will usually be responsible for court costs. Legal fees are recoverable but the amount reimbursed does not cover the amount actually spent.</p> <p>Partial contingency or conditional fee arrangements are permitted under French law.</p>	<p>Brussels regime.</p> <p>Reciprocal treaties.</p> <p>If there is no reciprocal treaty a judgment may be enforced by obtaining an “<i>exequatur decision</i>” recognising and enforcing the foreign decision.</p>

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					months on average.		
Germany	Civil law	<p>Various remedies available including:</p> <ul style="list-style-type: none"> • preliminary injunctions; • attachment orders in respect of monetary claims; • orders preserving evidence if there is a reasonable concern that the evidence will be lost or its use will be hampered, for example as a result of time lapse. 	<p>Parties generally do not have any obligation to disclose documents which are relevant to the case.</p> <p>German law does, however, make some provision for disclosure. According to section 142 Code of Civil Procedure the court may order disclosure of documents referred to by a party. Such an order may be made against another party to the proceedings or against a third person not involved in the proceedings.</p> <p>A claim for disclosure can only be made if there is a certain degree of likelihood that the Claimant has a claim regarding the desired information.</p>	<p>The claimant does not have to provide evidence of all the facts constituting his claim but only those facts which are contested by the defendant.</p>	<p>A first instance judgment in main proceedings may be obtained within a relatively short period of time, depending on the subject-matter. In trade mark or patent infringement proceedings, a judgment is usually obtained within 3 to 6 months or 6 to 12 months respectively. A default judgment is regularly handed down within a matter of weeks if not days. An appellate decision may be obtained within 9 to 15 months. Decisions on further appeals take about 3</p>	<p>The cost of litigating in Germany essentially comprises court costs and attorneys' fees. Under German Civil Procedure Law the unsuccessful party is obliged to bear the court costs and the attorneys' fees of the other party. The court costs are regulated by law and depend on the value of the dispute. The value of the dispute is determined by the court to reflect the claimant's interest in the subject-matter of the proceedings</p> <p>Contingency fees are permitted in exceptional cases (where claimant could not otherwise fund claim).</p> <p>Third party funding by non-profit organisations is permitted (but yet to be used).</p>	<p>Brussels regime</p> <p>Judgments of the courts of non-EU Member States may only be enforced after a more substantial recognition proceeding, during which the Court considers, inter alia, the international competence of the country of jurisdiction, proper service of the complaint and compliance of the judgment with the "<i>ordre public</i>".</p>

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					years.		
Italy	Civil law	<p>Courts have a wide discretion as to the type of injunctions that can be ordered. They include orders for the seizure and preservation of assets as well as preventative injunctions, requiring a party to refrain immediately from acting in a certain way. In IP matters, there are specific injunctions available to protect against infringements of patent rights and copyright.</p> <p>Italian law allows for an expedited route for relief to creditors holding qualified evidence of monetary claims.</p>	No general duty of disclosure., however, the court may order disclosure of documents on its own motion or at the request of either party, provided that the documents are determinant for the decision or are specifically identified. Generic requests for disclosure are not admissible.	The main types of evidence are documentary and oral evidence. Expert evidence is limited.	Comparatively slow compared to other EU countries.	<p>Court fees depend upon the value of the claim and/or the number of defendants against whom the action is brought. Court fees, including the use of bailiffs (bailiffs' costs are very low in Italy) and lawyers' fees can generally be recovered by the successful party from the unsuccessful party at the end of the trial. In general, the costs for litigation in Italy are lower than in the UK, Germany and France.</p> <p>Contingency and conditional fee arrangements are permissible provided the agreement is evidenced in writing.</p>	<p>Brussels regime.</p> <p>Reciprocal treaties.</p> <p>Judgments of the courts of non-EU Member States which are not subject to reciprocal treaties are enforceable pursuant to Law no. 218/1995.</p>
Netherlands	Civil law	Injunctions are usually imposed under severe money penalties. Provided that the matter is	No general duty of disclosure, however, a party may be ordered by the courts to disclose	Documentary and witness evidence. The hearing of witnesses in the	Judgment on the merits may be obtained within 12 to 18 months. Default	The cost of pursuing a claim in The Netherlands depends on the value of the claim in dispute.	<p>Brussels regime.</p> <p>Reciprocal treaties.</p> <p>Where a judgment has been rendered</p>

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		urgent, a party can ask for a fairly wide variety of injunctions which include payment orders (very difficult to obtain and severe review of the urgent interest), orders that a party take or refrain from taking certain action, orders to disclose documents and orders to cooperate with the transfer property	documents because, for example, the other party requires sight of those documents and is not able to obtain them in other ways.	<p>Netherlands proceeds on the principle that the judge leads the hearing. Lawyers of both parties are usually granted the opportunity to follow up the questions. However, the judge can prevent certain questions from being answered. Cross-examination of the witness by the counsel of parties involved is only allowed to a certain extent.</p> <p>A court can order an expert examination at the request of a party or on its own initiative by interlocutory judgment. It is completely at the court's discretion whether or not an expert examination is ordered.</p>	judgments can be obtained within 2 months. Appeal proceedings may take between 12 and 24 months. Proceedings before the Supreme Court typically take about 18 months.	The general rule is that a successful party will be able to recover a part of its costs from the unsuccessful party; depending on the performed acts a specific number of points can be awarded with a specific maximum up to a certain value of the claim. Each point corresponds with a fixed amount related to the value of the claim. The conduct of the parties is not taken into account, except in very extreme cases of 'abuse of procedural rights'.	outside the EU or in a country not bound by a specific treaty, the case has to be heard by the Dutch court. However, if the judgment meets the criteria of general international private law the proceedings will be similar to obtaining an "exequatur decision".
Spain	Civil law	A wide range of different interim measures are allowed under	No general duty of disclosure, however, parties can request the production of a	<ul style="list-style-type: none"> Interrogation of parties. Public 	Again, generally slow in comparison to other	The judge will generally order the unsuccessful party to pay the successful party's legal costs. When the	Brussels regime. Reciprocal treaties. Outside the EU, in

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		<p>Spanish law. Article 727 of the Spanish Civil Procedure Act identifies an open number of measures that can be requested. These can include: freezing of assets; judicial administration of goods; deposit of goods; in circumstances where the object of the case are goods or rights that can be registered in Public Registries, pre-emptive registration of claims; orders of cessation; the order to refrain carrying out particular actions; and the deposit of benefits obtained by illegal activities.</p>	<p>specific document.</p>	<p>documents (i.e., authorised by a Notary Public or competent public officer, with the formalities required by the law).</p> <ul style="list-style-type: none"> • Private documents. • Expert reports. • Judicial inspection of a place, object or person. • Witness testimony. • Reproduction of words, sounds or images. • Expert evidence is regulated as that of an expert in those cases where opinion is offered by a person with special scientific knowledge, or technical skill not common to the layman. 	<p>jurisdictions.</p>	<p>unsuccessful party is ordered to pay legal costs, it will only have to pay the fees corresponding to lawyers and other professionals whose fees are not fixed upon official fee scales, which, in any event, cannot exceed one third of the amount of the proceedings in question.</p> <p>Contingency fee agreements or "<i>quota littis</i>" between lawyers and their clients is permitted under Spanish law.</p>	<p>the absence of an international treaty and when no clear reciprocity policy has been established, the recognition and enforcement of foreign judgments is possible in Spain provided certain requisites are met.</p>

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Sweden	Civil law.	<p>In commercial litigation the court may order sequestration or other security measures. A measure like this may however be granted by the court only upon application and furthermore the applicant must deposit with the court security for the loss that the opposing party may suffer.</p> <p>The applicant must show probable cause for his/her claim. It also has to be reasonable to suspect that the opposing party will take actions endangering the right of the applicant.</p>	<p>There is no obligation to disclose documents in Sweden. Instead the parties are responsible to refer to the evidence they deem necessary.</p> <p>However, anyone holding a written document that can be assumed to be of importance as evidence is obliged to produce it upon a request from one of the parties to the court.</p> <p>There is no obligation to refer to evidence that may be to your own disadvantage.</p>	<p>The principle of admissibility of evidence means that there are only certain rare exceptions where it is forbidden to use certain types of evidence in Sweden. Therefore, practically all types of evidence can be referred to during the trial.</p> <p>Most commonly used are oral and written documents. The main rule is that written witness statements are not permissible in court. However if the parties agree to such a procedure and it is not clearly inappropriate the court may allow it.</p> <p>The parties (and also the court) may use expert reports and expert witnesses.</p>	In commercial litigation it generally takes 10-24 months in the first instance (District Courts).	<p>There is a minimal application fee in the courts. Otherwise the legal costs in Sweden mainly comprise of legal fees.</p> <p>The main rule is that the losing party shall reimburse the opposing party for its litigation costs including lawyer's fees.</p>	<p>Generally foreign judgments will not be recognised or enforced in Sweden. However, there are exceptions due to a number of international conventions to which Sweden has acceded, e.g. The Brussels Regulation between the EU states and also reciprocal treaties with several other states.</p> <p>Regarding International Arbitration awards Sweden is a contracting state to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards.</p>

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Central and Eastern Europe	Generally civil law	Limited range of powers in CEE, eg, summary judgment not available in Albania, Lithuania, Ukraine. Freezing, seizing and preservation orders are available in Poland. Security for costs can be available in certain jurisdictions (eg Estonia) if the opposing party is outside the jurisdiction (or EU).	No wide-ranging duties of disclosure. Courts can order disclosure of specific documents where the opposing party can show the existence of the document and its relevance to the dispute.	Limited disclosure, written (and oral) witness evidence and (court-appointed) experts.	Proceedings often delayed - can take 2 years or more.	Costs generally follow the event. In Poland court and attorney fees are capped by statute. Various approaches to CFAs and contingency fee arrangements, eg: Albania: third party funding by non-profit organisations is permitted (but yet to be used). Ukraine: conditional and contingency fees permitted. Hungary: contingency fees are permitted but not generally used. Poland: the use of contingency fees is not regulated.	Brussels regime (unless outside EU). Bilateral treaties in most jurisdictions. If the foreign judgment falls outside the scope of the Brussels regime or a bilateral treaty then enforcement will depend on local requirements, often including a requirement that the judgment is compliant with public policy. No anti-suit relief in Poland and the jurisdiction of the Polish courts cannot be excluded in consumer cases.
Middle East	Generally civil codes (based on historic Egyptian/Ottoman legal systems). Sharia law is the main source of legislation in countries such as Saudi Arabia,	Various.	No general duty of disclosure.	Written submissions supported by documentary evidence. Oral evidence is not generally allowed. If a party wishes to call a witness, an application must be made to the court. Such applications are	Generally very slow – can take years for final judgment and parties often deploy delaying tactics.	Commercial litigation is usually funded by the client and ATE insurance is not common. Fees are not fixed by law and are often based on the amount of the claim – often fixed fee. Although some larger law firms charge hourly rates. Court fees and costs are	Riyadh Convention covers enforcement of judgments between Middle East states. The existence of treaties with foreign states will often govern the enforcement of foreign judgments and will be subject to

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	<p>Oman, Yemen and the UAE (mix).</p> <p>Some notable exceptions, eg: Israel (common law and halakhah); DIFC Courts in Dubai (common law).</p>			rare.		<p>usually awarded to the successful party, however, the courts generally only award nominal contributions.</p> <p>The permissibility of contingency fees varies between states (eg they are not permissible in Iraq, Oman, Qatar and UAE).</p>	<p>local procedure.</p> <p>In some states (Saudi Arabia) the judgment will only be enforceable if compatible with Shari'ah Law.</p>
Africa	<p>A variety of common law (eg Nigeria, Ghana, Uganda, South Africa) and civil law systems (eg Gabon, Ethiopia).</p> <p>Customary laws.</p> <p>Sharia law (eg, Ghana, Sudan, Nigeria)</p> <p>In some states, there is a mix of two/ three types of legal system (eg Egypt, Ghana, Morocco, Namibia, Nigeria, South Africa, Zimbabwe).</p>	<p>Various.</p> <p>Courts in some states have wide case management powers that can be exercised both in response to party requests and of their own volition (eg Nigeria).</p> <p>In some states, while the Court might have the power to order interim relief, limited use by the parties because of difficulties surrounding enforcement (eg Egypt).</p>	<p>Varies between states: disclosure rules generally based on whether the state has a civil, common law or pluralistic legal system, eg the disclosure rules in litigation in Nigeria, which predominantly has a common law system, are similar to the disclosure rules in England & Wales.</p>	Written and oral evidence.	Generally slow (2-5 yrs) but with some exceptions (eg Nigeria, South Africa).	<p>Costs generally in the case.</p> <p>Low cost legal services.</p> <p>Flexible approaches to fees and funding; contingency/success fees generally permissible. Third party funding is becoming increasingly frequent in some states (eg South Africa).</p>	<p>The enforcement of foreign judgments is subject to local procedural requirements and must not be contrary to public policy.</p> <p>Many African states are not a party to the New York Convention.</p>

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