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Application of the Regulation No. 861/2007 on the European Small Claims Procedure (ESCP) (Part I)

Prof. Assoc. Flutura KolaTafaj

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- 1. Purpose of the Regulation 861/2007**
- 2. Scope of the application of the Regulation 861/2007**
- 3. Interaction with other European instruments**
- 4. Conduct of the Procedure**



Purpose of the Regulation 861/2007

- **The objective** of ESCP:
 - a. Facilitate access to justice (Recital 7);
 - b. Simplify and speed up litigation concerning small claims in cross-border cases (Recital 8, 36)
 - c. Reduce costs, by offering an optional tool in addition to the possibilities existing under the law of MS. (Recital 8);



- ECJ: “This assessment is confirmed by the very objective of Regulation No 861/2007. Recitals 7 and 8 and Article 1 of that regulation underline the fact that the purpose of the European procedure, which is optional, is three-fold. **Its aim is to allow for the resolution of small claims in cross-border cases in a simpler and faster manner whilst reducing costs.** Such an objective could not, however, be achieved if the procedure established were to allow for the participation of a third person, such as an intervener. (*ZSE Energy vs RG*[C-627/17] para. 28)



- This Regulation seeks to promote fundamental rights and takes into account, in particular, the principles recognised by the Charter of Fundamental Rights of the European Union. The court or tribunal should respect the right to a fair trial and the principle of an adversarial process, in particular when deciding on the necessity of an oral hearing and on the means of taking evidence and the extent to which evidence is to be taken. (Recital 9)



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Scope of application of the Regulation 861/2007

- A. Material scope of the Regulation
- B. Geographic scope of the application of the Regulation
- C. Applicability in time of the Regulation



- A. Material scope of the Regulation**
 - a. Civil and commercial matters
 - b. Monetary and non-monetary claims
 - c. Contested and uncontested claims
 - d. Claims, the value of which does not exceed 5000Eur.



a. Civil and commercial matters

- **Regulation does not provide the definition of the civil and commercial matters.**
- “In the interpretation of the concept “civil and commercial matters” for the purpose of the application of the Convention..... the reference must be made not to the law of one of the states concerned but, *first* to the objectives and scheme of the Convention and, *secondly*, to the general principles which stem from the corpus of the national legal systems.” (*C-29/76 LTU Lufttransportunternehmen GmbH & Co KG v Eurocontrol, ECR 1976, 1541*).



- 2 elements are of significant about of determination whether a dispute it is or it is not of civil and commercial matters:
 1. the subject-matter of the dispute and
 2. the nature of the relationship between the parties involved

[*LTU*, para. 4; *Rüffer*, para. 14; *Preservative function TIARD*, para. 21; *CEZ*, para. 22, and *Lechouritou and Others*, para. 30]



- Article 2 (1): “[It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta jure imperii*)].
- In relation to the claim that include the Public Authority, ECJ stipulates that: “Although certain actions between a public authority and a person governed by private law may come within the concept, it is otherwise where the public authority is acting in the exercise of its public powers. ”
[*Apostolides vs. Orams para. 43, 44, 45*]
- ECJ makes difference between *acta iure empire*, of what they excluded from the concept of “civil and commercial matters”, AND *acta iure gestionis*, of what are included in such a concept.



- In *Preservatrice fonciere* (C-266/01), ECJ held that the notion “civil or commercial matters” covers a claim by which a State seeks to enforce against a person governed by private law a private-law guarantee contract which was concluded in order to enable a third person to supply a guarantee required and defined by that State, in so far as the legal relationship between the creditor and the guarantor, under the guarantee contract, does not entail the exercise by the State of powers going beyond those existing under the rules applicable to relations between private individuals.
- In *Eurocontrol*, ECJ held that a claim by a public authority created by an international treaty to recover from private party charges for the use of its equipment and services where such use was obligatory and the charges were fixed unilaterally is not a civil or commercial matter.
- (*Practice guide for the application of the Regulation on the EOP*)



b. Monetary and non-Monetary claim

- **[# EOP applies only for monetary claim]**
- Claim to seek monetary damage;
- Claim to seek damage that can of coming from accidents;
- Claim to seek the fulfilment of the contractual liability;
- Claim to seek to secure the performance of an obligation etc.
- **If the claim is non-monetary, it must be given a value which falls within the financial limit of the ESCP**

c. Contested and uncontested claim

- **[# EOP applies only for the uncontested claims]**



d. ESCP is applicable only for claims that not exceed the value of 5 000 EURO

- Time of the calculation of the value of the claim (or counterclaim) it will be the moment when the claim is received by the court or tribunal with jurisdiction.
- The value is computed excluding all interest sought on the principal claim itself, any expenses and disbursements which might be added to the claim. This exclusion would not exclude a stand-alone claim, for example which related only to interests payments on a debt which had already paid.
- The value of the claim and counterclaim should not be calculated in a cumulative way.
- If the value of the counterclaim exceed the limit of 5000EUR, both the claim and the counterclaim proceed in accordance with national procedure law. (Art. 5(7))
- If the *petitium* of the claim is a monetary sum then the value of the claim is that sum.
- If the *petitium* of the claim is non-monetary, it is necessary to given a value of money.



- **ESCP are not applicable in the following matters:**
 - a. the status or legal capacity of natural persons;
 - b. rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession;
 - c. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - d. social security;
 - e. arbitration;
 - f. employment law;
 - g. tenancies of immovable property, with the exception of actions on monetary claims; or
 - h. violations of privacy and of rights relating to personality, including defamation.



- B. Geographic scope of application of the Regulation on ESCP**
- a. The implementation courts of the ESCP Regulation are only those of the MS, except Denmark (Recital 38); *Apostolides* case; TFEU
 - b. ESCP applies only for the cross-border disputes



a. **ESCP applies only for the cross-border disputes**

- For the purpose of this Regulation, a cross-border issue is one in which at least one of the parties is domiciled or habitually resident in a MS other than the Member State of the court seised,
- The relevant moment for determining whether there is a cross-boarder case is the date on which the claim form (Form A) is received by the court or tribunal with jurisdiction.

Theoretically:

1. Claimant / Respondent – both MS
2. Claimant [non- MS (ex Albania)] / Respondent [MS]
3. Claimant [MS]/ Respondent [non-MS (ex. Albania)] !!!!! EU court



- Domicile shall be determined in accordance with Article 62 and 63 of the Recast Brussel Regulations No, 1215/2012 (Article 3)
- Art. 62: “In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law. 2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.
- Article 63 1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:
 - (a) statutory seat;
 - (b) central administration; or
 - (c) principal place of business.



- *GJED: "The Brussels Regulation is in principle applicable is in principle applicable where the defendant has its domicile or seat in a Contracting State, even if the plaintiff is domiciled in a non-member country. It would be otherwise only in exceptional cases where an express provision of the Convention provides that the application of the rule of jurisdiction which it sets out is dependent on the plaintiff's domicile being in a Contracting State.*
- *[Group No how Reinsurance Company SA vs Universal General Insurance Company (UGIC) (C-412/98)]*



- Article 3: “For the purpose of this Regulation, a cross-border case is one in which **at least one of the parties is domiciled or habitually** resident in a MS other than the MS of the court or tribunal seised.
- 1. Does the concept of “parties” covers solely the applicant and the defendant in the main proceedings or whether it also includes an “intervener’ participating in the proceedings in support of one of those parties.
- 2. Article 2(1) and 3 (1) must be interpreted as meaning that a dispute comes within the scope of that Regulation when the applicant and the defendant are domiciled in the same MS as the court or tribunal seised?



- *ZSE v RG intervener: ZSE Energia CZ, s.r.o (C-627/17)*
- Article 3(1) of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, as amended by Council Regulation (EU) No 517/2013 of 13 May 2013, must be interpreted as meaning that the concept of ‘parties’ covers solely the applicant and the defendant in the main proceedings.
- Article 2(1) and Article 3(1) of Regulation No 861/2007, as amended by Regulation No 517/2013, must be interpreted as meaning that a dispute such as that in the main proceedings, in which the applicant and the defendant have their domicile or their habitual residence in the same Member State as the court or tribunal seised, does not come within the scope of that regulation.



C. Applicability in time of the Regulation

- a. The Regulation is applicable from 1 January 2009, with the exception of article 25, which shall apply from 1 January 2008.
- b. The amendments brought about by Regulation No. 1215/2421 have applied since 14 July 2017
- c. However, a claim can be made under the procedure even though it pre-dates that the date provided that the obligation on which the claim is based has not prescribed or that any period of limitation applicable in respect of the claim has not elapsed under the relevant applicable law .



Interactivity with other EU instruments

1. Regulation No. 1896/2006 “On European Order for Payment Procedure”
2. Regulation No. 1215/2012 “On Jurisdiction and Recognition of Civil and commercial judgments” [Recast Brussels Regulation]
3. Regulations Rome I and Rome II
4. Regulation No. 1393/2007 “On the service in the Member States of judicial and extrajudicial documents in civil or commercial matters”
5. Regulation No. 1206/2001 “On cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters”



- **Regulation No. 1896/2006 “On European Order Payment Procedure”**
- Allows the creditors to collect (a) monetary obligations; (b) uncontested claims and © unlimited value of claims
- "1. If a statement of opposition is entered within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the MS of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.
- Where the claimant has pursued his claim through the EOPP, nothing under national law shall prejudice his position in subsequent ordinary civil proceedings.
- 2. The transfer to ordinary civil proceedings within the meaning of paragraph 1 shall be governed by the law of the MS of origin.
- 3. The claimant shall be informed whether the defendant has lodged a statement of opposition and of any transfer to ordinary civil proceedings. (Article 17 EOPP)



2. Regulation No. 1215/2012 “On Jurisdiction and Recognition of Civil and commercial judgments” [Recast Brussels Regulation]

- Article 3 (2): “Domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.” [Article 62 & 63 of the Recast Brussels Regulation]
- ESCP does not contain rules on jurisdiction. Article 4 of the ESCP Regulation refers to the Form A . Point 4 of the Form A: “Jurisdiction will be determined according to the Regulation No. 1215/2012”
- Also the meaning of the “civil and commercial matters” is related to this Regulation.



- Rome I and II Regulations are applicable for determination of the applicable law in the contractual and non-contractual relations.
- Regulation No. 1393/2007 “On Service of Documents” and Regulation No. 1206/2001 are applicable in absence of any special provision in the Regulation on the ESCP.



Procedure

1. Commencement of the Procedure

- The Claimant shall commence the ESCP by filling in standard claim Form A, as set out in Annex I.
- The claim form shall include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.
- MS shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available.



- MS shall ensure that the claim form is available at all courts and tribunals at which the ESCP can be commenced.
- Where a claim is outside the scope of this Regulation, the court or tribunal shall inform the claimant to that effect.
- Unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the MS in which the procedure is conducted.



- Form A, as Annex I lodging it with the court or tribunal with jurisdiction:
 - a. directly,
 - b. by post or
 - c. by any other means of communication, such as fax or e-mail, acceptable to the MS in which the procedure is commenced.
- (acknowledgement of receipt)
- MS shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available. (Art. 4)
- https://e-justice.europa.eu/content_small_claims-354-ie-en.do?member=1#a_104
- Ex: France **Article 25 1 (b) Means of communication**
- A request for institution of legal proceedings can be submitted to the court by post.
- Parties to a proceeding commenced under Regulation (EC) No 861/2007 establishing a European Small Claims Procedure can communicate with the courts by post.



- When the court or tribunal
- (a) considers the information provided by the claimant to be inadequate or
- (b) insufficiently clear or
- (c) if the claim form is not filled in properly,
- **it shall, unless the claim appears to be clearly unfounded or the application inadmissible give the claimant the opportunity, within such period as it specifies:**
 - i. To complete or rectify the claim form (Form A) or
 - ii. To supply supplementary information or documents or
 - iii. To withdraw the claim
- The Court or Tribunal shall use Standard Form B, as set out in Annex II for this purpose.



- The application shall be dismissed:
 - i. Where the claim appears to clearly unfounded or the application inadmissible or
 - ii. Where the claimant fails to complete or rectify the claim form within the time specified.



- (Art. 5.1) ESCP shall be a written procedure.
 - a. The court or tribunal shall hold an oral hearing if it considers this is to be necessary
or
 - b. if a party requests.
- The court or tribunal may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair conduct of the proceedings. The reasons for refusal shall be given in writing. The refusal may not be contested separately.



- (Art. 5 (2)) After receiving the properly filled in claim form (Form A), the court or tribunal shall fill in Part I of the standard answer Form C, as set out in Annex III.

- Within 14 days from receiving of Form A, the court sends to the defendant (according to the notification procedure provided in Art. 13):
 - a. copy of the claim form (Form A);
 - b. copy of supporting documents where applicable;
 - c. The Form C, in which is filled only the Part I



- (Art.5.3) The defendant shall submit his response within 30 days of the service of the claim form (Form A) and answer form (Form C), accompanied, where appropriate, by any relevant supporting documents.

- The answer may be returned:
 - a. Form C, in which the Part II is filled;
 - b. In any other appropriate way not using the answer form.



- Within 14 days of receipt of the response from the defendant, the court or tribunal shall dispatch a copy thereof, together with any relevant supporting documents to the claimant. (Art. 5(4))
- If, in his response, the defendant claims that the value of a non-monetary claim exceeds the limit of 5000Eur, the court or tribunal shall decide within 30 days of dispatching the response to the claimant, whether the claim is within the scope of this Regulation. Such decision may not be contested separately. (Art. 5(5))



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1. Any counterclaim shall be submitted using the standard Form A;
2. The counterclaim and the supporting documents shall be served on the claimant in accordance with Article 13, within 14 days of receipt.

The claimant shall have 30 days from service to respond to any counterclaim.



- Shal be submitted in the language or one of the languages of the court or tribunal:
 - a. Claim form (Form A),
 - b. Response (Form B),
 - c. Counterclaim (Form A)
 - d. Response to a counterclaim (Form B)
 - e. Any description of relevant supporting documents

- https://e-justice.europa.eu/content_small_claims-354-ie-en.do?member=1#a_111
- Eg Ireland: **Article 25 1 (of) Accepted languages:** English and Irish



- If any other document (apart of the Forms) received by the court or tribunal is not in the language in which the proceedings are conducted, the court or tribunal may require a translation of that document only if the translation appears to be necessary for giving the judgment.
- Where a party has refused to accept a document because it is not in either of the following languages:
 - (a) the official language of the MSe addressed, or, if there are several official languages in that MS, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched; or
 - (b) a language which the addressee understands, the court or tribunal shall so inform the other party with a view to that party providing a translation of the document.
-the court or tribunal shall so inform the other party with a view to that party providing a translation of the document.



- (Art. 7) Within 30 days of receipt of the response from the defendant or the claimant within the time limits laid down in Article 5(3) or (6), the court or tribunal shall give a judgment, or:
 - (a) demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days;
 - (b) take evidence in accordance with Article 9; or
 - (c) summon the parties to an oral hearing to be held within 30 days of the summons.



- Art. 7 (2) The court or tribunal shall give the judgment either within 30 days of any oral hearing or after having received all information necessary for giving the judgment. The judgment shall be served on the parties in accordance with Article 13.
- Art. 7 (3) If the court or tribunal has not received an answer from the relevant party within the time limits laid down in Article 5(3) or (6), it shall give a judgment on the claim or counterclaim.



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