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Implementing the Regulation, No 861/2007, Establishing a European Small Claims Procedure: Hearings, evidence, representation, legal aid and costs of the process, service of documents, appeal and its impact on the enforcement of the judgment.

TRAIN 2 EN4CE WORKSHOP

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I. The role of the judge during European Small Claims Procedures

The purpose of ESCP:

- Creating of simplified procedure;
- Speeding up the procedures;
- Reducing costs;
- Increasing access to justice.

In order to achieve these goals, the courts have a key role in controlling and determining the procedure, which is guided by the adversarial principle.

This role of the court is particularly evident in its discretion to:

- a. Schedule a hearing to hear the parties orally
- b. Allowing and determining the means of taking evidence
- c. Setting and extending time limits.



I. The role of the judge during European Small Claims Procedures

a. Scheduling an oral hearing (Art. 8)

RULE: ESCP – written procedure

EXEMPTION: Article 5 – An oral hearing shall be held only if:

- it is not possible to give a decision on the basis of written evidence
- if a party requests it

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 not necessary for the fair conduct of the proceedings.



I. The role of the judge during European Small Claims Procedures

a. Scheduling an oral hearing (Art. 8)

An oral hearing is held:

- through means of distance communication technology, such as videoconferencing or teleconferencing if available to the court;
- In the presence of the parties if the use of technology, due to the special circumstances of the case, is not appropriate for the proper conduct of the proceedings.



I. The role of the judge during European Small Claims Procedures

a. Scheduling an oral hearing (Art. 8)

Where the person to be heard is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised, that person's attendance at an oral hearing by way of videoconference, teleconference or other appropriate distance communication technology shall be arranged by making use of the procedures provided for in Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.



I. The role of the judge during European Small Claims Procedures

a. Scheduling an oral hearing (Art. 8)

Regulation EC No. 1206/2001 (Art. 10/4)

- 4. The requesting court may ask the requested court to use communications technology at the performance of the taking of evidence, in particular by using videoconference and teleconference.
- The requested court shall comply with such a requirement unless this is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties.
- If the requested court does not comply with the requirement for one of these reasons, it shall inform the requesting court, using form E.
- If there is no access to the technical means referred to above in the requesting or in the requested court, such means may be made available by the courts by mutual agreement.



I. The role of the judge during European Small Claims Procedures

a. Scheduling an oral hearing (Art. 8)

- A party summoned to be physically present at an oral hearing may request the use of distance communication technology, provided that:
 - such technology is available to the court or tribunal, and
 - the arrangements for being physically present, in particular as regards the possible costs incurred by that party, would be disproportionate to the claim.
- A party summoned to attend an oral hearing through distance communication technology may request to be physically present at that hearing.
- The request is submitted through standard claim Form A and the standard answer Form C. The costs of physical participation in the hearing might not be recognized to the winning party if deemed unnecessary by the court. (Art. 8 (3) and Art. 16)
- The decision of the court or tribunal on a request provided for in paragraphs 2 and 3 may not be contested separately from a challenge to the judgment itself.



I. The role of the judge during European Small Claims Procedures

b. Allowing and determining the means of taking evidence (Art. 9)

- The court or tribunal determines the means of taking evidence, and the extent of the evidence necessary for its judgment, under the rules applicable to the admissibility of evidence.
- It shall use the simplest and least burdensome method of taking evidence.
- The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties.
- The court or tribunal may take expert evidence or oral testimony only if it is not possible to give the judgment on the basis of other evidence.
- Where the taking of evidence involves a person being heard, that hearing shall be carried out in accordance with the conditions explained above (Art. 8).



I. The role of the judge during European Small Claims Procedures

c. Setting and extending time limits (Art. 14)

Where the court or tribunal sets a time limit, the party concerned shall be informed of the consequences of not complying with it. (**E.g.**, giving a judgment in case of defendant's failure to respond within 30 days from the service of the Claim and Answer Form, or the dismissal of the application in case of failure to complete or rectify the claim form.)

In exceptional circumstances, if necessary, in order to safeguard the rights of the parties, the court or tribunal may extend:

- The time limit set for completing or rectifying the claim form;
- The 30-day time limit for the defendant to submit his response to the claim;
- The 14-day time limit for serving the counterclaim;
- The 30-day time limit for requesting additional information on the claim, taking evidence and summoning the parties to an oral hearing.

If, in exceptional circumstances, it is not possible for the court or tribunal to respect the time limits for the service of acts, the performance of actions such as the taking of evidence, the hearing of the parties orally, or the giving a judgment, it shall take the steps required by those provisions as soon as possible.



II. Legal representation and assistance to the parties, costs of the proceedings

- Representation with a lawyer or other legal professional is not mandatory. (Article 10 and Recital 15)
- The parties are not obliged to make a legal assessment of their claim. (Article 12 (1))
- The goal - to minimize the cost of the process
- What if domestic procedural legislation provides for the obligation to be represented by a lawyer?
 - Article 19: Except as provided in the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the proceedings are conducted.



II. Legal representation and assistance to the parties, costs of the proceedings

Member States have the obligation to provide free practical assistance in completing forms and general information on the scope of ESCP and the competent courts for ESCP in the Member States. (Art. 11)

Practical assistance includes technical information regarding the availability and completion of forms. (Recitals 21)

Practical assistance can be provided by the court staff. The European Consumer Center also plays a role in the consultation procedure.

Information on the organization of practical assistance is available on the e-justice Portal.

Member States are not required to provide legal aid in the form of a legal assessment of a specific case. The usual provisions on legal aid apply in the Member States.



II. Legal representation and assistance to the parties, costs of the proceedings

The court also has the obligation to inform the parties about procedural questions: (Art. 12 (2))

- orally during the proceedings, or
- by electronic communications such as e-mail or teleconferencing, or
- by other means that may be permitted by national law.

When appropriate, the court has the obligation to seek to reach a settlement between the parties. (n. 12 (3))

It can be done not only during the oral hearing, but at any moment of the trial of the claim and the counterclaim.



II. Legal representation and assistance to the parties, costs of the proceedings

Costs of the proceedings consist of:

- Court fees;
- Costs of expert, witness;
- Translation
- Representation expenses.

Court fees should be proportionate and not higher than those provided for similar national proceedings. (Art. 15)

Remote payment method should be available through:

- bank transfer;
- credit or debit card; or
- direct payment from the applicant's bank account.



II. Legal representation and assistance to the parties, costs of the proceedings

The cost of the proceedings are determined according to the relevant national law and are charged to the losing party. The court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim. (Art. 16)

What if the claimant's claim is partially accepted? How are the expenses divided?

A national legislation under which, where a party succeeds only in part, the national court may order each of the parties to the proceedings to bear its own procedural costs or may apportion those costs between those parties are not contrary to Article 16 of Regulation (EC) No 861/2007. In such a situation, the national court remains, theoretically, free to apportion the amount of those costs, provided that the national procedural rules on the apportionment of procedural costs in small cross-border claims are not less favorable than the procedural rules governing similar situations subject to domestic law and that the procedural requirements relating to the apportionment of those procedural costs do not result in the persons concerned foregoing the use of that European small claims procedure by requiring an applicant, when he has been largely successful, nonetheless to bear his own procedural costs or a substantial portion of those costs.

[Case C-554/17 *Rebecka Jonsson v Societe du Journal L'Est Republican*, ECLI:EU:C:2019:124]



III. Service of documents

a. Service by postal service and electronic means (Art. 13)

The claim and counterclaim Form A, the Response Form C and court judgments are served:

- a. with the postal service, or
- b. by electronic means:
 - i. where such means are technically available and admissible in accordance with the procedural rules of the Member State in which the European Small Claims Procedure is conducted and, if the party to be served is domiciled or habitually resident in another Member State, in accordance with the procedural rules of that Member State; and
 - ii. where the party to be served has expressly accepted in advance that documents may be served on him by electronic means or is, in accordance with the procedural rules of the Member State in which that party is domiciled or habitually resident, under a legal obligation to accept that specific method of service.

The service shall be attested by an acknowledgment of receipt including the date of receipt.



III. Service of documents

b. Means of service for other documents

All other written communications between the court or tribunal and the parties or other persons involved in the proceedings shall be carried out by electronic means attested by an acknowledgment of receipt:

- where such means are technically available and admissible in accordance with the procedural rules of the Member State in which the European Small Claims Procedure is conducted,
 - provided that the party or person has accepted in advance such means of communication or is, in accordance with the procedural rules of the Member State in which that party or person is domiciled or habitually resident, under a legal obligation to accept such means of communication.
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- Acceptance in advance can be done with Forms A and C.



III. Service of documents

C. Service by any of the methods provided for in Article 13 or 14 of Regulation (EC) No 1896/2006 where service is not possible to be effected by any of the previous methods.

- 1. Service with proof of receipt by the defendant/representative** - are characterized by the complete certainty that the served document has reached its recipient:
 - a. Personal service-** attested by:
 - i. an acknowledgement of receipt, including the date of receipt, which is signed by the defendant;
 - ii. a document signed by the competent person who effected the service stating that the defendant has received the document or refused to receive it without any legal justification, and the date of service;
 - b. Postal service-** attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant;
 - c. Electronic service** - e.g. fax or e-mail, attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant.



III. Service of documents

C. Service by any of the methods provided for in Article 13 or 14 of Regulation (EC) No 1896/2006 where service is not possible to be effected by any of the previous methods.

2. Service without proof of receipt by the defendant/representative:

- Applicable only if the defendant's address is known with certainty;
 - National laws of some states provide for the service of acts to the prosecutor's office for citizens who have their habitual residence abroad (remise au parquet). This method is incompatible with the standards of the Regulation 1896/2006.
- characterized by a very high probability that the defendant has been served.



III. Service of documents

c. Service by any of the methods provided for in Article 13 or 14 of Regulation (EC) No 1896/2006 where service is not possible to be effected by any of the previous methods.

2. Service without proof of receipt by the defendant/representative:

- a. personal service at the defendant's personal address on persons who are living in the same household as the defendant or are employed there, only if these persons accept the judgment, attested with an acknowledgement of receipt;
 - b. in the case of a self-employed defendant or a legal person, personal service at the defendant's business premises on persons who are employed by the defendant, only if these persons accept the judgment, attested with an acknowledgement of receipt;
 - c. deposit of the order in the defendant's mailbox;
 - d. deposit of the order at a post office or with competent public authorities **and** the placing in the defendant's mailbox of written notification of that deposit, **provided that** the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits
- In all these cases proof of service is attested by a document signed by the competent person who effected the service, indicating the method of service used, the date of service and where the order has been served on a person other than the defendant (a & b above), the name of that person and his relation to the defendant.



III. Service of documents

c. Service by any of the methods provided for in Article 13 or 14 of Regulation (EC) No 1896/2006 where service is not possible to be effected by any of the previous methods.

2. Service without proof of receipt by the defendant/representative:

- e. postal service without proof where the defendant has his address in the Member State of origin;
- f. electronic means attested by an automatic confirmation of delivery, **provided that** the defendant has expressly accepted this method of service in advance.



IV. Appeal and its impact on the enforcement of the judgement

- An appeal against a decision given in the European Small Claims Procedure is a procedural remedy that is governed by the national procedural legislation of the Member States.
- Information on whether an appeal is available and which court is competent and within what time limit must be submitted is available on the e-Justice Portal.
- The provisions of the Regulation on court fees and judicial expenses also apply to appeal procedures.



IV. Appeal and its impact on the enforcement of the judgement

- The judgment will be enforceable despite any possible appeal against it.
- No security will be required.
- However, at the request of the party against whom enforcement is sought, the courts may:
 - a. Limit the enforcement proceedings to protective measures;
 - b. make enforcement conditional on the provision of a security; or
 - c. in exceptional circumstances, stay the enforcement proceedings.



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THANK YOU!