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Train to Enforce

**TRAINING SEMINAR**

**TRIESTE**

**27 November 2021**

**European Small Claims Procedure (ESCP) EU  
Regulation 861/2007-**

**Contents, Promises and Challenges in Europe and Sweden**

**MARIE LINTON**



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# European Small Claims Procedure (ESCP) EU Regulation 861/2007

Contents, Promises and Challenges in Europe and Sweden

Trieste 27 November 2021



# Overview

## 1. Introduction to the ESCP Regulation

- Background
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- When is ESCP applicable?

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- How does the procedure work?
- Application and defence
- Conduct of procedure, evidence and examination
- How can a judgment be enforced?



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# 1. Introduction to the ESCP Regulation



# Background

- Difficulties in cross-border cases
- No proportionally to the value of the claim
- Common civil European procedure = ESCP
- In most cross-border disputes
- Speedy and less costly
- No legal representation required
- Max. € 5,000 (amended 2015)
- Free circulation of judgments
- Improve access to justice
- An *option/alternativa* to national civil procedure



# Why use the ESCP?

- Legal security
- Inexpensive
- Swift
- Simple
- Enforceable judgments

= **Efficiency**



# Interpreting the Regulation

- EU autonomous interpretation
- Art. 19: A matter not regulated in ESCP Regulation → national law of the member state (MS) where procedure is conducted.



# Substantive scope

- Art. 2: "Civil and commercial matters"
  - CJEU: extensive case law
  - Cf. Brussels instruments
- Not exceed 5,000 euro (**excluding** all interest, expenses and disbursements)
- Arts. 2 and 3: Only cross-border cases





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# Territorial and temporal applicability

- Applicable and binding to all member states, save Denmark (indent 38)
- Art. 29: Applies as of 1 January 2009



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## 2. Practical Aspects of the Procedure



# Overview over the Procedure

1. The plaintiff applies on a standard form to a competent court
2. Defence within 30 days of service
3. Case management
4. Court issues a judgment
5. Enforcement

CASE CLOSED WITHIN 74 DAYS (excluding time for service)



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# The European e-Justice Portal

[e-justice.europa.eu](http://e-justice.europa.eu)

Providing information on justice systems and improving access to justice throughout the EU, in 23 languages. Conceived as a future electronic one-stop shop in the area of justice.



# 1. Application: Competent court

- **Art. 4 ESCP: Application to court with jurisdiction**
- **Brussels I**
  - Main rule
  - Alternative rules:
    - Contract: Art. 7.1
    - Damages: Art. 7.2
  - Special rules
  - Choice of court clauses
  - Exclusive jurisdiction
- **In Sweden: A district court (*tingsrätt*)**



# 1. Application: Standard Form

- The application = **standard form A** = user-friendly
- Information needed
  - Claimant and defendant
  - Jurisdiction of the court
  - Cross-border nature of the case
  - The claim and the value of the claim
  - Costs for proceedings and interest
  - Substance of claim and supporting evidence
  - Request for an oral hearing

Art. 11 = practical assistance + general information



# 1. Application: Initial assessment

- Art. 4.3: Within the scope of ESCP Regulation
- Art. 4.4: If not adequate or sufficient information
  - Opportunity to complete or rectify using **standard form B**
  - Claim clearly unfounded or application inadmissible  
→ dismissal
- Art. 5.2: If OK, the court fills in Part I of **standard form C**, which is served on the defendant.



# 1. Application: Service

- Art. 13: **Form C**, a copy of the application form and evidence
    - By postal service
    - By electronic means:
      - i) if available and admissible, and
      - ii) where party to be served has accepted
- Attested by an acknowledgment of receipt
- Other methods in Arts. 13 or 14 of Regulation 1896/2006
  - Refuse to accept document





## 2. The Defence

- Art. 5.3: The defendant responds within 30 days on **Form C**
- Art. 7.3: Default judgment



### 3. Case management: Procedure and evidence

- Art. 5.1: The ESCP shall be a written procedure
- Art. 9.1: The simplest and least burdensome method
- Arts. 9.2 and 9.4: Written statements of witness-es, experts or parties are admitted, oral testi-mony is only allowed if it is not possible to give judgment on the basis of other evidence ./.. Swedish law
- Arts. 9.3 and 8: where an oral hearing is necessary it shall primarily be held by using videoconference or teleconference



### 3. Case management: Oral hearing only if necessary

- Art. 5.1: The ESCP shall be a written procedure
- Art. 5.1 a): Oral hearing shall only if not possible to give a judgment on the basis of the written evidence, or if a party so requests and the court does not find an oral hearing unnecessary with regard to the circumstances
- Art. 8: If oral hearing, make use of video- or teleconference, or other appropriate distance communication technology.



### 3. Case management: Language

- Art. 6.1: The claim form, the response, and supporting evidence shall be submitted in language of the court
- Art. 6.2: Other documents, for example written evidence need not be translated
  - Court may require a translation, only if the translation appears to be necessary to give a judgment
- Art. 6.3: A party may refuse to accept a document which is not in the official language or a language which the addressee understands



### 3. Case management: Legal representation and costs

- Art. 10: Lawyer not mandatory, nor prohibited
- Art. 16: The unsuccessful party carries the costs
  - Not unnecessary or disproportionate

*Case C-554/17, Rebecka Jonsson v Société du Journal*



## 4. The Judgment

- Art. 7.3: Default judgment
- Arts. 7.1 and 7.2: Judgment within 30 days if all necessary information, or within 30 days of taking of evidence
- Art. 7.2: The court shall give a judgment within 30 days of any oral hearing



## 4. The Judgment: Appeal and review in exceptional cases

- Art. 17: Appeal is regulated by national law.
  - Appeal to Court of Appeal within 3 weeks
  - Appeal to the Swedish Supreme Court
- An apply for reopening (appeal) of a default judgment under Swedish law.
  - One month
- Art. 18: Review in MS of origin in exceptional cases, only if defendant did not enter an appearance



## 5. Enforcement

- Art. 20.1: Judgment recognized and enforced in other MS
- Art. 20.2: Certificate
- Art. 21: Actual enforcement governed by the law of the enforcing MS  
= the Swedish Enforcement Authority (*Kronofogden*)





## 5. Enforcement: Stay or limitation

- Art. 23: If a challenge or a review, the court or authority of enforcing MS may:
  - a) limit enforcement to protective measures, or
  - b) make enforcement conditional on the provisions of security,  
or
  - c) stay the enforcement proceedings



## 5. Enforcement: Refusal

- Art. 22: Judgment irreconcilable with an earlier judgment issued in a MS or in a third country.
- Public policy or default service are not grounds for refusal
  - Not included, because of mutual trust



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# Closure

## **More information:**

The European e-justice portal

A Guide for Users to the European Small  
Claims Procedure



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# The ESCP Regulation — Cases and Practical Issues



**FACTS:** Mrs. V. is the CEO of one of the major banks in Sweden. She has a vivid art interest, and likes to visit auction sites to find art to her art collection. At the website of AuctionCasa, seated in Trieste, Italy, she finds an etching by one of Sweden's foremost artists, Anders Zorn (1860-1920). According to the AuctionCasa's description of the etching on-line, it was made prior to 1891, is 19,5 x 14 cm, marked and signed by the artist. Mrs V. secures the bid at 4 300 euros, and she pays the amount on-line. When the etching arrives at her house in Stockholm it turns out that the etching lacks the artist's signature.



**Scenario I:** If the parties cannot come to an amicable solution, Mrs. V. considers suing AuctionCasa in court to get a deduction of EUR 2 000. However, she feels uncertain of her legal options as the claim is rather small compared to the costs for litigation.



## Question 1 a)

What procedures are available to Mrs. V.?  
How should the choice between different  
legal schemes be made?



# Answer question 1 a): Options?

- The ESCP Regulation = optional *alternative* to
- Small claims procedures under national laws in Sweden or Italy.





# Answer question 1 a): Options?

- ESCP for monetary and non-monetary claims, and defended as well as undefended claims.
    - In the present case the claim is monetary.
    - The ESCP also applies if, let's say, the etching was not delivered, and Mrs. V. sought delivery instead of a monetary compensation.
- The ESCP can be applied whether AuctionCasa has defended the claim or not.



# Answer question 1 a): Choice to be made?

- Art. 1 ESCP:
  - Most likely a faster/*più rapida* procedure than under national small claims rules in Sweden and Italy
  - A predictable procedure, and easy to overview/**una procedura facilmente prevedibile**
  - A judgment issued in an ESCP directly enforceable in Sweden or Italy (or in any other MS where debtor has assets) – **escussione**



## Question 1 b)

Can Mrs. V. rely on the procedure in  
the ESCP Regulation?

*I.e.* what are the prerequisites for the  
application of the ESCP Regulation?



## Answer question 1 b): Prerequisites/*nozione*

- Art. 2.1:
  - a) the case must be of a cross-border nature,
  - b) it must concern civil and commercial matters,  
and
  - c) the claim must not exceed EUR 5 000
  - d) court with jurisdiction
- Art. 3: definition of “cross-border case”
- Art. 29 ESCP applies from 1 January 2009



## *Nozione*: A cross-border case?

- Art. 3.1: at least one of the parties is domiciled in a MS other than MS of the court
- ✓ Mrs. V. Sweden, AuctionCasa Italy
- ✓ Court in Sweden (or Italy)

*Case C-627/17, ZSE Energia v RG*



# *Nozione: A cross-border case?*

## ***WHEN DETERMINE CROSS-BORDER ELEMENT?***

- Art. 3.3 = the date on which the claim form received by the court with jurisdiction
  - This means that a purely domestic case could turn into a cross-border case if one of the parties change their domicile before a claim has been received by the relevant court.



## *Nozione: Materia civile e commerciale*

- Claim within the scope of civil and commercial matters ./.  
public and criminal law matters
- Not defined in the ESCP, nor in Brussels I
- CJEU extensive case law
  - See, *i.a.*, C-420/07, *Apostolides v Orams*, C-186/19,  
*Supreme Site Services*, C-579/17, *BUAK* and C-302/13,  
*flyLAL-Lithuanian Airlines*



## *Nozione: Materia civile e commerciale*

- Autonomous concept of EU law
- Decisive: Cause of action, the parties and the nature of the legal relationship determines whether a claim falls within the scope of civil and commercial matters or not

In our case, civil and commercial matter.

Underlying cause of action is not of a public law character or any other excluded matter as determined in Art. 2.2.





# *Nozione*: The claim must not exceed EUR 5 000

- At the time when court receives the claim form
- Value excludes interest, expenses and disbursements

In our case, Mrs. V.'s claim does not exceed EUR 5,000



## *Nozione*: Court with jurisdiction?

- Determined by Brussels I
- Main rule art. 4: *Actor sequitur forum rei*
  - Persons domiciled in a MS shall be sued in the courts of that MS = Italian courts has jurisdiction
- Mrs. V. want to litigate “at home”?
- Special jurisdiction rules Arts. 17 and 18: A consumer contract?
- Court at place of performance Art. 7.1?



# Court with jurisdiction: Problems with domicile

In the present case, Mrs V. is domiciled in Sweden and AuctionCasa has its seat/principal place of business in Italy

- Art. 3.2 ESCP: reference to Brussels I
- Art. 62(1) Brussels I: Domicile determined by internal law in MS whose court is seised
- Art. 62(2): If a party is not domiciled in the MS whose courts are seised, apply the law of another MS to determine domicile
- Art. 63(1): An autonomous definition of domicile for legal persons



## Scenario II: Calculation of value

Here, Mrs. V. wants to cancel the contract altogether. She has difficulties in understanding how to calculate the value of the claim under the ESCP Regulation, considering how costly it will be to send back the etching, including interest, court fees and lawyers' fees.

**How is the value of Mrs. V.'s claim calculated?**



## Answer to question 2: Calculation of value

- Mrs. V.'s claim concerns repayment of EUR 4 300, and the value is that sum
- For the purpose of calculating the value of the claim, all interest, expenses and disbursements **are excluded**



# Answer to question 2: Calculation of value

## **Attenzione!**

Even if the claim is successful, the costs of legal advice may not be awarded (Art. 16)

It could be additional expense implications if the defendant requests a hearing, and the court agrees to this. In such a case, the parties can expect to pay the costs of any expert or witness, the costs of translation of documents and of any special procedure used for the hearing, for example video-conferencing.



# A non-monetary claim

If we alter the scenario: The painting was not delivered to Mrs. V. after payment. Her claim now concerns delivery of the painting. How is the value of the claim, which is a non-monetary claim, determined?

- **Claim form A box 7.2** = estimate value of the claim
- The estimate is not complicated in this case: EUR 4 300



## Answer question 2: Currency

- The financial value of the claim must be stated in the currency of the court (SEK or EUR) **section 7.1 claim form A**
- If the currency of the court is not the currency in which the claimant has formulated the claim the value of the claim will have to be stated in the appropriate currency by converting amount claimed into the currency used in the MS of the court.





## Answer question 2: Currency

- For example, if Mrs. V. has formulated the claim in EUR, but the currency of the Swedish court is SEK, it would be necessary to convert the amount claimed in EUR into SEK.
- MS may have specific procedures for currency conversion. If a conversion is necessary, Mrs. V. should contact the court for further information on the arrangements that apply.



# Some reflections

- June 2022 revision of ESCP – raise threshold, employment matters included?
- Service of judgment necessary?

*More information A Guide for Users to the European Small Claims Procedure and Practice Guide for the application of the European Small Claims Procedure*



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