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The Regulation (EC) No 861/2007: Contents, Promises and Challenges in Europe and Italy

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Regulation (EC) No 861/2007

Consolidated version (as last amended in 2017):
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02007R0861-20170714&from=EN>

► <u>B</u> 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)			
<u>Amended by:</u>			
	Official Journal		
► <u>M1</u>	Council Regulation (EU) No 517/2013 of 13 May 2013	No	date
		L 158	10.6.2013
► <u>M2</u>	Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015	page	
		L 341	24.12.2015
► <u>M3</u>	Commission Delegated Regulation (EU) 2017/1259 of 19 June 2017	No	date
		L 182	13.7.2017



Regulation (EC) No 861/2007

Article 1

Subject matter

This Regulation establishes a European procedure for small claims (hereinafter referred to as the 'European Small Claims Procedure'), intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. The European Small Claims Procedure shall be available to litigants as an alternative to the procedures existing under the laws of the Member States.

The ESCP is a written procedure for cross-border claims below 5,000 EUR based on standard forms. Success rate has been low: between 2007 and 2012, only 3,500 ESCP applications were filed in Europe.

Structural problems at the EU level

Optional character and limited scope of application of the ESCP

Linguistic and legal diversity

Limited digitalization and coordination of civil justice services across Europe



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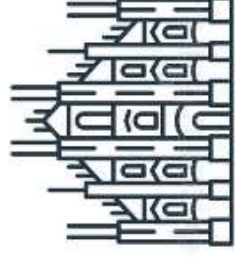
Regulation (EC) No 861/2007

Structural problems in Italy

Italy's reputation for lengthy trials and delayed justice
Historical absence of a fast-track procedure for small claims
Lack of normative guidelines about how to implement and coordinate the ESCP with domestic rules of civil procedure



In Milan, the 'Giudice di Pace' ('Justice of the Peace') receives on average 25 ESCP applications per year



No need to check for implementing rules

Limited case-law; cases in English at <https://ic2be.uantwerpen.be>

Yet, context matters: especially in terms of language of the procedure, competent judges and procedural rules on court fees, service of documents, applicable law, representation by a lawyer, lawyers' fees, evaluation of the defendant's absence, judicial review and enforcement.



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Regulation (EC) No 861/2007 in Italy

Article 6

Languages

1. The claim form, the response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents shall be submitted in the language or one of the languages of the court or tribunal.

Article 122, Italian Code of Civil Procedure (CCP): “All the documents used in the procedure should be in Italian; documents written in a different language will be considered invalid and as never submitted.”

What happens if an ESCP claim is submitted before an Italian court in a language other than Italian?

Article 4

Commencement of the Procedure

4. Where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear or 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 to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies. The court or tribunal shall use standard Form B, as set out in Annex II, for this purpose.



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Regulation (EC) No 861/2007 in Italy

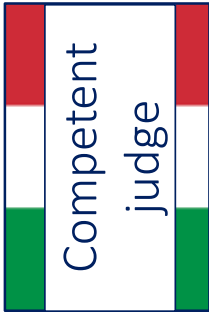
What happens if a Swedish defendant receives an ESCP claim (forms A and C) in Italian?

Article 6 **Languages**

3. 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 Member State addressed, or, if there are several official languages in that Member State, 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.



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Regulation (EC) No 861/2007 in Italy

Article 2

Scope

1. This Regulation shall apply, in cross-border cases as defined in Article 3, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 5 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. 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*).

1. The limit of 5,000 EUR refers to the claimant's request (excluding interests and fees). The defendant may always contest the claim value or propose a counterclaim exceeding that value.
2. The notion of "civil and commercial matters" is largely overlapping with the one adopted by the Regulation (EU) No 1215/2012 (Brussels I bis), as specified by Article 2(2) of the ESCP.

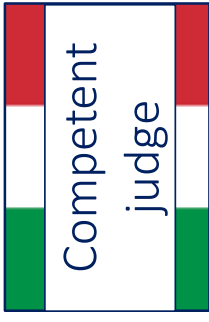
In practice, the Regulation mostly applies to contractual cases (e.g., online sales and contracts of carriage by air of passengers and baggages), but nothing excludes the Regulation may also apply to extracontractual claims. See e.g. CJEU, **Rebecka Jonsson v Société du Journal L'Est Républicain**, February 14, 2019, C-554/2017.



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Article 3
Cross-border cases

1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised.

3. As to “cross-border cases”, the criteria for determining the parties’ domicile, residence, and jurisdiction, are set forth by Regulation (EU) No 1215/2012.

REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2012
on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Article 4

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

Article 7

A person domiciled in a Member State may be sued in another Member State:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

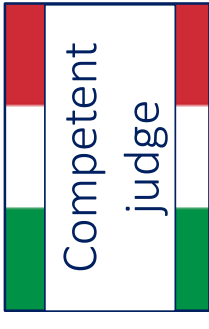
(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

- in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
 - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;
- (c) if point (b) does not apply then point (a) applies;

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;



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Regulation (EC) No 861/2007 in Italy

Article 19

Applicable procedural law

Subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted.

Article 7, Italian CCP: “The Justice of the Peace hears claims [...] whose value is below 5,000 EUR*, unless the claim falls within the exclusive competence of another court.”

* Effective from October 2025, the threshold will be raised to 30,000 EUR.

There are 391 offices of the Justice of the Peace scattered on the Italian territory.

Assuming that Italian jurisdiction for hearing an ESCP claim is established, the competent judge to receive the claim should be determined according to Italian rules on jurisdiction.

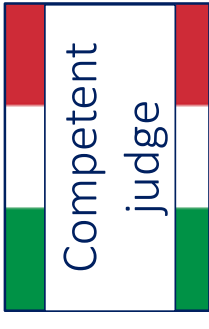




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Article 18, Italian CCP: “[...] [N]atural persons can be sued before the court of the place where they are resident or domiciled [...].”

Article 19, Italian CCP: “[...] [L]egal persons can be sued before the court of the place where they have their seat [...].”

Article 20, Italian CCP: “In matters relating to obligations, a person can also be sued before the court of the place where the obligation arose or was performed.”

European Judicial Atlas in civil matters

https://e-justice.europa.eu/354/EN/small_claims

Small claims

National information and online forms concerning Regulation No. 861/2007

FINDING COMPETENT COURTS

The search tool below will help you to identify court(s)/authority(ies) competent for a specific European legal instrument. Please note that although every effort has been made to ascertain the accuracy of the results, there may be some exceptional cases concerning the determination of competence that are not necessarily covered.

Country *

Please select



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Regulation (EC) No 861/2007 in Italy

A claimant applying for an ESCP in Italy should pay the standard fee to bring the action (whose value is proportional to the value of the claim), plus other fees (such as the service fees and the fees for copies), when needed.

Article 13, Presidential Decree of 30 May 2002, no. 115: “The standard fee to bring a judicial action is equal to: 43 EUR for claims below 1,100 EUR [...]; 98 EUR for claims below 5,200 EUR.”

Article 15a

Court fees and methods of payment

For claimants not resident in Italy and do not have an Italian bank account, only option (a) is available, that is, payment by bank transfer [IBAN: IT 04 0 01000 03245 350008332100, BIC code: BITAITRENT].

2. The Member States shall ensure that the parties can pay the court fees by means of distance payment methods which allow the parties to make the payment also from a Member State other than the Member State in which the court or tribunal is situated, by offering at least one of the following methods of payment:
- (a) bank transfer;
 - (b) credit or debit card payment; or
 - (c) direct debit from the claimant's bank account.



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Regulation (EC) No 861/2007 in Italy

The service of judicial acts is in principle done in Italy by bailiffs ('ufficiali giudiziari'), who are also competent under Article 2 of Regulation (EC) No 1393/2007 for the transmission and receipt of documents for service in or from another Member State. For proceedings before the Justices of the Peace, the service of documents can be carried out via personal service into the hands of the addressee or by post.

Article 5

Conduct of the Procedure

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

A copy of the claim form, and, where applicable, of the supporting documents, together with the answer form thus filled in, shall be served on the defendant in accordance with Article 13. These documents shall be dispatched within 14 days of receiving the properly filled in claim form.

Italian courts, however, do not serve documents. The claimant should check when the forms are ready and then serve them.

A further problem relates to the communication with the court: Justices of the Peace's websites are not always up-to-date, and communication might be done by phone or letter (in Italian or English).



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Article 113, Italian CCP: “1. In deciding a case, the court must follow the rules of law, except when the law grants her the power to decide in accordance with equity.

2. Justices of the Peace decide on an equitable basis claims not exceeding 1,100 EUR*, provided that they do not relate to contracts governed by uniform standard terms and conditions”.

* Effective from October 2025, the threshold will be raised to 2,500 EUR.

Article 339, Italian CCP: “3. Judgments handed down by Justices of the Peace in equity can be appealed solely on the grounds of having violated Italian civil procedure rules, constitutional provisions, European Union provisions or general principles governing the case at hand.”





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Article 10

Representation of parties

Representation by a lawyer or another legal professional shall not be mandatory.

According to Italian commentators,
Art. 19 ESCP Regulation mandates that
Art. 10 ESCP Regulation should prevail
over Art. 82 Italian CPP.

Article 82, Italian CCP: “1. Before the Justice of the Peace litigants can stand trial personally, if the economic value of the dispute does not exceed 1,100 EUR.
2. In all other cases, parties cannot stand trial without the representation or assistance of a lawyer. However, taking into consideration the nature and value of the dispute, the Justice of the Peace, upon request, might authorize a party to stand trial personally.
3. Except in cases provided by law, before the Tribunal and the Court of Appeal parties can stand trial only if represented by a lawyer; before the Court of Cassation, parties can stand trial only if represented by a lawyer admitted before the Court.”



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Article 16

Costs

The unsuccessful party shall bear the costs of the proceedings. However, 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.

The ESCP Regulation leaves any other issue concerning the award of the costs of the proceedings to national law. Such costs are regulated by the Decree of the Ministry of Justice of 10 March 2014, no 55.

Art. 2, Decree of the Ministry of Justice of 10 March 2014, no 55: “remuneration for lawyers’ services should be proportionate to the value of the dispute and the amount of work performed.”
The Decree provides that average remuneration for representation in a proceeding before the Justice of the Peace should be comprised between 350 and 1,400 EUR.

See **Tribunal of Rome, November 18, 2013**: awarding to a lawyer 75 EUR as remuneration is offensive to the professional dignity of the lawyer.



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Article 7

Conclusion of the Procedure

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.

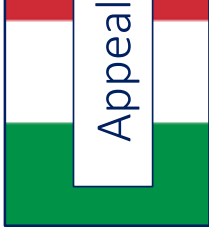
Italian legal scholarship and courts have discussed whether Art. 7(3) ESCP Regulation implies that the defendant's inactivity should be interpreted against her.

According to the majority of commentators and courts, under Italian civil procedure, the defendant's inactivity cannot be equated to the acceptance of the plaintiff's claim. Therefore, a judge under Article 7(3) of the ESCP Regulation cannot simply verify the defendant's absence and then rule for the plaintiff, but must examine the merit of the case.

See for instance **Tribunal of Milan, May 30, 2016**: outside the areas covered by the Art. 19 of the ESCP Regulation, the procedure is governed by national rules. Under Italian civil procedure, the claimant bears the burden to prove the facts that ground his claim, even if the defendant did not appear before the court.



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Article 17

Appeal

1. Member States shall inform the Commission whether an appeal is available under their procedural law against a judgment given in the European Small Claims Procedure and within what time limit such appeal shall be lodged. The Commission shall make that information publicly available.

Article 18

Review of the judgment in exceptional cases

Judgments of the Justices of the Peace can be appealed both mistakes of facts and law, except for decisions rendered in equity under art. 339 Italian CCP.

Article 325, Italian CCP: “1. Judgments can be appealed within 30 days from their notification.”

Article 327, Italian CCP: “1. Independently from their notification, judgments cannot be appealed after 6 months from their publication.”

Article 341, Italian CCP: “Judgments of the Justices of the Peace should be appealed before the tribunal where the Justice of the Peace who issued the decision has its seat.”



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Regulation (EC) No 861/2007 in Italy

Article 21

Enforcement procedure

1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement.

Article 23

Stay or limitation of enforcement

Enforcement in Italy lies in the jurisdictions of tribunals. The tribunal with competence to enforce an ESCP judgment should be determined according to Italian rules on jurisdiction for enforcement.

Article 26, Italian CCP: "1. Territorial competence in proceedings concerning the debtor's goods and real estate is vested in the court of the place in which the goods or the estate is located. [...]
2. In case of proceedings concerning debtor's credits, the competent judge is the tribunal of the place in which the debtor's debtor resides."

Article 28, Italian CCP: "Parties cannot modify by agreement rules on jurisdiction for enforcement."

The background is a dense, colorful watercolor composition. It features numerous overlapping circles and soft, irregular washes of color in shades of red, orange, yellow, green, blue, and purple. The colors are applied with varying intensity, creating a rich, textured effect. The overall palette is bright and cheerful, with a mix of primary and secondary colors.

Thanks for
your attention!