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## EUROPEAN SMALL CLAIMS PROCEDURE

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### **-abstract-**

The European Small Claims Procedure was introduced by EU Regulation 861/2007 and applies between all Member States of the European Union except Denmark. This procedure can be used for claims up to the value of €5000 and is a written procedure, unless an oral hearing is considered necessary by the court. The European Small Claims Procedure is an alternative to national procedures. A judgment for this procedure is recognised and enforceable in another EU country and cannot be opposed (unless there are inconsistencies with an existing judgment in the other EU country between the same parties). The purpose of the European Small Claims Procedure is to harmonize national litigation. Precisely because of this the subject of analysis of this paper are the basic features of the European Small Claims Procedure, benefits that this procedure offers and the Amendment of Regulation 861/2007 with Regulation 2015/2421.

**Key words:** civil proceedings, European Small Claims Procedure, EU Regulation 861/2007.

## **I. INTRODUCTION**

The European Small Claims Procedure as a legal institute of the EU civil procedure law had been established by the Regulation of the European Parliament and the European Council (EC) No. 861/2007. The European Small Claims Procedure was created in order to overcome the problems of cross-border enforcement of judgments and the proper functioning of the single European market. The ambition of Regulation 861/2007 is to establish a single Community procedure for resolving small claims in all EU member states that will be fast, cheap and economical. Advantages of European Small Claims Procedure are: you don't need to hire a lawyer to start a Small Claims Procedure, the claim should be solved more quickly and the procedure is simpler, especially for cross-border claims.

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European Small Claims procedure was initially conceived as an alternative procedure to national litigation procedures for resolving small claims, in order in the future to harmonize the national litigation procedures for resolving small claims due to its benefits.

The Regulation 861/2007 is an instrument of the post-Amsterdam phase of the scientific development of the civil procedure law of the European Union and as such has strengthened the principle of mutual trust in the judicial systems of the member states of the European Union.<sup>1</sup>

The European Small Claims Procedure should be further improved by Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure that entered into force on July 14<sup>th</sup> 2017.<sup>2</sup>

## II. ON THE NEED TO ESTABLISH EUROPEAN SMALL CLAIMS PROCEDURE

The proposal for the establishment of the European Small Claims Procedure was adopted on 15 March 2005.<sup>3</sup>

The European Small Claims Procedure is one of the three autonomous European procedures that should facilitate access to justice in the single European market. The legal background for the creation of the European Small Claims Procedure are: the Amsterdam Treaty, the Tampere Summit of 1999 and the EU Green Paper of 2002.

The Amsterdam Treaty in its Article 65 provided the legal basis for the creation of a European Small Claims Procedure because it established an area of freedom, security and justice at EU level. The Tampere Summit established special procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims. The 2002 Green Paper analyzing the existing national procedures for small claims in the then EU Member States proved that national small claims procedures are not designed to be used effectively in international disputes. Undoubtedly, the national civil procedures for resolving small claims differed from each other: according to the value criteria, the structure of the procedure, the deadlines for making decisions and did not contain rules for electronic management of these cases.<sup>4</sup>

This is why the idea of creating a Common Procedure for resolving small claims under the auspices of the EU was launched. The European Small Claims Procedure as a supranational institute is expected to reduce costs and increase the speed of legal redress in civil and commercial cases with cross-border implications. This is necessary because low-cost litigation procedures often cause major problems in practice.

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<sup>1</sup> Kremer X, “*Small Claim, Simple Recovery? The European Small Claims Procedure and Its Implementation in the Member States*” (Journal of European Law, Vol. 1, 2011), 119.

<sup>2</sup> Statistics concerning the use of the European Small Claims Procedure implemented by Regulation 861/2007 show that this mechanism has not been as successful as expected. For example in Portugal, the number of cases is still low but has grown. Statistics from 2011 to 2019 show that there were 220 small claims judged, which means an average of 24.4 per year, which is a small number. However, growth has been positive since, from 2011 to 2019, it increased from 4 to 71, corresponding to an increase of 1,800%. Mesquita L V, Cebola C M, “*European Small Claims Procedure: An Effective Process?*” (AJEE Journal, 2022), 4.

<sup>3</sup> Proposal for a Regulation of the European Parliament and of the council establishing a European Small Claims Procedure, COM (2005) 87 final, 15 March 2005. See Haibach G, “*The Commission Proposal for a Regulation Establishing a European Small Claims Procedure: An Analysis*” (European Review of Private Law 2005), 593.

<sup>4</sup> See on practical obstacles in international litigation amongst others *Paulien van der Grinten, Paul Meijknecht & Frans van der Velden* (ed.), Practical obstacles in cross border litigation: speeches and presidency conclusions of the international conference organised by the Dutch Presidency on 8 and 9 November 2004 in the Hague.

First of all, it is interesting to remark that this European procedure has been adopted by way of regulation and not of a directive. In its proposal, the European Commission affirmed that the choice of that legal instrument was made considering that this type of legal act leaves the right of the Member States unaffected to continue the application of their domestic rules alongside the European Small Claims Procedure thus, a regulation encroaches much less on the national procedural systems than a Directive that would require an adaptation of national legislation to the standards set in that instrument. Furthermore, the European Commission highlighted that a regulation would ensure the uniformity and direct applicability of the procedure. Through this legislative instrument, in fact, a common minimum level in the efficiency of the recovery of small claims is ensured in all Member States, notably in those Member States where no simplified procedures were in place, at the same time it permits to Member States that have developed an even better-functioning domestic system to retain it. As we know, this proposal resulted in the adoption of the Regulation 861/2007.

### III. SCOPE OF REGULATION 861/2007

The Regulation 861/2007 determines its objective validity autonomously, and not according to *lex nationalis*, depending on the subject of the dispute in concreto and the essence (nature) of the relationship between the parties.

The Regulation 861/2007 applies only in civil and commercial cases regardless of the type of court if the value of the claim without interest, costs and other costs does not exceed 2000 euros at the moment at the time when the claim form is received by the court or tribunal with jurisdiction.<sup>5</sup>

The scope of application of Regulation 861/2007 is almost identical to the private-legal scope of application of Regulation 44/2001 and Regulation 1896/2006, but with some differences.<sup>6</sup> The Regulation 861/2007 applies only to civil and commercial matters.<sup>7</sup> The concept of civil and commercial cases should be considered as an independent term from national law, which can be particularly problematic in common law legal systems based on the so-called "triple structure of civil, criminal and administrative law". Because of this, "the concept of civil and commercial matters is shaped by the case law of the European Court of Justice, not by *lex causae* or *lex fori*". With negative enumeration from its area of application are excluded: revenue, customs or administrative matters, *acta iure imperii*<sup>8</sup>, cases relating to the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession, bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements,

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<sup>5</sup> The EESC expressed in its opinion (Opinion EESC, O.J. 2006 C 88/61, comment 6.1.) on the proposal that the ceiling of EUR 2000 is clearly insufficient given the current value of goods and services. More: Mańko R, "European Small Claims Procedure - Legal analysis of the Commission's proposal to remedy weaknesses in the current system" (European Parliamentary Research Service, 2014), 3.

<sup>6</sup> More see in Brokamp A, "Das Europäische Verfahren für geringfügige Forderungen" (Tübingen, Mohr Siebeck, 2008).

<sup>7</sup> The case law of the European Court of Human Rights (C-29/76 LTU Lufttransportunternehmen GmbH & Co KG v Eurocontrol, ECR 1976, 1541) is of particular importance for the autonomous interpretation of the concept of civil and commercial affairs.

<sup>8</sup> This formulation is derived from Article 1 of the Brussels I Regulation and the case law of the European Court of Justice (ECJ) in relation to this provision. The concept of *acta iure imperii* is closely related to the ECJ's practice in explaining the concept of civil and commercial affairs. Although not many cases of *acta iure imperii* are found in the case law of the European Court of Justice, this does not mean that it does not cause much controversy. The reason for this is sought in the vague distinction between public and private law, especially in the United Kingdom, France and Ireland.

compositions and analogous proceedings, social security<sup>9</sup>, arbitration<sup>10</sup>, employment law, tenancies of immovable property, with the exception of actions on monetary claims, or violations of privacy and of rights relating to personality, including defamation.

The reason for the applicability of Regulation 861/2007 only to civil and commercial matters, is sought in the absence of a complete solution to the conflict of laws in the above legal areas in the EU member states or the special legal regulation with the EU instruments.<sup>11</sup>

The Regulation 861/2007 has territorial validity within the EU, with the exception of Denmark.

The Regulation 861/2007 was adopted in Strasbourg on 11 July 2007. It shall apply from 1 January 2009, with the exception of Article 25 which shall apply from 1 January 2008. In 2017. The Regulation 861/2007 was changed under the influence of the Lisbon Treaty, and entered into force on 14.07.2017.

The Regulation 861/2007 applies regardless of the citizenship or residence of the parties who may be natural or legal persons.

In terms of validity Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure introduces the following amendments of Regulation 861/2007: expansion of the definition of Small Claims with regard to the value of a claim from EUR 2,000 to EUR 5,000, extension of the list of matters which are excluded from the scope of application of Regulation (EC) No. 861/2007, give the opportunity European Small Claims Procedure applies to both contested and uncontested cross-border civil and commercial claims with the exception of a limitative list of matters such as employment law, arbitration, etc. Also The Regulation (EU) 2015/2421 extends this limitative list to exclude matters concerning maintenance obligations arising from a family relationship, parentage, marriage or affinity, and wills and succession, including maintenance obligations arising by reason of death, from the Small Claims procedure, and expansion of the scope of application to court settlements. The Regulation shall be applied not only to decisions of the court but also to court settlements approved by or concluded before a court or tribunal. As such, court settlements shall be recognised and enforced in all other Member States under the same conditions as a judgment given in the European Small Claims Procedure.

#### **IV. EUROPEAN SMALL CLAIMS PROCEDURE**

The European Small Claims Procedure is designed as an alternative to national litigation.<sup>12</sup> The main goal for the establishment of this procedure is to simplify and speed up the litigation procedure which refers to small claims in cross-border cases<sup>13</sup> as well as to reduce

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<sup>9</sup> The reason for excluding social security from the private legal area of application of Regulation 861/2007 is sought in the fact that matters relating to social security in most Member States are referred to as matters of a public nature.

<sup>10</sup> Arbitration is excluded because the 1957 Treaty of Rome introduced the principle of free arbitration. An attempt by the European legislator to equalize the arbitration procedure law with the European Convention on International Arbitration of 1961, but it seems unsuccessful. Arbitration is not a matter of regulation due to the high efficiency of the 1958 New York Convention and the 1961 Geneva Convention on International Commercial Arbitration.

<sup>11</sup> Jenard, *Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters*, OJ 1979 C 59/1, 10-11.

<sup>12</sup> Panych N, "Access to Justice as Illustrated by the Institute of Small Claims"(Access to Justice in Eastern Europe, Issue 1/2, 2019), 55.

<sup>13</sup> For the purposes of Regulation 861/2007 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.

litigation costs.<sup>14</sup> The European Small Claims Procedure also eliminates the procedure for *exequatur* in cases where a judgment rendered in a Member State of the EU should be recognized and enforced in another Member State of the EU due to the principle of mutual trust.

The European Small Claims Procedure is quite automated, i.e. it is based on the use of standard forms, and in terms of initiation it is based exclusively on the dispositive principle. This means that this procedure always starts at the request of the plaintiff and is never *ex officio* initiated by a court of a member state of the EU.

The importance of Regulation 861/2007 is undoubted. It is an advantage to have a procedure with a uniform central structure, accessible to citizens, in which the decision is enforceable in the European area.

This procedure is characterized by being simple, written, supported by standard forms, and based on judicial cooperation with the parties and an active stance of the court. It is used as an alternative to domestic proceedings by the creditor of a civil or commercial obligation (pecuniary or non-pecuniary) up to EUR 5,000 (excluding interest, costs, and other expenses), provided that it is a cross-border case.

The European Small Claims Procedure has these stages as provided for in Arts. 4 to 9: i) the creditor submits the case using Form A; ii) the court has an initial intervention (preliminary injunction) to assess the correct applicability of this procedure to the application, the correct filling in of the form, and the regularity of the proceedings; iii) after this intervention, the court may: a) decide that the procedure is not applicable, applying the consequence provided for in the internal procedural rules for such failure; b) request corrections to form A (using form B) if the information provided by the claimant is inadequate or insufficiently clear or if the claim form is not filled in properly; c) reject (reject out of hand) in case the claim appears to be clearly unfounded or the application inadmissible; d) order the continuation. Then, if the proceedings continue: iv) the defendant ‘summoned to answer’ and given a copy of Form A (application), the documents, and Form B with Part I (details of the court and of the proceedings) completed by the court. The defendant has 30 days to respond, so he or she should submit a defence and make a claim against the applicant (counterclaim) using Form A. If there is a counterclaim, the claimant has 30 days to answer. At the end of the pleadings, if the judge has sufficient information, he or she shall give a decision. If the judge is unable to give a judgment, he or she may: request further clarification, order the production of undocumented evidence, arrange a final hearing, which is exceptional. Once the procedure has been decided, the applicant may request a certificate (Form D) which would serve as an enforcement order. This enforcement order may provide an enforceable application in any member state.

## **V. COMMENCEMENT OF THE PROCEDURE**

According to Article 4 the Claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced. The standard claim form A include data for the court/tribunal before which you are making a claim, information for the claimant and defendant, jurisdiction, cross- border nature of the case, details for the claim, evidence which support the claim, information about the will of the claimant to be held an oral hearing and to be issued a certificate concerning the judgment, bank details for the

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<sup>14</sup> Kremer X, “*The European Small Claims Procedure: Striking the Balance between Simplicity and Fairness in European Litigation*” (Zeitschrift für Europäisches Privatrecht, Vol. 2, 2008), 355.

purpose of payment of application fee and date and signature of the claimant. The court or tribunal shall not require the parties to make any legal assessment of the claim.<sup>15</sup>

The Member States shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available. According to the available information in some member states such as Belgium, Bulgaria, France there is no possibility according the national law for electronic filing of the lawsuit, while in the Czech Republic, Germany, Estonia, Ireland, Spain, Croatia, Italy, Latvia, Lithuania, Hungary, Austria, there is a possibility to file a lawsuit electronically, either by email, fax or special court platforms. When the court or tribunal considers that the information provided by the claimant are 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, will 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. Where the claim appears to be clearly unfounded or the application inadmissible or where the claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed.

## **VI. CONDUCT OF THE PROCEDURE**

As the purpose of introducing the European Small Claims Procedure is to make the procedure simpler, more efficient and cheaper compared to the national procedure. The Regulation introduces certain deviations from the usual rules of litigation. Taking into account the process economy, and in direct proportion to the value thresholds of the claims, it is prescribed that the procedure is usually conducted in written form. The court or tribunal shall hold an oral hearing if it considers this to be necessary or if a party so requests.<sup>16</sup>

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 legal principle and the equality of the parties in the procedure are respected through the obligation of the court to serve the form A with the appropriate documents to the defendant.

In order to point out the opposite arguments and evidence, the defendant may, within 30 days, to submit the form C to the court. The defendant may also file a counterclaim in response to the lawsuit. The standard answer form C include answers of the questions does the defendant accept the claim, does the claim out of the scope of European small claims procedure, the evidences that defendant should submit to support its position, the information about the will of the defendant to be held an oral hearing or to make a counterclaim and date and signature of the claimant. If the counterclaim exceeds the limit set of 5.000 euros the claim and counterclaim shall not proceed within the rules of the European Small Claims Procedure but shall be dealt with in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.<sup>17</sup>

The procedure, as well as all documents in the procedure need to be submitted in the official or in one of the official languages of the court. If the documents are submitted in a language other than the official one, the court may require from the parties to translate the documents.

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<sup>15</sup> Kremer X, “*The European Small Claims Procedure: Striking the Balance between Simplicity and Fairness in European Litigation*” (Zeitschrift für Europäisches Privatrecht, Vol. 2, 2008), 362-363.

<sup>16</sup> Kremer X, “*Small Claim, Simple Recovery? The European Small Claims Procedure and Its Implementation in the Member States*” (Journal of European Law, Vol. 1, 2011), 123-124.

<sup>17</sup> Fiorini F, “*Facilitating Cross-Border Debt Recovery – the European Payment Order and the Small Claims Regulations*.” (International Comparative Law Quarterly 57, 2008).

Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it accepts as official within the European Small Claims Procedure.

The European Justice portal publishes information on the languages of the proceedings before the courts of each Member State, which range from one accepted language to several accepted languages (e.g. in Italy the proceedings may be conducted only in Italian, Spanish and English are accepted in Spain, while French, English, German, Spanish and Italian are accepted in France).

The principle of procedural economics of the European litigation procedure is re-represented through the way the evidence is presented. The regulation states that the court or tribunal shall use the simplest and least burdensome method of taking evidence. The court or tribunal may hold an oral hearing through video conference or other communication technology if the technical means are available.<sup>18</sup> The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties. It may also admit the taking of evidence through video conference or other communication technology if the technical means are available. The court or tribunal may take expert evidence or oral testimony only if it is necessary for giving the judgment.

The European Small Claims Procedure is essentially a written procedure. To further reduce the costs of litigation and the length of proceedings, the Regulation 2015/2421 provides that the service of documents and other written communications can be done via electronic means and sets out the circumstances where modern communication technology could be used.

## VII. CONCLUSION OF THE PROCEDURE

The procedure is fast and ends up in a shorter period of time than the usual time for regular court proceedings is proved by Article 7 of the Regulation according to which the court should shall give a judgment within 30 days of receipt of the response from the defendant or the claimant. Except when it is necessary for the court or tribunal to demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days; or it is necessary for the court/tribunal to take evidence in accordance with Article 9; or to summon the parties to an oral hearing, then 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 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. Given the value framework for determining the jurisdiction of this type of dispute, the costs of conducting this procedure in most EU Member States are lower than the court fees paid for regular court proceedings. There are even examples from EU member states where the parties to the proceedings are exempt from paying court fees (eg Luxembourg, Spain, Cyprus, France in case the dispute is brought before a court of first instance and not before a commercial court).

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<sup>18</sup> When an oral hearing is considered necessary in accordance with Art. 5 (1a), it shall be held by making use of any appropriate distance communication technology, such as videoconference or teleconference, available to the court or tribunal, unless the use of such technology, on account of the circumstances of the case, is not appropriate for the fair conduct of the proceedings. Nevertheless, the Regulation does not mention in what language the oral hearing should be made. The Council Recommendations on cross-border videoconferencing of 15 and 16 June 2015, as well as the work carried out in the framework of the European e-Justice Strategy and Action Plan adopted for the 2019-2023 period, 12 warn that videoconferencing services should be available in all languages of the member states, but their implementation is still difficult. More see in: Mesquita L V, Cebola C M, “*European Small Claims Procedure: An Effective Process?*” (AJEE Journal, 2022), 5.

There are also examples in member states where court fees for this type of dispute are of symbolic value e.g. in Poland a court fee is paid for initiating a dispute of about 20 EUR, in Ireland of 25 EUR.

## VIII. ENFORCEABILITY OF THE JUDGMENT AND APPEAL

The judgment shall be enforceable notwithstanding any possible appeal. The provision of a security shall not be required. 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.

The procedural law of the Member States determines whether the parties have the right to appeal. 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.<sup>19</sup>

Country	Allowance of appeal	Time limits
Belgium	An appeal can be lodged	one month from service or notification of the judgment
Bulgaria	An appeal can be lodged	within two weeks
Czech Republic	An appeal can be lodged	no more than 15 days after the written decision is served
Germany	An appeal can be lodged	within one month
Estonia	An appeal can be lodged	within 30 days
Ireland	An appeal can be lodged	within 14 days
Greece	An appeal can not be lodged/ an appeal for annulment to the Supreme Court can be lodged	/
Spain	No appeals can be lodged for small claims of less than EUR 3 000	/
France	An appeal can be lodged	within a month
Croatia	An appeal can be lodged	within eight days
Italy	An appeal can be lodged	Within 30 days
Cyprus	An appeal can be lodged	within 14 days
Latvia	An appeal can be lodged	within 20 days
Lithuania	An appeal can be lodged	within thirty days
Luxembourg	Where the amount of the claim does not exceed EUR 2 000.00, the decisions of the justice of the peace are final. The only possible challenge is an appeal on a point of law ( <i>pourvoi en cassation</i> ).	/
Hungary	An appeal can be lodged	within fifteen days
Malta	An appeal can be lodged	within twenty days
Netherlands	An appeal can be lodged in the case of European small claims involving amounts of €1 750 or more	within 30 days
Austria	An appeal can be lodged	within four weeks
Poland	An appeal can be lodged	within <b>two weeks</b>
Portugal	An appeal can be lodged	within 30 days
Romania	An appeal can be lodged	within 30 days
Slovenia	An appeal can be lodged	within eight days
Slovakia	An appeal can be lodged	within 15 days
Finland	An appeal can be lodged	within seventh day

<sup>19</sup> Data for all countries are available at <https://e-justice.europa.eu/> [15.04.2022].



Sweden	An appeal can be lodged	within three weeks
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Source: European E-justice Portal

Regardless of whether Member States allow parties to appeal in European disputes of small claims, as a minimum procedural guarantee of the defendant's rights, there is an opportunity to review the court decision in case the basic principles of the procedure are violated and the minimum guarantee for equality of the parties, if: the claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally, as provided for in Article 14 of Regulation (EC) No 805/2004; a service was not effected in sufficient time to enable him to arrange for his defence without any fault on his part, or the defendant was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part. But in any case the reaction of the defendant to review the decision needs to be as soon as possible (promptly).

If the court or tribunal decides that the review is justified for one of the reasons, the judgment given in the European Small Claims Procedure shall be null and void.

According with Regulation 2015/2421 where the claim is dismissed on the basis that it is clearly unfounded or if the application is ruled as being inadmissible or where the claimant fails to complete or rectify the claim form within the time specified, the court or tribunal shall inform the claimant of such dismissal and whether an appeal is available against such dismissal.

According with Regulation 2015/2421, Regulation 861/2007 is improved because only defendants who did not enter an appearance are allowed to apply for a review of the judgment within 30 days.

## **IX. RECOGNITION AND ENFORCEMENT IN ANOTHER MEMBER STATE**

The judgment given in a Member State in the European Small Claims Procedure will be recognized and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition. The parties can request and the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D.

Any judgment given in the European Small Claims Procedure will be enforced under the same conditions as a judgment given in the Member State of enforcement. If the party seeks enforcement he/she shall produce: a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and a copy of the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European Small Claims Procedure. The content of Form D shall be translated by a person qualified to make translations in one of the Member States.

The party seeking the enforcement of a judgment given in the European Small Claims Procedure in another Member State shall not be required to have: an authorized representative; or a postal address in the Member State of enforcement, other than with agents having competence for the enforcement procedure.

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in the European Small Claims

Procedure in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

Upon an application by the person against whom enforcement is sought, the court or tribunal with jurisdiction in the Member State of enforcement shall refuse the enforcement, if the judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that: the earlier judgment involved the same cause of action and was between the same parties; the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given.

Under no circumstances may a judgment given in the European Small Claims Procedure be reviewed as to its substance in the Member State of enforcement.

The court or the tribunal with jurisdiction or the competent authority in the Member State of enforcement, upon application by the party against whom enforcement is sought, may limit the enforcement proceedings to protective measures; make enforcement conditional on the provision of such security as it shall determine or under exceptional circumstances, stay the enforcement proceedings where a party has challenged a judgment given in the European Small Claims Procedure or where such a challenge is still possible, or where a party has made an application for review within the meaning of Article 18 of the Regulation.

## **X. CONCLUSION**

Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007, as amended by Reg. 2015/2421, established a European Small Claims Procedure in cross-border litigation, aiming to create a fast and inexpensive process to obtain judgments in specific cross-border cases and, consequently, to facilitate access to justice. As expressly declared in this Regulation: the distortion of competition within the internal market due to imbalances with regard to the functioning of the procedural means afforded to creditors in different Member States entails the need for Community legislation that guarantees a level playing-field for creditors and debtors throughout the European Union.

The European Small Claims Procedure is a non-exclusive, alternative, dispositive European procedure that offers many advantages over European Enforcement Order and European Payment Order procedures. This is because a judgment that is upheld in accordance with the mechanism of Regulation 861/2007 may be based on non-monetary and pecuniary claims. It is a specific procedure that is conducted according to *lex fori processus* and is based on the principles of fair trial and adversarial proceedings. These principles are especially evident in the court's decision to conduct an oral hearing and in determining the manner of presenting evidence. The European Small Claims Procedure does not lay down any rules on exclusive jurisdiction and sets minimum standards for delivery in the background, introducing autonomous rules for the delivery of the document by post.

The European Small Claims Procedure regulates special rules for reducing the costs of cross-border litigation in accordance with the principles of uniformity, speed and equality. This procedure reduced the costs of translation and legal aid, the costs related to the duration of national litigation by introducing fixed, preclusive deadlines for taking procedural actions by the parties and excludes the need for mandatory representation of the parties during the procedure. The Regulation establishing a European Small Claims Procedure also make it simpler to obtain the recognition and enforcement of a judgment given in the European Small Claims Procedure in another Member State.

Regulation 2015/2421 simplify it Regulation 861/2007 with measure that the court shall use the simplest and least burdensome method to determine the means of taking evidence, and the extent of the evidence necessary for its judgment. Also she provides that the court fees charged in a Member State for the European Small Claims Procedure shall not be disproportionate and shall not be higher than the court fees charged for national simplified court procedures in that Member State. The parties can pay the court fees by means of distance payment methods.

### **Bibliopgrahy:**

1. Brokamp A, “*Das Europäische Verfahren für geringfügige Forderungen*“ (Tübingen, Mohr Siebeck, 2008)
2. Fiorini F, “*Facilitating Cross-Border Debt Recovery – the European Payment Order and the Small Claims Regulations.* “ (International Comparative Law Quarterly 57, 2008)
3. Kremer X, “*The European Small Claims Procedure: Striking the Balance between Simplicity and Fairness in European Litigation*“ (Zeitschrift für Europäisches Privatrecht, Vol. 2, 2008)
4. Kremer X, “*Small Claim, Simple Recovery? The European Small Claims Procedure and Its Implementation in the Member States*“ (Journal of European Law, Vol. 1, 2011)
5. Maňko R, “*European Small Claims Procedure - Legal analysis of the Commission's proposal to remedy weaknesses in the current system*” (European Parliamentary Research Service, 2014)
6. Mesquita L V, Cebola C M, “*European Small Claims Procedure: An Effective Process?* ” (AJEE Journal, 2022)
7. Maffeo, A.; Rolando, F. “*The EU Action in the Field of Small Claims Procedures and the Limits Resulting from Its Implementatiob in the National Legal Systems* “ (RIEDP 2022)
8. Panych N, “*Access to Justice as Illustrated by the Institute of Small Claims*“(Access to Justice in Eastern Europe, Issue 1/2, 2019)
9. Haibach G, “*The Commission Proposal for a Regulation Establishing a European Small Claims Procedure: An Analysis*“ (European Review of Private Law 2005)
10. REGULATION (EC) No 861/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 establishing a European Small Claims Procedure
11. Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure
12. ECC-Net European Small Claims Procedure Report September 2012
13. <https://e-justice.europa.eu>