



PROJECT NO JUST/2010/JCIV/AG/0010-30-CE-0421163/00-50  
«ENHANCING QUALITY OF JUDICIAL COOPERATION IN CIVIL  
MATTERS: THE EUROPEAN UNION CIVIL  
PROCEEDINGS AND TOOLS PROVIDED BY REGULATIONS ON  
TAKING EVIDENCE AND SERVICE OF DOKUMENTS»

1

# TRAINING COURSE „EUROPEAN ORDER FOR PAYMENT, EUROPEAN SMALL CLAIMS PROCEDURE AND EUROPEAN ENFORCEMENT ORDER”

MAY, 27-28, 2013

# The European Small Claims Procedure

**REGULATION (EC) No 861/2007**

2

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MAY 2013

# Overview and Background

3

# European Procedural Law – Overview of instruments

4

- Brussels I Regulation (Reg 44/2001): jurisdiction and recognition & enforceability of judgments in civil and commercial matters (since 1973)

## COMPLEMENTED BY:

- EEO Regulation (Reg 805/2004): European enforcement order for uncontested claims (since 2005)
- EPO Regulation (Reg 1896/2006) and Small Claims Regulation (Reg 861/2007): European procedures

# A bit of history: the Brussels I « regime »

5

1957 Objective: uniform and coherent system for the free movement of judgments (seen as necessary for sound operation of internal market)

- Free movement of judgments easily achieved if the power of foreign judges to review the judgment of which recognition and enforcement is sought is kept to a minimum
- This in turn is easily achieved if uniform jurisdiction rules are adopted

# The 1968 Brussels I Convention & EC Regulation 44/2001 (Brussels I Regulation)

6

- Structured as a double instrument:
  - jurisdiction rules harmonised and
  - system for the semi-automatic recognition and enforceability for Contracting State judgments established)
- Is applicable today between all 27 (soon 28) EU MS
- The interpretation is given in light of the principles and objectives of the Regulation: in particular the principles of
  - MUTUAL TRUST and
  - LEGAL CERTAINTY

# Background to the Small Claims Regulation (1)

7

- ✧ The Brussels I Reg harmonised Jurisdiction grounds and simplified but maintained *exequatur* (procedure leading to a declaration of enforceability)
- ✧ This leads to delays and costs
- ✧ These consequences are particularly difficult to accept as regards claims of a small importance

## Background (2)

8

- **Procedural** law is **not harmonised** in the EU – States apply their own procedural rules.
- **Not all States have simplified procedures** for small claims and if they do, these vary considerably (in terms of costs, speed, threshold, requirements etc)
- This results in an **uneven access to justice** of EU citizens and a **distortion of competition** within the internal market

# The Origins

9

- Tampere Conclusions (1999): **mutual recognition** should become the **cornerstone** of judicial cooperation in civil matters
- Commission Green Paper (2002)
- Commission proposal (2004)
- Hague Programme (2004) – ‘..work to be Actively pursued..’

# Regulation (EC) 861/2007

10

**ESTABLISHING  
A  
EUROPEAN SMALL CLAIMS PROCEDURE**

# Policy Objectives

11

- Simplification and acceleration of procedures for small consumer and business claims (Tampere)
- Facilitation of access to justice
- Reduction of cost
- Rectification of distortions in functioning of the internal market
- Abolition of exequatur for judgments given in that procedure

# Small Claims Regulation (EC) 861/2007

12

- Adopted in co-decision with the European Parliament – 11 July 2007
- Applies as from 1<sup>st</sup> January 2009
- Applies in all EU MS except Denmark
- Review planned by 1<sup>st</sup> January 2014

# Overview

13

- ✧ Reg 861/2007 creates an **optional** (art 1(2)) - inexpensive, fast track- **European procedure**.
- ✧ This procedure only applies to **cross-border** cases (art 3) in **civil and commercial** matters
- ✧ The Reg permits the **free circulation** of small claim judgment obtained on the basis of a harmonised, European procedure (compliance with which renders intermediate proceedings unnecessary)

# Seven principles

14

- Essentially a **written procedure** (unless oral hearing deemed necessary by court)
- **Time limits** for speed
- Procedure based on 4 **standard forms** & IT use encouraged
- **No** need for a **lawyer**
- **Restriction** on awards of **costs**
- Court empowered to direct procedure
- **No intermediate measures**

# Provisions – scope

## Article 2 (1)

15

- **Cross-border cases** – see Art 3
  - Cross-border means at least one party is domiciled or habitual resident in a MS other than the MS seised at the time the claim form is received
  - Domicile is determined under the Brussels I Regulation
- **Civil and commercial matters** whatever the nature of court or tribunal
- Claim (contested or uncontested) under **EUR 2000** excluding interest, expenses and outlays (at the time the claim is received by the court)

# Exclusions from scope

## Article 2(1) & (2)

16

- Revenue, Customs, Administrative matters
- Acta jure imperii
- Status and legal capacity
- Property arising out of matrimonial relationships, maintenance obligations, will & succession
- Insolvency,
- Social security,
- Employment law,
- Arbitration
- Tenancies except monetary claims
- Privacy & personality rights, incl defamation

# Procedure – I

## Article 4: Commencement

17

- Commencement using standard claim **form A**
- Sent to **competent court** (under Brussels I) by any means of communication acceptable to court
- Together with ***description of evidence*** supporting the claim & documents if appropriate

# Procedure – I

## Article 4: Commencement

18

3 situations are possible:

1. Claim **outside scope** of Regulation
  - Court informs claimant. If application is not withdrawn, normal procedure applies
2. Insufficient/incomplete/inadequate **information** provided by claimant
  - Opportunity to clarify/complete/rectify if the claim is not clear or incomplete, using form B
3. Claim clearly **unfounded**, application **inadmissible** or **no rectification** within the deadline set
  - Application dismissed

# Procedure – 2

## Article 5: Conduct of Procedure

19

- Written procedure; Oral hearing only if court thinks it necessary (Art 5); if so videoconference or other IT method available allowed (Art 8)
- Court fills in Part 1 of **Form C**
- Copy of forms A & C & possibly supporting docs **served** to defender – under Art 13: postal service with receipt - **within 14 days** of receipt by the court
- **Response** from Defender **within 30 days** (Part 2 of Form C) possibly with supporting docs
- Copy dispatched to claimant within 14 days

# Procedure – 2

## Article 5: Conduct of Procedure

20

- Possible situations

1. Defender claims that the **value** of the claim **exceeds**  
**€ 2000**

- Court decides within 30 days of dispatching response to claimant if the claim falls within the Reg. Such decision may not be contested separately

2. Defender submits a **counterclaim**

- Using form A, incl supporting docs and served on defender within 14 days of receipt by court
- Claimant has 30 days to respond to counterclaim
- If counterclaim exceeds €2000, standard domestic procedure will apply to claim and counterclaim

# Procedure – 3

## Article 7: conclusion of procedure

21

- Within 30 days of defender or claimant's response:
  - A.
    - ✦ Court decides – or
  - B.
    - ✦ Demands further details from parties to be obtained within 30 days – or
    - ✦ Takes evidence – or
    - ✦ Summons parties to an oral hearing within 30 days – Art 7.1
- Judgment within 30 days of obtaining details under B.

# Procedure – 4

## Article 6: language

22

- Claim form to be in **the language of the court**
- Court may require a **translation** of any document **only if necessary for judgment**
- If party has refused to accept a document because it is neither in the language of the MS addressed nor in a language he understands, the court informs the other party so that it provides a translation.

# Procedure – 5

## Article 9: taking of evidence

23

- Court determines
  - means of taking evidence
  - extent of the evidence necessary
- Court to use ‘**simplest and least burdensome** method of taking evidence’
  - Court may admit evidence through **written** statements (of parties, experts, witnesses) or **videoconference** or other means
  - Court may take **expert evidence** ONLY if necessary for giving the judgment and bearing in mind costs

- Art 10: Legal representation is NOT mandatory
- Art 11: MS ensure that parties can receive practical assistance in filling in the form
- Art 12: remit of court
  - Court not to require parties to make a legal assessment of the claim
  - Court – to inform parties about procedure, including of the consequences of not complying with time limits set by court (Art 14)
  - Court to seek to reach settlement between parties if appropriate

- **Art 14: time limit**
  - Court may exceptionally extend time limits provided by Reg IF NECESSARY TO SAFEGUARD THE RIGHTS OF THE PARTIES
  - Where court cannot meet the time limits set by Reg, must take steps to do so ASAP
- **Art 16: cost**
  - Unsuccessful party bears the costs
  - No award of costs however if they were unnecessarily incurred or disproportionate to the claim
- **Art 19: Procedural law**
  - Procedure is governed by lex fori, subject to provision of the Reg
  - MS inform the Commission whether an appeal is available under their law

# Review

## Article 18

26

- Defender may apply for a review of the ESC judgment in the MSO where
  - Service was made through a method without proof of receipt and not in sufficient time to enable defender to arrange for a defence without any fault on his part
- Or
- Defender was prevented from objecting to the claim because of force majeure or exceptional circumstances without fault on his part
- Defender must act promptly

# Review

## Article 18

27

### 2 possible outcomes

1. Court rejects the review because none of the grounds apply
  - ESC judgment remains in force
2. Court decides that the review is justified
  - ESC judgment is null and void

Pending the application for review in the MSO, the enforcement may be stayed or limited in the MSE

# Enforcement : Principle

## Articles 15 and 20 to 22

28

- Judgment is enforceable notwithstanding a possible appeal
- No need for a declaration of enforceability of the foreign ESC judgment (treated as domestic judgment if certificate and copy of judgment is provided)
- Certificate (issued free of charge by court on demand of a party) is basis for enforcement (form D)
- Enforcement proceeds under the law of the State of enforcement

# Enforcement: Stay or Limitation

## Article 23

29

- If ESC judgment has been challenged or may still be or is being reviewed under Art 18 (all in the MSO), the court in the MSE, upon application, may:
  - Limit the enforcement proceedings to protective measures
  - Make the enforcement conditional on the provision of a security
  - Under exceptional circumstances, stay the enforcement proceedings

# Enforcement: Refusal

## Article 22

30

- Sole ground for refusing enforcement is **irreconcilability** with an **earlier** judgment (from MS or third country)
  - Earlier judgment must involve same cause of action and same parties
  - Earlier judgment must fulfill conditions for recognition
  - Irreconcilability could not have been raised in proceedings leading to the ESC judgment
- Absolutely no review on the merits

# Final Provisions

31

- MS to provide information on the Procedure to public – Art 24
- Information regarding jurisdiction, means of communication and appeals to be given to and published by the Commission – Art 25
- Claim and other forms as prescribed by the Regulation – Annexes to the Regulation
- Review of the ESC Regulation due in 2014 (Art 28)

# Evaluation

32

- Meets its objectives of swiftness, facilitation of access to justice and remedy to the distortion or the functioning of the internal market, abolition of exequatur
- Meets some of objectives of cost reduction (for parties)
- Simplification??
  - EPO is a simplified procedure
  - May not be simpler than domestic small claims procedure but has the advantage of bypassing exequatur
  - But...

## ... Complexity of Routes available to creditors

33

- ✧ Brussels I Regulation for J, in conjunction with domestic procedures, and Brussels I Reg rules for R&E.
- ✧ If uncontested claim:
  - ✧ Brussels I Reg for J, in conjunction with domestic procedures and EEO rules for R&E.
  - ✧ Brussels I Reg for J, in conjunction with EPO.
- ✧ If small claim: Brussels I Reg for J, in conjunction with ESC rules.

# Impact of the Reform of the Brussels I Reg on Small Claims Regulation

34

- 2007 – publication of report on application
- 2010 – proposal of a new regulation
- 2012 – adoption of a new Regulation (EU Reg 1215/2012) , which will be applied from 2015
- Main achievement: **general abolition of exequatur**



Does it mean that Reg 861/2007 is moribond?

NO!

# Illustration

35

**THE CASE OF MEKAS V PROKOPCUKA**

# The story

36

- Mr Mekas lives in Kretinga (Lithuania). As he was in Riga for business he came across the small ads in the paper and noticed one that Mrs Prokopcuka who lives in Liepaja (Latvia) for the sale of her BMW car.
- On 27.12.2012 Mr Mekas goes to Liepaja, tests the car and agrees to buy it for €5000. It is agreed that he should pay €2000 straight away by bank transfer and that the sale will be complete when Mrs Prokopcuka delivers her car to his domicile on 5.1.2013, at which stage he would give her the rest of the price in cash.
- On 5.1.2013, as she is driving to Kretinga, Mrs Prokopcuka is severely injured in a car crash and the BMW car is a write off.
- Mr Mekas wants his money back but Mrs Prokopcuka still has not paid.

# Is the Small Claims Regulation applicable?

37

- Civil & commercial matter? (according to their nature, and irrespective of the character of the court)
  - Not excluded from scope? Art 2
  - Cross-border? Art 3
    - Depends on domicile of parties (Art 59/60 of Brussels I) and seat of competent court (under Brussels I)
    - Mr Mekas is domiciled in Lithuania
    - Mrs Prokopcuka is domiciled in Latvia
    - Court with jurisdiction is court of the defender's domicile (Latvia)
-  YES
- Claim under €2000?

# What steps should Mr Mekas take?

38

- Find which court has jurisdiction
  - Go to European Judicial Atlas

The screenshot shows the European Judicial Atlas website with the URL [ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_courtsjurisd\\_en.jsp?countrySession=19&txtPostalCode=&txtMunicipality=Liepaja&rbMunicipality=265#statePage3](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsjurisd_en.jsp?countrySession=19&txtPostalCode=&txtMunicipality=Liepaja&rbMunicipality=265#statePage3). The page is titled "European Commission > Judicial Atlas > ... > Courts with jurisdiction". The "Selected Country" is "Latvia". The page is divided into three main sections: 0 COMMUNICATIONS, 1 COURTS WITH JURISDICTION, and 2 MUNICIPALITY (SEARCH RESULTS). Section 0 states: "In Latvia the ordinary courts have jurisdiction to give judgment in the European Small Claims Procedure." Section 1 contains input fields for "Postal Code:" and "Municipality: (\*)" with "Liepāja" entered. Section 2 shows search results for "Liepājas pilsēta // Liepāja" and "Rīga (Liepājas iela)". Section 3, titled "TERRITORIALLY COMPETENT COURTS FOR Liepājas pilsēta // Liepāja", lists the "Liepājas tiesa" (Court of Liepāja) with its address, telephone, fax, and email.

European Commission > Judicial Atlas > ... > Courts with jurisdiction

Home

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Filing in Forms | Links | What's new? | Atlas mailbox

Member States' Courts Legal Aid Mediation Serving Documents European Cross-border Procedures Taking Evidence Recognising and Enforcing Judgements Family law Compensation to Crime Victims

Small Claims >>> Courts with jurisdiction

Information  
courts & bodies  
Courts with jurisdiction  
Courts for appeal  
Competent authorities  
Communications of Member States  
Forms (1 to 4)  
Documents

Get Acrobat Reader

Selected Country: **Latvia**

CLICK ON THE MAP TO SELECT ANOTHER COUNTRY:

0 COMMUNICATIONS

In Latvia the ordinary courts have jurisdiction to give judgment in the European Small Claims Procedure.

1 COURTS WITH JURISDICTION

Postal Code: Municipality: (\*)  
Liepāja

(\*) For Rīga city, please enter the street name instead of the city.

2 MUNICIPALITY (SEARCH RESULTS)

Liepājas pilsēta // Liepāja  
Rīga (Liepājas iela)

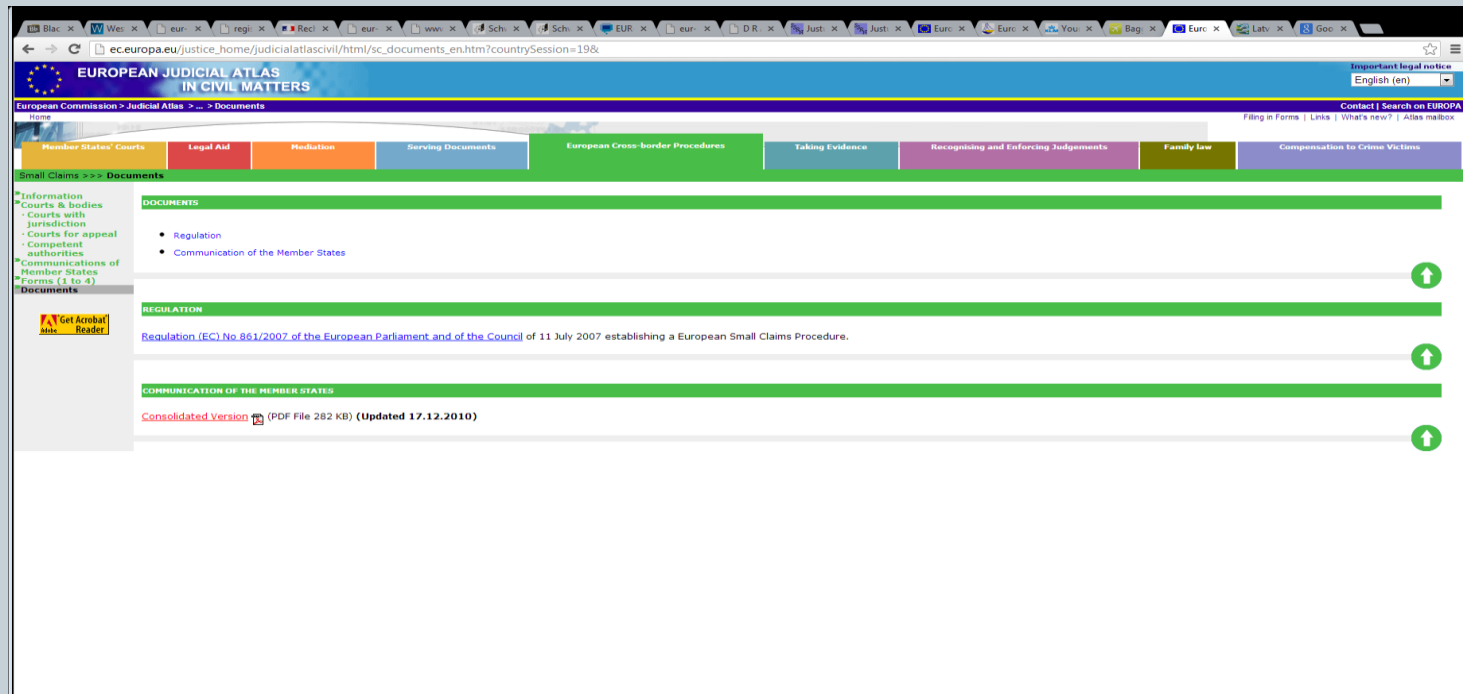
3 TERRITORIALLY COMPETENT COURTS FOR Liepājas pilsēta // Liepāja

**Liepājas tiesa**  
Administrative Address: Republikas iela 14/Tiesu iela 5, Liepāja, LV-3401  
Tel.: +371 63401800, +371 63401752  
E-Mail: [liepajas\\_ts@court.gov.lv](mailto:liepajas_ts@court.gov.lv)  
Fax: +371 63426333

# What steps should Mr Mekas take?

39

- Find country specific information regarding jurisdiction, means of communication and appeals
  - Go to European Judicial Atlas



# What steps should Mr Mekas take?

40

- Fill in a small claims application form (in the language of the court) & lodge it with the court with description of evidence and possibly supporting

Small Claims >>> FORM A - CLAIM FORM

**EUROPEAN SMALL CLAIMS PROCEDURE**  
**FORM A**  
**CLAIM FORM**  
(Article 4(1) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

Case number \*:   
Received by the court/tribunal on \*:   
\* To be filled in by the court/tribunal.

**IMPORTANT INFORMATION**  
PLEASE READ THE GUIDELINES AT THE BEGINNING OF EACH SECTION - THEY WILL HELP YOU TO FILL IN THIS FORM

**Language**  
Fill in this form in the language of the court/tribunal to which you are sending your application. Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm). This may help you in filling in the form in the required language.

**Supporting documents**  
Please note that the claim form should be accompanied, where appropriate, by any relevant supporting documents. However, this does not prevent you from submitting, where appropriate, further evidence during the procedure.  
A copy of the claim form and, where appropriate, of the supporting documents, will be served on the defendant. The defendant will have an opportunity to submit a response.

**1. Court/tribunal**  
In this field you should identify the court/tribunal before which you are making your claim. When deciding which court/tribunal to choose, you need to consider the grounds for the court's/tribunal's jurisdiction. A non-exhaustive list of possible grounds of jurisdiction is included in section 4.  
1. Before which court/tribunal are you making your claim?

1.1. Name:   
1.2. Street and number/PO box:   
1.3. City and postal code:   
1.4. Country:

# What if...

41

- Court considers that the form is incomplete?
  - Mr Mekas will be asked to use form B to clarify/complete information
  - If he does not do so within the deadline set by court (Art 4(4)), claim will be dismissed
- Court considers the claim clearly unfounded?
  - Claim will be dismissed.
  - Appeal possible only if provided by the domestic procedure (again explained in the State communication)

# What happens next?

42

- Court will fill in form C and serve to Mrs Propokcuka within 14 days or receipt
- Mrs Prokopcuka will answer within 30 days.  
value above € 2000?  
counterclaim?  
other defence?
- If Court has enough information, decision within 30 days of response
- If not: further details; taking of evidence or oral hearing and judgment within 30 days of obtaining these.

# If court finds in favour of Mr Mekas...

43

- Judgment is enforceable even if Mrs Prokopcuka appeals
- Mr Mekas may ask for a certificate which will act as a visa for the judgment, which is thus treated as a domestic judgment in all EU MS
- Enforcement will proceed under domestic law
  - But if Mrs Prokopcuka has appealed or indeed applied for a review or could still do so, the enforcement may be stayed or limited under Art 23.
  - Enforcement may only be refused if ESC judgment is irreconcilable with earlier judgment under Art 22.

Questions?