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EUROPEAN SMALL CLAIMS PROCEDURE

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ÁLLAM- ÉS JOGTUDOMÁNYI KAR

**REGULATION (EC) No 861/2007 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
of 11 July 2007
establishing a European Small Claims Procedure**

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National small claims procedures

Many Member States have introduced simplified civil procedures for small claims since costs, delays and complexities connected with litigation do not necessarily decrease proportionally with the value of the claim.

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The purpose and character of the regulation on European Small Claims Procedure

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The EuSCPR aimed to establish a simplified and efficient procedure, therefore it is a **written procedure** and it begins with a **standard claim form**.

The main idea was that **the parties should not be obliged to be represented** by a lawyer or another legal professional. Therefore the regulation requires from judges a relatively **high degree of activity**.

The regulation applies short and strict terms.

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Alternative nature

The European Small Claims Procedure shall be available to litigants as an alternative to the procedures existing under the laws of the Member States.

So the EuSCPR did not establish a compulsory procedure which should be applied in cross-border cases with low value claims.

The Regulation gives the right to choose to the plaintiff, after he decided to apply the national rules, the defendant can not choose the European small claims procedure .

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The scope of the regulation

This Regulation shall apply, in

- cross-border cases,
- to civil and commercial matters, whatever the nature of the court or tribunal, where
- the value of a claim **does not exceed 2000 Euro** at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements

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Counterclaim

If the counterclaim exceeds the 2000 Euro the claim and counterclaim shall not proceed in 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 .

The value of claim and the counterclaim should be calculated separately, so their amounts should not be aggregated.

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This Regulation shall not apply to matters concerning:

- (a) the status or legal capacity of natural persons;
- (b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession;
- (c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

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- d) social security;
- (e) arbitration;
- (f) employment law;
- (g) tenancies of immovable property, with the exception of actions on monetary claims; or
- (h) violations of privacy and of rights relating to personality, including defamation.

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).

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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 seized.

Domicile shall be determined in accordance with the Brussels I regulation.

The relevant moment for determining whether there is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction

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General rules

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Language and service of documents

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.

If any other document received by the court or tribunal is not in the
language in which the proceedings are conducted, the court or
tribunal may require a translation of that document only if the
translation appears to be necessary for giving the judgment.

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Refuse to accept a document

A party may refuse to accept a document

- at the time of service or
- by returning the document within one week

if it is not written in, or accompanied by a translation into,
the

- official language of the Member State addressed or
- a language which the addressee understands

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Service of document

Documents shall be served by postal service attested by an acknowledgement of receipt including the date of receipt.

If service in accordance with paragraph 1 is not possible, service may be effected by any of the methods provided for the EuSoDR

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Representation and activity of the judge

The parties should not be obliged to be represented by a lawyer or another legal professional. Therefore the EuSCPR regulates that representation by a lawyer or another legal professional shall not be mandatory

The court or tribunal shall not require the parties to make any legal assessment of the claim and if necessary, the court or tribunal shall inform the parties about procedural questions.

Whenever appropriate, the court or tribunal shall seek to reach a settlement between the parties

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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 costs of the proceedings should be determined in accordance with national law.

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Commencement, conduct and conclusion
of the procedure

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Commencement of the procedure

The claimant shall commence the European Small Claims Procedure by filling in standard claim form, 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.

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Conduct of the procedure

The European Small Claims Procedure shall be a written procedure .

The court or tribunal shall hold an oral hearing if it considers this to be necessary or if a party so requests.

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.

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Taking of evidence

The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence.

The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties. The court or tribunal may take expert evidence or oral testimony only if it is necessary for giving the judgment.

The court or tribunal shall use the simplest and least burdensome method of taking evidence.

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Conclusion of the procedure

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 judgment shall be served on the parties in accordance with Article 13 (by postal service).

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Remedies

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Appeal

The EuSCPR contains no regulation on appeals, therefore the procedural rules of the Member States shall applied.

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Review of the judgment

The defendant shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the court or tribunal with jurisdiction of the Member State where the judgment was given where:

(a) (i) the claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally and (ii) service was not effected in sufficient time to enable him to arrange for his defense without any fault on his part,

or

(b) the defendant was prevented from objecting to the claim

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Recognition and enforcement in another Member State

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A judgment given in a Member State in the European Small Claims Procedure shall be recognised and enforced in another Member State **without the need for a declaration of enforceability and without any possibility of opposing its recognition.** (no exequature)

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