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European Payment Order and Small Claims Procedure

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Regulations

- I. Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (**EPO**)
- II. Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (**SC**)
- III. 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 (**Revision**)
applies from 14 July 2017

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Content of the Presentation

- I. Common Aspects of the EPO and SC Procedures
 - a) Legal Basis
 - b) Cross-border Element
 - c) Scope of the Regulations
 - d) Jurisdiction

- II. EPO Procedure

- II. SC Procedure

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Legal Basis Main Goals

- measures eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States - Art. 65 TEC (Art. 81 TFEU)

- measures to simplify, speed up and reduce the costs of the recovery of uncontested claims and small claims

- free movement of orders (no declaration of enforceability)

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Cross-border Element Jurisdiction

- closer connection with the territory of the EU
- cross-border situation:
 - at least one party must have his or her
 - **domicile** or
 - **habitual** residence
 - in a **MS** other than the MS of the forum
 - at the time when the application is submitted
- limits the scope of the jurisdictional rules of the Brussels I bis Regulation (Art. 6/2 EPO: limits jurisdiction in consumer matters)

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Scope of the Regulations

Territorial Scope:

- „Member State“ – all MS except of Denmark
- *Apostolides (C-420/07)* – the northern part of Cyprus excluded
- Art. 355 TFEU

Material Scope:

- civil and commercial matters
 - autonomous interpretation, case law of the CJEU
 - similar to the Brussels I bis, but not identical!
- cross-border cases

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Relation to national procedures

The EPO and SC procedure is

- **alternative**
- **facultative**

to similar national procedures.

Applicants decide!

National procedural rules are **subsidiary** to the Regulations

- Art. 26 EPO
- Art. 19 SC

EPO Material Scope

What can be claimed in EPO procedure?

- „uncontested“ **pecuniary** claims for
 - **specific** amount that
 - have **fallen due** at the time when the application is submitted
- cross-border element
- **non-contractual obligations** – almost all **excluded** from the scope
- **maintenance obligations?**

EPO Application

How can be applied for an EPO and how shall be examined the application?

- Art. 7
- [Form A](#) – obligatory, in the official language of the court
- evidence supporting the claim – only description, not copies!
- *prima facie* examination
- grounds for rejection (Art. 11):
 - claim outside the scope of the Regulation
 - absence of cross-border element
 - the claim is not pecuniary and/or have not yet fallen due
 - lack of statements under Art. 7 (chance to complete and/or rectify)
 - claim is **clearly unfounded**
 - other grounds set by national law
- no appeal against rejection
- rejection is not *res iudicata*

EPO Application

Other grounds for rejection

Other procedural conditions emanating from national law:

- immunities of persons or states
- material, local and functional jurisdiction
- legal capacity of parties
- legal capacity and power of attorney of the parties' representatives
- payment of court fees

EPO Issue and service

How to issue and serve EPO?

- 30-day-deadline
- Art. 12
- [Form E](#), in the official language of the court
- Service of EPO on the defendant:
 - national law of the place of service, however, minimum standards must be observed: Art. 13 – 15
 - cross-border service: Service Regulation No 1393/2007
 - unknown address of the defendant: national law applies, **Lindner, C-327/10**

EPO Opposition

How can the defendant contest the EPO?

- Art. 16
- [Form F](#) – non-mandatory
- within 30 days of the service – Regulation (EEC, Euratom) No 1182/71; [C-324/12](#) Novontech-Zala kft. v. Logicdata Electronic & Software Entwicklungs GmbH
- without any specification of reasons

What follows after the opposition?

- termination of the procedure – Annex 2 to the Application Form A
- ordinary civil procedure – national procedure, (**Revision**: small claims procedure, if applicable)
- jurisdiction: [C-144/12](#) Goldbet Sportwetten GmbH v. Massimu Sperindeovi

EPO Enforceability, Review

When is EPO enforceable?

- no opposition
- the EPO was properly served
- declaration – Form G

How can be the enforceable EPO reviewed?

- Art. 20 – autonomous review procedure
- Grounds for review:
 - EPO was served without proof of receipt by the defendant ([C-119/13](#) and C-120/13 - **eco cosmetics GmbH & Co. KG**)
 - the defendant was prevented from objecting by reasons of force majeure or extraordinary circumstances
 - the EPO was clearly wrongly issued
 - other exceptional circumstances – negligence of the defendant's representative is excluded (C-324/12), lack of jurisdiction of the court is excluded ([C-245/14](#) – Thomas Cook Belgium NV v. Thurner Hotel GmbH.)

SC Material scope

What can be claimed in the SC procedure?

- not only pecuniary claims
- the threshold of EUR 2000 (**Revision: EUR 5000**)
- cross-border element
- maintenance excluded

SC Application

How can be applied for an SC order and how shall be examined the application?

- Art. 4, [Form A](#) – mandatory
- evidence supporting the claim – description and attachment of supporting documents
- grounds for dismissal of the application:
 - claim outside the scope of the Regulation: **no dismissal, transfer to national procedure** (Art. 4/3)
 - lack of information provided by the claimant (chance to complete and/or rectify)
 - claim is **clearly unfounded** or application inadmissible
 - other grounds set by national law

SC Conduct of the procedure

- **written** procedure
- oral hearing only exceptionally: Art. 5:
 - the court considers this to be necessary (**Revision**: it is not possible to give the judgment on the basis of the written procedure!) or
 - request of a party (refusal cannot be contested separately from a challenge to the judgment itself)
 - distance communication technology: Art. 8 (**Revision!**)
- service of the claim on the defendant:
 - within 14 days
 - autonomous rules on service: Art. 13:
 1. postal service with acknowledgement of receipt,
 2. **electronic means (Revision!)**
 3. rules on service of the EEO (**Revision: EPO**)
- response of the defendant:
 - non-mandatory form (part II of the Form C), supporting documents shall be attached
 - within 30 days
 - dispatching of the response to the claimant within 14 days
 - counterclaims: Form A

CS Language regime

Autonomous language regime – Art. 7

- the official language of the court: claim, counterclaim, response
- the right of a party to refuse to accept a document, if the document is not:
 - in the official language of the place of service or
 - in the language which the addressee understands
- translation shall be provided by the other party

SC Conclusion of the procedure

- within 30 days the court:
 - demands further details or
 - takes evidence (simplest and least burdensome method) or
 - summons the parties to an oral hearing or
 - gives the judgment
- service of the judgment on the parties: Art. 13
- no autonomous appeal – notification of Member States on national law
- enforceability of judgments notwithstanding any appeal
- no exequatur required
- review in exceptional cases: Art. 18 – autonomous review

Thanks for your attention!

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