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ORDINE DEGLI AVVOCATI DI ROMA

Venerdì 29 gennaio 2021

Criticità normative del Regolamento CE n.861/2007 e proposte di modifica

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REGOLAMENTO (CE) N. 861/2007

○ **OBIETTIVI:**

*consentire il corretto funzionamento del mercato interno
agevolare l'accesso alla giustizia*

○ **PRINCIPI GUIDA:**

semplicità

rapidità

proporzionalità

economicità

uniformità



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Relazione della Commissione sull'applicazione del Regolamento (CE) n. 861/2007 del 19 novembre 2013 trasmessa a Parlamento europeo, Consiglio e Comitato economico e sociale europeo ai sensi dell'art. 28 del Regolamento.

- individuazione degli ostacoli alla realizzazione del pieno sfruttamento delle potenzialità dell'ESCP
- proposte di modifica miranti ad offrire un mezzo di ricorso efficace ai consumatori e alle imprese, in particolare le piccole e medie imprese (PMI).



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REGOLAMENTO (UE) 2015/2421

Principali modifiche:

- innalzamento del limite di valore da 2000 a 5000 euro;
- incentivo all'uso di mezzi di comunicazione a distanza sia per la notifica degli atti che per lo svolgimento delle udienze e l'acquisizione di prove;
- contenimento dei costi/proporzionalità delle spese e incentivo all'uso di strumenti di pagamento a distanza;
- richiesta di impegno degli Stati a fornire assistenza pratica per l'avvio della procedura nonché tutte le informazioni necessarie, anche su web.



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Art. 28 Reg. (CE) 861/2007, come modificato nel 2015



15 luglio 2022 : nuova tappa per la valutazione dell'efficacia dell'ESCP e dell'opportunità di revisione.



Contributo del Consorzio SCAN



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A. Indagine sul grado di conoscenza dell'ESCP nonché sulle ragioni del suo scarso utilizzo: predisposizione di questionari e interviste e sottoposizione alle diverse categorie di soggetti interessati: giudici, avvocati, accademici ed esperti che forniscono consulenza legale; cittadini/consumatori/imprenditori dell'UE; rappresentanti delle associazioni dei consumatori.

B. Analisi dei risultati: esame delle interviste raccolte e individuazione di lacune, ostacoli e difficoltà presenti nella procedura.

C. Elaborazione di linee guida: dapprima a livello nazionale e poi in una versione unica armonizzata attualmente sottoposta al vaglio della Commissione.



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POLICYMAKERS GUIDELINES

A. Proposed Amendments to Regulation No. 861/2007

1. Increasing the financial limit of the ESCP's scope referred to in Article 2(1) of the Regulation from EUR 5,000 to **EUR 10,000**.
2. **Extending the material scope** of the Regulation to new areas previously excluded from Article 2(2) of the Regulation, such as property rights and maintenance obligations arising from family relationships, parentage, marriage or relationships producing effects comparable to marriage, wills and successions, administrative claims and the protection of privacy and rights relating to personality.
3. Extending the material scope of the ESCP to compensation disputes relating to cross-border labour relationships.



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4. The ESCP should be made **compulsory** for the resolution of cross-border small claims.
5. Reserving the use of ESCP to **functionally-specialised sections of domestic courts** working in coordination.
6. Amending Article 8 of the Regulation, relating to the way hearings are held, introducing the **obligation** for national courts to offer the parties the opportunity to participate by **teleconference or videoconference**.
7. **Simplifying the forms** attached to the Regulation (A, B, C and D) in order to ensure an easier access to justice through the ESCP.
8. Within matters pertaining to the ESCP, obliging national courts to accept forms and documents by **electronic means** and foster the digital handling of the procedure.
9. Amending the Regulation with regard to the **translation** of forms and documents.



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10. Providing for a privileged treatment in the stage of enforcement in relation to the ESCP's [final] decisions in order to ease and speed up their enforcement in all Member States.
11. Providing clarifications about the eligibility/admissibility of **credit fragmentation** under the ESCP.
12. Restricting the possibility to appeal against a final decision rendered under the ESCP.
13. Clarifying and providing a uniform standard regarding the **means of gathering evidence** to be considered admissible under the ESCP.
14. Establishing **fixed court fees equal** for all Member States or indicating a reference range to be adopted by all Member States.



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15. In line with the previous points, it is suggested that Member States be requested to review and reformulate the statements made in accordance with Article 25:
- i. calling for a clearer indication of which national courts have jurisdiction and a practical and intuitive guide to help European citizens identify the court to which they should apply;
 - ii. requiring that electronic means of communication be accepted in addition to, and as an alternative to, those currently accepted;
 - iii. requiring the precise identification of the authorities and organisations deputed to provide practical assistance under Article 11, providing the relevant contact details so that the parties can get in touch with them easily;
 - iv. requiring court fees to be established in accordance with the fixed amount or reference range indicated in the Regulation;
 - v. providing for a harmonised appeal procedure applicable to all Member States;
 - vi. requiring the inclusion of English and French among the languages accepted.



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16. Collecting and regularly providing transparent data and adequate statistics on the use of the ESCP in national courts.
17. Extending the use of the ESCP to national disputes.
18. Strengthening the link between the ESCP and alternative or online dispute resolution (ADR, ORD) mechanisms.
19. A provision should be made for a centralised online platform to be set up to allow Judicial Authorities to share information regarding the ESCP, as well as case files and judgments in order to coordinate and facilitate uniform and harmonised application of the Procedure across the European Union.



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B. Remarks to make the European e-Justice Portal more user-friendly

1. Implementing measures making it easier for European citizens to be aware of the services provided by the European e-Justice Portal.
2. Making the European e-Justice Portal accessible to EU citizens without the help of a lawyer.



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Grazie per l'attenzione !