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**Ordine degli Avvocati di Roma**

Venerdì 29 Gennaio 2021, ore 14.00

***EUROPEAN SMALL CLAIMS PROCEDURE***

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***Criticità applicative del Regolamento CE n. 861/2007 e linee guida applicative per autorità giudiziarie e utenti***

avv. Rita Tuccillo (LUISS)



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# EUROPEAN SMALL CLAIMS PROCEDURE – ESCP

## PROCEDIMENTO EUROPEO PER LA RISOLUZIONE DELLE CONTROVERSIE TRANSFRONTALIERE DI MODESTA ENTITÀ

Regolamento (CE) n. 861/2007

Regolamento (UE) n. 2015/2421



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## PUNTI DI FORZA DELLA ESCP:

- 1. celerità;*
- 2. semplicità;*
- 3. possibilità di ricorrere a tecnologie moderne per eliminare la distanza geografica tra le parti;*
- 4. esecutorietà della sentenza;*
- 5. riduzione dei costi.*



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## CRITICITÀ APPLICATIVE DELLA PROCEDURA:

- 1. assenza di autonomia processuale della disciplina europea;**
- 2. scarsità di risorse tecnologiche e di conoscenza della procedura;**
- 3. profili di incompatibilità con le regole dettate dai codici di rito interni.**



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*Obiettivi del Progetto SCAN –  
Small Claims Analysis Net*



*implementazione della European Small Claims  
Procedure, attraverso vari strumenti di  
divulgazione.*



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*Il team LUISS ha elaborato le*

*Harmonised Guidelines for Judicial Authorities and Users, perseguendo tre principali finalità:*

- incrementare il ricorso alla ESCP;*
- rendere la procedura più accessibile per consumatori ed utenti;*
- assicurare la uniforme applicazione delle norme contenute nel Regolamento n. 861/2007.*



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***Queste le linee guida armonizzate sottoposte alla Commissione UE:***

**A. Initiatives to promote the awareness, use and knowledge of the European Small Claims Procedure**

1. Organising training events for judges, lawyers and consumers, not only specifically about the small claims' procedure created by the ESCP, but also regarding digitisation, the use of electronic means of communication and translation services for different foreign language(s).
2. Inserting the study of the Regulation No. 861/2007 in the curriculum of law schools, in the context of courses on civil procedural law, EU law, consumer rights' protection, private law or commercial law.
3. Promoting interorganisational workshops and training within the courts competent to apply the ESCP.
4. Serious efforts should be undertaken in the judicial systems of each Member State to promote the digitisation of the communication services in the court(s) competent to apply the Regulation No. 861/2007.



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5. The court competent under the ESCP Regulation should ensure the necessary equipment and staff training needed to promote digitisation.
6. The rules about the e-filing and e-evidence should be harmonised under the ESCP. The judges should be equipped with the necessary tools to accept e-evidence and e-filing (instead of being able to accept only documents and files sent by ordinary post or delivered in person, as it happens in some countries).
7. Every Member State should upload the judgments rendered under the ESCP Regulation in a public online portal, to disseminate models of best practices regarding small claims' disputes.
8. Creating a specific website to centralize useful information about the ESCP Regulation or to increase the knowledge regarding the European e-Justice Portal.





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## **B. About the application of the EU Regulation No. 861/2007: assistance to users; transparency of the procedure and role of the judge**

1. Ensuring the effective implementation of Article 11 of the ESCP Regulation and providing or increasing (in the countries where there are already forms of assistance for citizens in place) the role of an information desk providing assistance to users.
2. Increase cost transparency for the small claims procedure through the development of a standard table of costs for each kind of expense and by making available an electronic calculator on the European e-Justice Portal.
3. Clarifying that the criteria determining the maximum value of small claims under the ESCP Regulation do not include interests, expenses and disbursements, despite the potential provisions of domestic law stating otherwise.





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4. Establishing a specific translation center at the EU level available for all Member States or a common online translation platform shared by all Member States.
5. Authorising the parties to provide answers to the ESCP forms and evidence in several languages.
6. Judicial authorities should encourage the use of ADR or ODR in ESCP cases by inviting the parties to use them.



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### **C. Further Suggestions**

- 1. Setting a specific and simplified appeal procedure under the ESCP, because the appeal procedures provided by the domestic laws of the Member State are significantly different.**
- 2. Appointing one or a few national courts as competent to apply the ESCP in each Member State, provided that teleconferencing tools are available, dispensing with the need for the parties to physically go to the court.**
- 3. Introducing an express provision in the ESCP allowing for class actions.**



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**Riflessioni conclusive.**

*Grazie per l'attenzione!*