

# The European Procedure on Reduced Value Claims

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**Abstract:** Maintaining and developing the area of freedom, security and justice is a major objective of the European Community, which guarantees the free movement of persons. As a result of litigations regarding the applications with a reduced value arising among physical or legal persons, it was felt the need for a community legislation that would guarantee identical conditions, both for creditors and debtors throughout the entire European Union territory. The European procedure regarding the debts recovery of reduced value facilitates the access to justice and it is characterized by simplifying and expediting the settling of the transboundary litigations, reducing costs, the recognition and execution of the court order in a Member State given in another Member State. This procedure is available to litigants as an alternative to the procedures provided by the laws of Member States. The Regulation (EC) no. 861/2007 establishing a European procedure regarding the applications with reduced value applies in civil and commercial matters in the transboundary cases, regardless the nature of the court when the application value, without taking into account the interest, expenditures and other costs, does not exceed 2000 Euro at the time of receiving the application form by the competent court. This procedure does not apply to revenue, customs or administrative matters or in regard to state responsibility for acts or omissions in exercising the public authority, and other matters specifically referred to in the Regulation. A cause is transboundary in nature when one of the parties has its habitual residence in a Member State, other than the one where the court receives such application. The proper procedure of application resolution for the recovery of debts with reduced value is governed by the rules of procedural law of the Member State in which the proceedings are conducted, and the execution of court of law is made by state legislation in which it takes place. The Regulation expressly provides that the court order in this matter can not be, in any form, the subject of reexamination, in the State member in which its execution is requested. As regards the linguistic regime, the application will be written in the language or in one of the procedure languages of the court; the costs are incurred by the losing party in the application. But the court will not grant the party that won the lawsuit the expenses that were not necessary or the ones that have a disproportionate value in relation to the application.

**Keywords:** transboundary nature, scope, evidence, recognition, costs.

## 1. Prior considerations

In order to create a space of security, freedom and justice, as well as the good functioning of the internal market, the Community adopted, among others, some measures that will eliminate the obstacles against the proper progress of civil procedures on judiciary cooperation in civil matters, with trans-border incidence, in recuperating the claims with reduced value. In this context, the European Council reunited in Tampere on 15 and 16 October 1999 invited the Council and Commission to establish common procedural norms in order to simplify and accelerate the solving of international disputes on reduced value claims in consumer's law and commercial field. On 20 December 2002 the Commission adopted the Green Paper concerning the creation of a procedure on the European payment order and adoption of measures to simplify and accelerate the solving of disputes concerning reduced value claims. The purpose of this procedure is to facilitate the access to justice in the EU member states. This desideratum is based on the fact that at the moment there isn't any Community legislation, neither material nor procedural that can guarantee identical conditions for both creditors and debtors in the EU. In other words, we cannot talk about a European civil procedure on the recovery of such claims.

The purpose of adopting the European procedure norms of this type is to simplify and accelerate the solving of

trans-border disputes and cost reduction. In the same time, it is intended to offer the interested ones an optional instrument that can complete the possibilities regulated by the member state's legislations, without bringing them any prejudice. The base of this procedure is the Regulation (CE) no.861 on 11 July 2007 of the European Parliament and Council to establish a procedure on the reduced value claims that came into force on 1st January 2008. The regulation is structured in four chapters, with 29 articles and four annexes. We have to consider the duration from the adoption until the coming into force of the regulation, which can be explained by the fact that its regulations correspond to the exigencies of the community legislation. This paper's purpose is not to make a detailed analysis of the rules consecrated by the regulation, but only a summary presentation of the main norms that govern the new community regulation.

## **2. Object and scope**

The regulation's object is to establish a European procedure concerning the reduced value claims in order to simplify and accelerate the solving of disputes concerning this type of requests and the reduction of costs in the trans-border cases. This European procedure is at the judges disposal, as an alternative to the procedures stipulated in the member state's legislations. We have to mention the fact that the Regulation eliminated the intermediate procedures necessary for the recognition and execution, in a member state, of the decisions taken in another member state, in what concerns the European procedure on reduced value claims. The elimination of the exequatur procedure ensures the rapid recovery of the reduced value claims thus the Regulation marks a substantial progress at European level.

In what concerns the scope, article 2, al. 1 of the Regulation states that it is applied in civil and commercial matters in trans-border cases, no matter the nature of the instance. It results thus that a trans-border case has to be implied, meaning that at least one of the parties has to have residence in a member state, other than the one in which the judicial instance referred to is located. The residence is established according to the articles 59<sup>1</sup> and 60<sup>2</sup> of the Regulation (CE) no.44/2001 on the competence, recognition and execution of the decisions in civil and commercial matters. In establishing the trans-border feature of a case the date when the judicial instance receives the claim forms have to be taken into consideration. By reduced value claim, in virtue of the regulation, we refer to the claims with a value of maximum 2.000 euro, at the time the judicial instance receives the sign up form, by the competent instance without taking into consideration the interests, the expenses and other costs. The Regulation rigorously determines the content on the phrase "reduced value", unlike the procedure Code when establishing the competence of the instances on the value of the object. The Regulation does not apply in fiscal, customs or administrative matters, or in the cases that refer to the state's liability for acts or omissions in exerting public authority (*acta iure imperii*). Following, in the article 2, al.2 it is mentioned that the Regulation does not apply to matters that refer to: marital status or judicial capacity of private persons, patrimony rights deriving from marital regimes, wills and inheritance and other legal persons, friendly agreements, composition procedures and other similar procedures; social insurance; arbitrary; labor law; rental of real estate commodities, except actions with claims that have the payment of a sum of money as object; prejudice to the right to life or the rights that imply personal status, including calumny.

The Regulation determines the concept of "member state" referring to the EU's member states, except Denmark, that was never part in its adoption and has no obligation in its virtue.

## **3. European procedure regarding the reduced value claims**

The court is referred to by the claimant (the initiator of the European procedure on reduced value claims) by filling in the type A form provisioned by the Regulation. The request can be personally submitted or mailed or any other mean of communication, such as fax or e-mail, to the competent judicial instance to be solved, according to the dispositions of Regulation no.44/2001. The information concerning the judiciary competence norms are available on The European Judicial Atlas web site. The A form excels by a rigor imposed by the Regulation, as the claimant is obliged to obey and insert all the solicited elements, to describe the evidence that support the request and submit, if necessary, the relevant documents for justification. Member states have the obligation to take the

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<sup>1</sup> (1) "In order to determine if a party is resident in the member state where the judicial instance is referred to, its internal law is applied. (2) "In case a party does not reside in the member state where the court is referred to, in order to determine in the party is resident of another member state, the internal legislation of that state is applied."

<sup>2</sup> (1) "According to the new Regulation, a society or another legal person or association of private or legal persons resides in the place where it has: a) the legal centre or the b) central administration or c) the business centre. (2). In what concerns the United Kingdom of Ireland, through legal centre we refer to the social centre or, in its absence, the registration place or, in its absence, the place in which was set up, according to law. (3) To determine if a fund is located in the member state where the instances were referred to, the instance applies its norms of private international law."

necessary measures for the form to be available for all instances that can sustain a European procedure on reduced value claims. Moreover, the member states inform the Commission on the accepted means of communication. We consider that the Romanian legislator has to provision in detail, in the next Civil Procedure Code the elements that the proceedings have to contain as well as the possibility to retreat the request in a period of time established by the instance. In the present regulation, for example, in what concerns the appeal, in case the appeal request does not fulfill the conditions imposed by law, the judicial instance's president will be able to return it in order to be remade, prolonging the appeal term with five days (art 303, al.5). In the practice of some instances, no proper attention is given to these provisions, leading most of the times in a very long time for the judgment and decision. In case the judicial instance asserts that the information provided by the claimant are not clear enough or are inadequate or the form was not filled in correctly, except for the situations in which the request is groundless or inadmissible, the instance grants the claimant the possibility to fill in or to rectify the form or to provide additional information or documents or to retreat the request in the period of time established by it. The instance uses in this case the type B form, stated in annex II of the Regulation. In case the request is groundless or inadmissible or in case the claimant does not fill in or rectify the form in due time, the request is rejected. What happens in case the claimant is not applied the provisions of the Regulation? In this situation, the judicial instance is obliged to inform the claimant. If he does not retreat the request, the instance examines it according to the relevant procedure norms of the member state in which the procedure is displayed. As we can see, the European procedure on reduced value claims is written. We can talk about the oral principle only when the judicial instance disposes of an oral debate and if it considers that is necessary or if it is solicited by one of the parties. The court can refuse such a request in case it decides that an oral debate is not necessary for the process. This denial is motivated in written and cannot be separately contested. But the instance can also set up an oral debate through a teleconference or through other means of communication, when these are available.

After receiving the form correctly filled in, the judicial instance fills in part I of the type C answer form, stated in annex III and transmits a copy of the request for to the defendant. These documents are transmitted within 14 days from the receipt of the form correctly filled in. the communication and notification of these documents is made through courier, with receipt confirmation that proves the receipt date. In case the notification or communication mentioned above is not possible or available, it can be made through any of the means stated in article 13 named **“the notification or communication accompanied by the receipt confirmation from the debtor's part”** or 14, named **“the notification or communication unaccompanied by the receipt confirmation from the debtor”** of the Regulation (CE) no.805/2004 on the establishment of an European executor title for the uncontested claims. From the moment the request form is received and the answer one as well, the defendant has 30 days to answer by filling in part II of the type C answer form or in other adequate way, without using the answer form as well as retransmitting it in court, together with other relevant documents of justification, if necessary. Naturally, the judicial instance will communicate the claimant, within 14 days from receiving the answer from the defendant, a copy of this answer and the relevant documents of justification. It is possible for the defendant to declare that the value of an unevaluated request is over 2.000 euro. In this situation, the instance decides, within 30 days from transmitting the answer to the claimant, if the request is under the present regulation's scope. This decision cannot be contested separately. In case the defendant formulates a counterclaim, this one will be communicated to the claimant, who has 30 days from the notification date to answer. What happens if the counterclaim has a value bigger that 2.000 euro? In this case, the principle *accessorium sequitur principale* does not apply. The main request and the counterclaim are not examined under the European procedure concerning the reduced value claims, but according to the procedural norms of the member state in which the procedure is being deployed.

In what concerns the language in which the forms are filled in, the Regulation stipulates that they are presented in one of the language of procedure of the judicial instance. In case any other document received by the instance is drafted in another language than the procedure one, the judicial instance can solicit its translation, only if necessary for its decision. In case one of the parties refuses to accept a document, based on the fact that is not drafted:

(a) In the official language of the member state the request is addressed in- if the member state has more than one official language- in the official language or one of the official languages of the place the document is transmitted to, or

(b) In another language familiar to the addressee the instance informs the other party on this matter, for it to provide a translation of the document (article 6, al.2).

The regulation stipulates that for the correct completion of the forms the member states provides the parties with technical assistance and that their representation by a lawyer or other judicial representative is not mandatory. The rigor requested by the Regulation in completing the forms, the written dialogue between the parties and the judicial

instance and between the parties to the dispute, until the trial stage and not granting the sue charges with a disproportionate value, justify the absence of lawyers in these cases. Following the compliance with the principle of access to justice, the Regulation consecrated in article 12, named “the instance’s role” that this offers the judicial qualification of the request, informs the parties on procedural matters (if necessary) and whenever the case, tries to determine an agreement between the parties. The dispositions referring to the judge’s insistence “in the process’s stages, in order to provide an amiable solution” are comprised also in the civil procedure Code (article 129, al.3), but the number of cases solved through an agreement of the parties is reduced.

In order to grant the parties’ rights, in case the instance sets up a term, the interested party is informed on the consequences of the failure and in extraordinary cases, the instance can prorogue the terms, if necessary.

The instance can then proceed in judging the reduced value claim and pronounce a decision within 30 days from receiving the answer from the claimant or the defendant. In case the instance is not elucidated concerning the entire case, it solicits the parties to provide more information related to the request, until the due time but no later than 30 days. If after the receipt of the additional information, the case cannot be trialed, the instance sets up the means to obtain evidence necessary for the decision, according to the provisions on the acceptance of evidence. In the reduced value claims, the instance can allow witness and expertise? The instance can allow expertise or witnesses only when they are necessary for the judgment. In this case the instance will take into consideration the costs this process implies. The instance can accept the evidence consisting in written depositions of the witnesses, experts or parties. It can also agree with obtaining evidence through videoconference or other means of communication when they are available. The instance must choose the most simple and onerous means to obtain evidence. When it considers necessary, the instance cites the parties to present themselves at an oral debate, within 30 days from the citation. In this case, the instance makes a judgment within 30 days from the debate or after it received all the necessary information to make a judgment. In case no answer is received from the respective party, in due term, the instance will decide regarding the main request or the counterclaim through a decision. The instance will decide also in what concerns the sue payments, at the party’s request. The claimant will of course be the one sustaining the sue payment. But unlike the civil procedure Code, the Regulation stipulates that “the instance doesn’t grant the party that won the trial the payments that were not necessary or the ones that are disproportional with the value of the request” (article 16). The civil procedure Code, in article 274, al.3 grants the judge the right to “increase or decrease the lawyer’s fees, according to the ones presented in the minimum fees table, every time it considers they are too big or too small for the case or for the activity they deployed as lawyers”. Comparing these texts, we can easily notice that the Regulation’s dispositions are easy to apply and are protected from critics from a party, who can sustain that the payments he made were disproportionate and too big for a reduced value request matter. The judge of the cause is the one that interprets and applied the dispositions mentioned above, in the case brought before him.

The Regulation does not stipulate the way to solve the incidents that can appear during the solving of a reduced value claim. But, in article 19, it is stated that the European procedure concerning the reduced value claims is regulated by the norms of procedural law in the member state where the procedure is deployed, without prejudice to the dispositions in the Regulation. Accordingly, any incident that involves the competent instance and the full court will be solved according to the provisions of the civil procedure Code and the internal Regulation of the judicial instances.

In all the cases above mentioned, the judgment will be communicated to the parties, in case all the required documents were transmitted. It is natural to address the question of ways of attacking this judgment. Article 17 in the Regulation stipulates only the member state’s obligation to inform the Commission if their procedures norms provision a way of contesting a judgment in the matter of a European procedure regarding reduced value claims, as well as the term in which such a claim can be formulated. This information is made public by the Commission. We have to mention that in article 18, the Regulation establishes minimum standards for the jurisdictional control of the judgment. Thus, “the defendant has the right to solicit the jurisdictional control of the judgment in a European procedure on reduced value claims before the competent judicial instance where the decision was pronounced, when:

- (a) (i) the request form of the citation for the oral debate were transmitted or communicated through an oral mean, without the personal receipt confirmation, according to article 14 of the Regulation (CE) no.805/2004 and
- (ii) the communication or notification were not made in time so that the defendant could prepare the defense
- (b) The defendant couldn’t call the request into question, for very serious reasons or following extraordinary circumstances independent from his will, on condition that, in any of these cases, he reacts promptly”.

In case the reasons invoked are groundless, the judicial control instance will reject the appeal and consequently maintains the request as being legal and grounded. If the judicial instance decides that the exertion of the appeal is based on one of the above mentioned reasons, the judgment in the European procedure on reduced value claims is

avoided. The term 'avoid', as a solution that can be pronounced by the judicial control instance is not comprised in the civil procedure code and is not considered to be right. The civil procedure code offers, for the abovementioned cases, in a) and b) (when the judicial control instance asserts that the critics are grounded) solutions for the dismissal or annul de judgment, when necessary.

Although the Regulation abounds in terms imposed to the litigants and even the judicial instance, we have to mention that the jurisdictional control of the term in which the defendant has the right to invoke the reasons in a) and b) has to be promptly. The procedural rights have to be exerted in good faith and respecting the terms provided by law or, at the receipt of the claimant's request that has jurisdictional control as purpose, the judge can arbitrarily establish the promptly term, generating a non unitary judicial practice and making way for new claims, sometimes from both litigants.

#### **4. Recognition and execution in another member state**

Based on mutual recognition principle of the judicial systems in the member states of the European Union, the judgments pronounced in a member state are completely recognized in the other member states, without a special procedure. In this context, article 33 of the Regulation (CE) no.44/2001 stipulates that "a judgment made in a member state is recognized in the other member states, without a special procedure being required". In what concerns the requests discussed in this paper, the Regulation stipulates that a judgment made in a member state in the matter of European procedure on reduced value claims will be recognized and executed in another member state, without a recognition judgment of the executor character and without the possibility to oppose to its recognition. Thus, the *exequatur* was eliminated in what concerns the execution of the judgments in the member states. Any judgment in a European procedure regarding reduced value claims is executed in the same conditions as a judgment made in the member state where the execution takes place. In other words, the execution procedure that has to be followed is the one of the member state's legislation, where the execution takes place. The execution procedure begins at the request of the party interested in recovering the claim, that will be accompanied by: a copy of the judgment that can fulfill the necessary conditions of establishing its authenticity and a copy of the certificate of type D form, stipulated in annex IV. When necessary, a translation of this form in the official language of the member state that executes the judgment –in case in that state there is more than one official language- in the official language or one of the procedure languages of the judicial instance stated in the place where the execution id being followed, according to the member state's legislation or in another language accepted by the member state that executes the judgment. In this context, each member state can indicate the official language/s of the EU's institution/s than its own, that the state can accept in case of a European procedure of recovering claims with reduced value. The translation of the D form's content is made by an authorized translator in that state.

In this stage of the civil trial, the party that solicits the execution of a judgment made in a European procedure of reduced value claims in another member state is not obliged to have an authorized representative; or a post address in the member state that executes the judgment, except the judicial executors. Also, the solicitant is not obliged to present a guarantee or a gage, no matter the currency, based on the fact that he is not a resident of the state solicited for the execution.

The Regulation offers special attention to the procedural requests in case the execution is denied, including a limitation or suspension of the execution.

The Regulation does not use the term debtor, but person that refuses the execution. Since this person is directly interested in suspending the execution, will address to the execution instance, in case the judgment of the European procedure on reduced value claims is not compatible with a prior judgment, made in a member state or a third one, when the following conditions are met: the prior judgment implied the same parties, in a litigation with the same cause; the prior judgment was made in the member state where the execution is solicited or meets the conditions to be recognized in the member state that solicits the execution; and the incompatibility of the judgments couldn't be invoked as being an objection in the judicial procedure in the member state in which the judgment was made, in a European procedure on reduced value claims.

The judgment of such a procedure cannot be the object of a merits review in the member state where the execution is solicited (article 27, al.2).

In case one of the parties appealed a judgment made in a European procedure on reduced value claims or another form of attack is available or the way consists in jurisdictional control, the instance or competent authority in the member state that solicits the execution can, base on a request of the defendant: limit the execution procedure to ensuring measures; condition the execution by a guarantee that will be established by the instance; or in exceptional conditions, suspend the execution procedure. All these measures will be disposed by the instance according to the member state's legislation in which the execution, limitation or suspension is solicited.

## 5. Conclusions

What is new in what concerns this Regulation is the institution of a European procedure, regarding reduced value claims, namely 2.000 euro (without counting the interests, expenses and other costs, without prejudice to the judicial instance's competence), in order to facilitate the access to justice. This procedure simplifies and accelerates the solving of international litigations, without violating the rights of the parties to a fair trial; it focuses on respecting the conflicting principle, the right to be defended etc. ; it reduce the costs; it focuses on the principle of mutual recognition and execution of judgments made in the member states, eliminating the *exequatur* procedure. The Regulation imposes to the parties the formulation of the initial request, the answer and the counterclaim by filling in the forms in the annexes and this process is accompanied by practical assistance. The procedure is written, except the cases in which the judicial instance find appropriate an oral debate, or at the request of the parties. The representation of the parties is not mandatory. The member states have the obligation to cooperate, most of all through the European Judicial Network in civil matters, set up by the Decision 2001/470/CE, in order to provide information on the European procedure in reduced value claims and its costs. As the Regulation came into force only five months ago, we cannot appreciate and make statements on its application by the judicial instances besides the ones mentioned in the paper.