

PRINCIPLE OF COOPERATION AND CASE MANAGEMENT IN THE MODEL EUROPEAN RULES OF CIVIL PROCEDURE

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THE ADVERSARIAL PRINCIPLE

- Civil procedure & Society
- Adversarial Principle = Verhandlungsgrundsatz
- Criticism: Germany, France, England & Wales
- New balance between powers parties, lawyers and judge
- = Principle of Cooperation

MODEL EUROPEAN RULES OF CIVIL PROCEDURE

Rule 2 (General) Parties, their lawyers, and the court must co-operate to promote the fair, efficient and speedy resolution of the dispute.

PRINCIPLE OF COOPERATION

- Starting point
- Civil procedure from various perspectives
 - Litigants
 - Society
- Justifies a procedural model based on:
 - True facts
 - Correct legal rules
 - Effective and efficient use of scarce resources
- Role of participants varies throughout procedure (no predefined role)

MODEL EUROPEAN RULES OF CIVIL PROCEDURE

‘The rules provide a modern approach to civil litigation in that they put the emphasis on loyal co-operation between the judge, the parties and their lawyers. The rules are written from the perspective that judges, parties and their lawyers have a shared responsibility in putting an end to disputes in a fair, efficient, speedy and proportionate manner, either by way of settlement or by way of a court decision based on the true facts and right law. This means that the adversarial-inquisitorial divide is intentionally avoided. The underlying idea of the rules is that there is no mutually exclusive division of labour between the various participants in a civil lawsuit; there are only shared obligations. This means that apart from the parties, the court also has certain obligations regarding facts and evidence, whereas parties share the responsibility for the assessment of the pertinent legal issues with the judge.’

MODEL EUROPEAN RULES OF CIVIL PROCEDURE

- Proportionality
 - Nature, importance and complexity of case
 - Caseload of court

Rule 6 (Role of the parties and their lawyers) Parties and their lawyers must co-operate with the court to promote a proportionate dispute resolution process.

Rule 5(2):

In determining whether a process is proportionate the court must take account ... of the need to give effect to its general management duty in all proceedings with due regard for the proper administration of justice.

MODEL EUROPEAN RULES OF CIVIL PROCEDURE

Cooperation in the pre-action stage (Rule 51)

- Settle the case
- Prepare the case

Parties required to co-operate with the aim of avoiding ‘unnecessary disputes and costs, to facilitate the early consensual resolution of their dispute and, where such a resolution is not possible, the proportionate management of future proceedings ...’

May imply that parties make sure that their opponent is provided with ‘concise details’ of the claims and defences, that disputed legal and factual issues are clarified and, if possible, narrowed, and that relevant evidence is identified.

Parties may also discuss a timetable for the proceedings that may follow, make an estimate of the potential costs of litigation, and pay attention to prescription (statute of limitations), as well as jurisdiction, provisional measures, and ‘any other procedural matter’.

MODEL EUROPEAN RULES OF CIVIL PROCEDURE

Role of parties and their lawyers in court

- Contribute to the proper management of the proceedings

Must present claims and defences, including facts and offers of evidence, and assist the court in determination of relevant facts and applicable law 'as early and completely as possible and as appropriate to the careful conduct of litigation in order to secure procedural expedition.'

Court must monitor whether parties and their lawyers co-operate.

MODEL EUROPEAN RULES OF CIVIL PROCEDURE

- A case management hearing (or case management conference) should be held as early as possible.
- Court determines the claim on the merits at a case management conference or immediately thereafter.
- Case management orders may be made on the court's own motion (usually upon consultation with the parties) or on application of a party.

CONCLUSION