

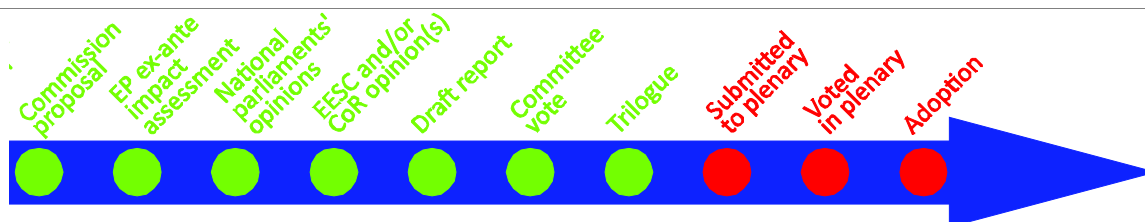
# Reform of the European Small Claims Procedure

## SUMMARY

On 23 June 2015, the European Parliament and the Council agreed on a compromise regarding the reform of the European Small Claims Procedure (ESCP). The compromise, which still requires to be formally adopted by the two co-legislators in the coming months, provides that the ceiling for claims will be raised from the current €2 000 to €5 000. In five years' time the Commission will be asked to look into the possibility of raising the ceiling even further. The court fees charged to claimants will have to be proportional to the value of the claim, but there will be no fixed cap on fees. Member States will have to accept electronic payments of court fees. The Commission's proposal to expand the scope of the ESCP to domestic cases with some cross-border implications was not taken on board. Although for the time being employment cases will not be subject to the ESCP, the Commission will be asked to look into the matter again in five years' time. The use of remote communications technology, like videoconferencing, will be increased and encouraged, although the Member States will not be under a legal duty to install such equipment.

**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure**

<i>Committee responsible:</i>	Legal Affairs (JURI)	COM(2013) 794 final of 19.11.2013
<i>Rapporteur:</i>	Lidia Geringer de Oedenberg (S&D, Poland)	<i>procedure ref.:</i> 2013/403(COD)
<i>Next steps expected:</i>	First reading in plenary	Ordinary legislative procedure



This briefing updates an earlier edition of 20 May 2015, [PE 557.014](#).

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## Introduction

The European Small Claims Procedure (ESCP) became operational from 1 January 2009, as a special, EU-wide procedure available for pursuing cross-border claims within the Internal Market of up to €2 000. However, during the first five years of its existence, the ESCP has been used only rarely. According to available statistical data, the average number of claims pursued yearly, per Member State, has amounted to around 120. In many Member States, the number of claims filed has even been below 10 per year. Having evaluated the functioning of the ESCP through a consultation and an external study, in 2013 the Commission put forward a proposal aimed at making the ESCP more widely available and more efficient. The proposal was examined by the Council, which reached a general approach in December 2014, and by the Parliament's Legal Affairs Committee (JURI), which adopted its report in April 2015. On 23 June 2015, following a series of trilogues, the Parliament and Council reached a compromise on the proposal, which was approved by Coreper on 29 June 2015, and then by the JURI Committee on 14 July. The Parliament is expected to adopt the text during the October 2015 plenary.

## Existing situation

### *Scope of the ESCP*

Under the existing legislation, for a claim to be eligible to be pursued under the ESCP, it must meet a three-pronged test:

- the **value** of the **claim** may not exceed €2 000 excluding all interest, expenses etc.
- the **claim must arise from private law** (it must have a 'civil or commercial' character), but may not concern: status or legal capacity of natural persons; matrimonial property rights, maintenance obligations, succession law; bankruptcy law; arbitration; employment law; tenancies of immovable property, except for monetary claims; and violation of privacy and other rights relating to personality,
- the claim must have a **cross-border character**, meaning that at least one of the parties must be domiciled in a different Member State than the one in which the competent court seised is located.

### *Fees*

Currently, the Regulation does not contain any rules on fees. As a consequence, many Member States still charge disproportionately high fees on small claims, amounting, for example, to 50% of the value of the claim, or even exceeding the value of the claim altogether. Furthermore, some Member States do not accept payment of the court fee by electronic means such as credit card, or even require payment in person at the cash desk of the court or by way of buying fiscal stamps.

### *Use of electronic communications*

Currently, courts are not obliged to use electronic means of communication if they decide to hold a hearing. Parties and witnesses may therefore face the high costs of travel to a different country in order to give testimony regarding a low value claim.

### **The changes the proposal would bring**

The Commission proposal was intended to change those elements which, in light of the evaluation of the functioning of the ESCP, were perceived as barriers to its broader use. These included, in particular:

- raising the **monetary ceiling on claims** from €2 000 to €10 000,
- making the ESCP available in purely domestic litigation (both litigants and court in the same Member State) if there was a **sufficient connection with a different Member State** (e.g. the place of performance of the contract, place where the facts giving rise to the claim took place, the place where the judgment is to be enforced)
- introducing a **maximum ceiling on court fees** (10% of the claim's value),
- enabling the **on-line payment of court fees**,
- making the use of **electronic means of communications obligatory** for hearings,
- obliging Member States to accept the standard form with the judgment in **at least one official EU language**, other than its own official language.

### **Preparation of the proposal**

The legislative proposal was preceded by a [public consultation](#) held between March and June 2013. 14 entities submitted written replies, including consumer stakeholders (BEUC, ECCs), lawyers' representatives (Bar Council of England & Wales, ENCJ), as well as business organisations (Business Europe). Furthermore, 85 entities answered an [on-line questionnaire](#), including just two consumers who had been claimants in the procedure and not a single person who had been a defendant in such a procedure. An [external expert study](#) on the functioning of the procedure was delivered to the Commission by the Deloitte consulting firm. In November 2013, the Commission published a [report](#) on the functioning of the procedure. The proposal was accompanied by an impact assessment, essentially based on the Deloitte study.

### **Parliament's starting position**

Parliament had already drawn attention to the problems with regard to the ESCP in its June 2013 [resolution on improving access to justice](#) (2012/2101(INI)), issued before the tabling of the Commission proposal later that year. MEPs pointed out that the ESCP is not well known, and '**will not achieve a high profile if the current information policy continues to be pursued**'. It also pointed out that with regard to (digital) forms used in the ESCP their temporary and permanent 'storability' needs to be improved, so that the forms are equally visible in all languages, including on the website of the European Judicial Atlas in Civil Matters and on the European [e-Justice Portal](#).

### **Stakeholders' views**

In its preparations towards evaluating the ESCP and putting forward a reform proposal, the Commission ordered a [Special Eurobarometer 395](#) on small claims, asking EU consumers about their experience with cross-border litigation and the ESCP. The Eurobarometer revealed that as many as 86% of EU citizens had never heard of the ESCP.

In 2012, the **European Consumer Centres Network** [formulated](#) its own recommendations on the ESCP, calling for the establishment of one or more **central authorities**, setting up a widespread system of **assistance to consumers** wishing to bring a claim, and proposing that the ESCP should be conducted across the EU in **one common language**.

Academics have noticed the deficiencies of the ESCP and have come up with proposals for concrete solutions. **Xandra Kramer** [proposed](#) introducing an overall time limit for delivering a judgment, instead of the existing piecemeal limits which are capable of being extended. She also advocated enacting rules which would protect consumers as defendants in ESCP with regard to the recognition and enforcement of judgments and the introduction of a uniform rule on appeals. Being aware that the current regime of EU competences and political factors requires the limitation of the ESCP to cross-border cases only, she nevertheless [considers](#) that 'this is highly undesirable from the viewpoint of coherence, transparency, legal certainty, and non-discrimination'.

However, **Pablo Cortés**, has [argued](#) that in small cases, going to court should be the last resort. Therefore, he advocated a closer linkage between the ESCP and alternative dispute resolution (ADR), as well as on-line dispute resolution (ODR). In a recent (2015) [study for the JURI committee](#), Cortés developed these views and made concrete legislative recommendations providing for a strong interconnection between ESCP and ADR/ODR.

### Advisory committees

Following the publication of the Commission proposal, on 23 March 2014 the **European Economic and Social Committee** issued an [opinion](#) (rapporteur: Reine Claude Mader, France). The Committee supported the higher ceiling of €10 000 but at the same time expressed some reservations. It criticised the 10% cap on court fees as still being set too high and pointed to the need to define the notion of 'costs of proceedings' in the Regulation. As to the use of videoconferencing, the EESC pointed out that its use in small claims courts could be difficult and drew attention to issues of security and confidentiality. Pointing to Articles 47-48 of the [EU Charter of Fundamental Rights](#), the Committee stressed that parties should always have the right to use their official language for the entire procedure. Attention was also drawn to the need to provide effective assistance to parties (inter alia via the ECC network) and for the spread of information about the ESCP by universities, judicial training centres and courts.

### Parliamentary advice

The EPRS Members' Research Service prepared a [briefing](#) on the ESCP, presenting the existing legislation (October 2013), followed by an [in-depth analysis](#) of the Commission's amendment proposal (November 2014). In the meantime, the EPRS Ex-Ante Impact Assessment Unit prepared an [initial appraisal](#) of the Commission's impact assessment on the proposal (March 2014). Furthermore, the reform of the ESCP was put in the broader context of [Europeanisation of civil procedure](#) in an in-depth analysis on the topic, published by the Members' Research Service in June 2015.

In January 2015, the EPRS Members' Research Service organised a [policy hub on the ESCP and its forthcoming reform](#) with the participation of Prof. Xandra Kramer and Jacek Garstka (DG Justice, European Commission). Policy Department C commissioned an [external study](#) on the Commission's proposal from Dr Pablo Cortés, which was

presented at the [Civil Law and Justice Forum](#) (26 February 2015) and published as part of the Forum materials (February 2015).

## Legislative process

### Parliament: initial steps

The Commission proposal was published on 19 November 2013, and on 9 December it was referred to the Legal Affairs Committee which, on 20 January 2014, appointed Lidia Geringer de Oedenberg (S&D, Poland) as the rapporteur. In the current legislative term, Lidia Geringer de Oedenberg was reappointed rapporteur on 3 September 2014.

### Report of the EP Legal Affairs Committee

*Draft report of 7 November 2014*

In the [initial draft report](#) presented to the Committee on 7 November 2014, the rapporteur wanted to keep the ceiling for claims at €10 000, as proposed by the Commission. She proposed to enlarge the scope of the ESCP *ratione materiae* to claims for violation of privacy and the right of personality. Court hearings should not be mandatory to reach a settlement, unless it cannot be reached by correspondence. The introduction of videoconferencing would be obligatory only two years after the amendment enters into force. Member States would be obliged to allow citizens with a very low income to use the ESCP for free; this income threshold would be determined at national level. The rapporteur proposed to raise the threshold above which a judge would be obliged to grant a request for an oral hearing from €2 000 (as proposed by the Commission) to €5 000.

*Final report of 16 April 2015*

On 16 April 2015 the Legal Affairs Committee adopted its report. It put forward a number of modifications to the Commission proposal:

- a **double monetary ceiling on claims**: €5 000 in lawsuits brought against natural persons, and €10 000 in lawsuits brought against legal persons,
- keeping the ESCP available only in genuinely cross-border cases,
- making the ESCP available for disputes under employment law, as well as disputes regarding violations of privacy rights relating to personality, including defamation,
- making the introduction of **videoconferencing** technology by the Member States mandatory only three years after the entry into force of the regulation,
- introducing the possibility of addressing **written questions** to witnesses, who would also provide written answers to the court,
- appointment of experts by the court,
- lowering the ceiling for court fees from the 10% proposed by the Commission to as little as 5%,
- obliging each Member State to set a minimum income threshold under which parties would be allowed to use the ESCP for free.

### Council

*Working Party on Civil Law Matters (Small Claims)*

Within the Council, the Commission proposal was referred to the **Working Party on Civil Law Matters (Small Claims)** which examined the bill at regular meetings from February 2014. By November 2014, the working party [found](#) compromise solutions on a number of aspects. It was against the Commission's proposal to expand the definition of a cross-border claim, and therefore wanted to maintain the current scope of the ESCP. It supported the obligation of Member States to offer at least one means of payment at

distance for court fees, and the minimising of the translation requirement as regards the certificate for the enforcement of a judgment given in the ESCP. Finally, it supported making a bridge between the ESCP and the [European order for payment procedure](#), by allowing the claimant to use the European Small Claims Procedure when a statement of opposition has been lodged against a European order for payment.

#### *General approach*

At its meeting on 4-5 December 2014, the Council [reached agreement](#) on a [general approach](#) on the Commission proposal, putting forward the following modifications:

- **maximum ceiling for claims** set at €4 000 (twice the current ceiling),
- keep the ESCP available only in genuinely cross-border cases,
- no formal obligation on Member States to install distance communication equipment in courts,
- videoconferencing should not be used if that would be inappropriate from the point of view of fair conduct of proceedings,
- Member States should not be obliged to provide for legal aid in addition to what is provided by the [Legal Aid Directive](#), or assess specific cases; the information provided to citizens should only be general,
- no maximum ceiling on court fees,
- broad use of electronic methods of paying court fees, including direct debit,
- no duty to accept judgments in foreign languages.

#### **Outcome of the trilogues**

##### *Agreement between the Parliament and the Council*

In April 2015, Lidia Geringer de Oedenberg, the rapporteur, received a mandate from the Legal Affairs Committee to start negotiations with the Council with a view to seeking agreement at first reading (Rule 73 [RoP](#)). An agreement between the two co-legislators was [reached](#) on 23 June 2015. On 29 June 2015, this was [approved](#) by the Permanent Representatives Committee (Coreper). Subsequently, the Legal Affairs Committee voted to [endorse the agreement](#), on 14 July 2015.

##### *Scope of application*

The compromise text provides that the ceiling for claims would be elevated from the current €2 000 to **€5 000**, for all defendants alike. The cross-border requirement, as it stands now, will not be modified. By five years from the date of application of the revised ESCP, the Commission will be obliged to look into the possibility of further increasing the ceiling for claims.

Furthermore, the Commission will be obliged to look into the possibility of including certain **employment law claims** by carrying out a full impact assessment on that matter, which should take place by five years after the date of application of the reformed ESCP.

##### *Practical assistance to parties*

Parties will be entitled to free assistance in filling in the forms and general information about the procedure, but Member States will **not be required to provide for legal aid or for legal assistance** in the form of a legal assessment of cases, notwithstanding the generally applicable rules of national law implementing the [Legal Aid Directive](#).

##### *Electronic service of documents*

Whereas under the Commission proposal a party would always have to consent to the use of such a form of service, the compromise allows for national law to impose a duty

to accept electronic service, in line with the Council's approach. In general, service will be subject to the requirements laid down by the law of the addressee's location.

#### *Court fees*

The compromise text provides that court fees may not be disproportionate to the value of the claim and may not be higher than fees charged in a simplified domestic procedure in the Member State concerned. Furthermore, the preamble of the compromise text explicitly provides that Member States will be allowed to levy a reasonable minimum fee, as well as a separate fee for filing an appeal.

As regards **methods of payment**, every Member State must offer at least one of the three options listed in the compromise version: bank transfer; credit or debit card payment; direct debit from the claimant's bank account.

#### *Oral hearing vs written procedure*

Under the agreed text a court will be allowed to hold an oral hearing '*only if* it considers that it is not possible to render the judgment on the basis of the written evidence or if a party so requests.' The new wording will allow the court, whenever the applicable law of civil procedure allows for it, to gather written evidence *ex officio* in order to avoid holding a hearing.

Furthermore, the **decision to grant or refuse a request for an oral hearing** will remain, in contrast to the Commission proposal, at the court's discretion and judges will never be formally obliged to hold a hearing.

#### *Use of distance communication technology for hearings*

If a person to be heard is domiciled or habitually resident abroad, the court will have to hear that person by distance communication technology (e.g. video- or teleconference), if available at the court, unless the use of such technology would not be appropriate for the fair conduct of proceedings.

Member States will not be legally obliged to ensure that courts are actually equipped with such technology due to concerns over the financial aspects of installing such technology. Nevertheless, Member States are strongly encouraged to install appropriate devices, and the revised Regulation presumes that, as a rule, courts will have access to videoconferencing technology.

Furthermore, any party summoned to be physically present at the hearing will have the option of requesting a hearing by distance communication (if available at the court) if the costs of appearance in court would be disproportionate to the claim. On the other hand, a party summoned to be heard by distance communication technology may demand to be physically present.

#### *Evidence*

Courts will be obliged to use the **simplest and least burdensome method of taking evidence**. Oral testimony will be allowed only if the court cannot make the judgment on the basis of other evidence, submitted by the parties or otherwise available to the court.

#### *Enforcement of court settlements*

A new article has been added on the initiative of the Council, providing that a court settlement approved or concluded before a court in the course of the ESCP shall be **recognisable and enforceable under the same conditions as an ESCP judgment**. This

will not entail the creation of a new certificate, but will require a modification of standard form D.

#### *Other issues*

The standard form with the certificate concerning a judgment (which is the basis of its enforcement) will now be made available to a party in any official language of the EU institutions. Courts will have to use the multilingual dynamic standard form on the European e-Justice portal. On the other hand, the Commission's ambitious initiative to require Member States to accept form D in at least one of the official languages of the institutions has been done away with. Member States will have this option, but will not be obliged to use it.

The compromise text provides that the standard forms of the ESCP will be established by the Commission on the basis of **delegated acts**. This is in line with the Commission's proposal, whilst the Council initially preferred implementing acts.

Finally, the compromise text amends the European Order for Payment (EOP) Regulation with a view to allowing claimants requesting an EOP to have their case transferred to the ESCP in case the debtor launches a statement of opposition against the order.

#### **Further steps**

Following the approval of the compromise by Coreper and the JURI Committee, the text, once revised by lawyer linguists, will be submitted to a plenary sitting of the Parliament for a vote at first reading (probably in October) and then to the Council for its formal first reading.

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[eprs@ep.europa.eu](mailto:eprs@ep.europa.eu)

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