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Committee on Legal Affairs

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AMENDMENTS 55-120

Draft report **(PE 368.105v01-00)**
Hans-Peter Mayer
on the proposal for a regulation of the European Parliament and of the Council establishing a European Small Claims Procedure

Proposal for a regulation (COM(2005)0087 – C6-0082/2005 – 2005/0020(COD))

Text proposed by the Commission	Amendments by Parliament
Amendment by Diana Wallis	
Amendment 55 Recital 6	
(6) The European Small Claims Procedure should apply also to purely domestic cases in order to eliminate distortions of competition between economic operators in different Member States and to facilitate access to justice under equal conditions in all Member States.	(6) The European Small Claims Procedure should apply also to purely domestic cases in order to eliminate distortions of competition between economic operators in different Member States and to facilitate access to justice under equal conditions in all Member States***, especially in those Member States which have multiple internal jurisdictions (such as the United Kingdom)***.
	Or. en

Justification

Member States should have the option to apply this procedure to internal cases, too. This possibility would be in particular to the benefit of consumers in those Member States that do not have internal small claims procedures or in which the existing procedures have failed to meet the particular needs of consumers. It would also facilitate the claims in Member States who have multiple internal jurisdictions (such as the UK).

Amendment by Hans-Peter Mayer

Amendment 56
Recital 7 a (new)

(Does not affect English version.)

Or. de

Justification

The German term 'Bagatellverfahren' [used in the explanatory memorandum to the Commission document, though not in the text of the proposal] is misleading, as a 'bagatelle' is something that is not worth claiming.

Amendment by Klaus-Heiner Lehne

Amendment 57
Recital 9

(9) In order to reduce costs and delays, documents should be served on the parties by registered letter with acknowledgment of receipt, or by any simpler means such as simple letter, fax or email. The procedure should be a written procedure, ***unless*** an oral hearing ***is considered necessary by the court or tribunal***. The parties should not be obliged to be represented by a lawyer.	(9) In order to reduce costs and delays, documents should be served on the parties by registered letter with acknowledgment of receipt, or by any simpler means such as simple letter, fax or email. The procedure should be a written procedure***. The court or tribunal may on request hold*** an oral hearing. ***It should give reasons for refusing to do so, but the decision may not be challenged.*** The parties should not be obliged to be represented by a lawyer.

Or. de

Justification

The principle of openness implies that there must be an oral hearing at the request of one of

the parties.

Amendment by Hans-Peter Mayer

Amendment 58
Recital 9

(9) In order to reduce costs and delays, documents should be served on the parties by registered letter with acknowledgment of receipt, or by any simpler means such as simple letter, fax or email. The procedure should be a written procedure, ***unless*** an oral hearing ***is considered necessary by the court or tribunal***. The parties should not be obliged to be represented by a lawyer.	(9) In order to reduce costs and delays, documents should be served on the parties by registered letter with acknowledgment of receipt, or by any simpler means such as simple letter, fax or email. The procedure should be a written procedure***. The court or tribunal will hold*** an oral hearing ***at one party's request or if it considers an oral hearing necessary in the light of the evidence presented***. ***An oral hearing is also a hearing within the meaning of Article 6(1).*** The parties should not be obliged to be represented by a lawyer.

Or. de

Justification

Unless there is a mandatory rule requiring an oral hearing to take place at the parties' request, their interests will clearly be infringed. They will be denied the legitimate right to argue their case through advocacy in an oral procedure. So the regulation must ensure there is an oral hearing at the request of one party. This is one of the central principles of a fair trial.

Amendment by Maria Berger

Amendment 59
Recital 9

(9) In order to reduce costs and delays, documents should be served on the parties by registered letter with acknowledgment of receipt, or by any simpler means such as simple letter, fax or email. The procedure should be a written procedure, ***unless*** an oral hearing ***is considered necessary by the court or tribunal***. ***The parties should not be obliged to be represented by a lawyer.***	(9) In order to reduce costs and delays, documents should be served on the parties by registered letter with acknowledgment of receipt, or by any simpler means such as simple letter, fax or email. The procedure should be a written procedure***. The court or tribunal should hold*** an oral hearing ***if it considers an oral hearing necessary or this is requested by one of the parties***.

Or. de

Justification

Unless there is a mandatory rule requiring an oral hearing to take place at the parties' request, their interests will clearly be infringed. They will be denied the legitimate right pursuant to Article 6 of the ECHR to a fair and public hearing. So the regulation must ensure there is an oral hearing at the request of one party. The question as to which procedures require legal representation by a lawyer should remain a matter for regulation by the Member States as at present.

Amendment by Jean-Paul Gauzès

Amendment 60
Recital 10

(10) The court or tribunal should be given the possibility to hold a hearing through ***an audio***, video ***or email*** conference. ***It should also be given the possibility to determine*** the means of proof and the extent of the ***taking of*** evidence according to its discretion and admit the taking of evidence through telephone, written statements of witnesses, and audio, video or email conferences.	(10) The court or tribunal should be given the possibility to hold a hearing through ***a*** video conference ***or written statements of witnesses if such facilities are available***. The means of proof***, burden of proof*** and the extent of the evidence ***shall be governed by the law of the Member State in which the procedure is being held***.

Or. fr

Justification

The means of proof and extent of evidence used in the European small claims procedure must not be allowed to cast doubt on existing legal principles in this area in the Member States.

On the contrary, there is a need to safeguard legal certainty for the parties involved by

applying on this point the procedural law of the Member State in which the procedure is held.

This amendment is consistent with the amendment to Article 7(1).

Amendment by Jean-Paul Gauzès

Amendment 61
Recital 14

(14) In order to reduce costs, when the unsuccessful party is a natural person and is not represented by a lawyer or another legal professional, he should not be obliged to reimburse the fees of a lawyer or another legal professional of the other party.	***deleted***

Or. fr

Justification

To abolish a discriminatory principle that would encourage abuse.

This amendment is consistent with the amendment to Article 14(2).

Amendment by Klaus-Heiner Lehne

Amendment 62
Article 2, paragraph 1

1. This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal, where the ***total*** value of a ***monetary or non-monetary*** claim excluding *interests*, expenses and outlays does not exceed ***EUR 2000*** at the time ***the procedure is commenced***. It shall not apply, in particular, to revenue, customs or administrative matters.	1. This Regulation shall apply in civil and commercial matters ***in cross-border proceedings***, whatever the nature of the court or tribunal, where the value of a claim***,*** excluding *interest* ***charged thereon***, ***and excluding*** expenses and outlays***,*** does not exceed ***EUR 1 000*** at the time ***of receipt by the competent court or tribunal***. It shall not apply, in particular, to revenue, customs or administrative matters***, or to cases concerning the liability of a state for actions or omissions in the exercise of sovereign rights***.

Or. de

Justification

A claim of €2 000 is not 'small' in the European perspective.

Amendment by Klaus-Heiner Lehne

Amendment 63
Article 2, paragraph 1

1. This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal, where the ***total*** value of a ***monetary or non-monetary*** claim excluding *interests*, expenses and outlays does not exceed ***EUR 2000*** at the time ***the procedure is commenced***. It shall not apply***, in particular,*** to revenue, customs or administrative matters.	1. This Regulation shall apply in civil and commercial matters ***in cross-border proceedings***, whatever the nature of the court or tribunal, where the value of a claim excluding *interest* ***charged thereon***, ***and excluding*** expenses and outlays***,*** does not ***at the time of receipt by the competent court or tribunal*** exceed ***the sum applicable, in the Member State of the court before which the case is brought, to the procedure under this Regulation. The Member States shall determine the value for procedures before their courts. The value shall not be less than EUR 1 000 or more than EUR 3 000. The Regulation*** shall not apply to revenue, customs or administrative matters***, or to cases concerning the liability of a state for actions or omissions in the exercise of sovereign rights***.

Or. de

Justification

The differing economic conditions in the EU could be taken into account in this way. The minimum value should be €1000, to ensure an appropriate scope of application for the procedure. A maximum value of €3000 is in line with the higher claim ceilings for small claims procedures in the old Member States.

Amendment by Maria Berger

Amendment 64
Article 2, paragraph 1

1. This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal, where the ***total*** value of a monetary ***or non-monetary*** claim excluding *interests*, expenses and outlays does not exceed EUR 2000 at the time ***the procedure is commenced***. It shall not apply***, in particular,*** to revenue, customs or administrative matters.	1. This Regulation shall apply in civil and commercial matters ***in cross-border proceedings***, whatever the nature of the court or tribunal, where the value of a monetary claim excluding *interest* ***charged thereon***, ***and excluding*** expenses and outlays***,*** does not ***at the time of receipt by the competent court or tribunal*** exceed EUR 2000***.*** It shall not apply to revenue, customs or administrative matters***, or to cases concerning the liability of a state for actions or omissions in the exercise of sovereign rights***.

Or. de

Justification

As the European small claims procedure is supposed to be a simple and rapid process we must ensure that it is applicable only to cases that are suitable for processing in such a procedure. Restricting the scope to monetary claims fulfils this requirement.

Amendment by Diana Wallis

Amendment 65
Article 2, paragraph 1

1. This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal, where the ***total*** value of ***a monetary or non-monetary*** claim excluding *interests***,** expenses and outlays does not exceed ***EUR 2000*** at the time the ***procedure is commenced***. It shall not apply, in particular, to revenue, customs or administrative matters.	1. This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim excluding *interest* ***attaching thereto and excluding*** expenses and outlays does not exceed ***the prescribed value in the Member State concerned*** at the time the ***claim is received by the competent court or tribunal***. It shall not apply, in particular, to revenue, customs or administrative matters***, or to the liability of the State for acts and omissions in the exercise of State authority***.

Or. en

Justification

This sets the financial limit for the proposal yet it is crucial to its usefulness. Too low a limit will effectively deny citizens cost-effective access to justice in relatively small cases.

Greater flexibility could be achieved either by allowing Member States to specify a higher sum than € 2000, or, if it that might appear too flexible, by providing a range within which Member States could set their own limits.

Amendment by Diana Wallis

Amendment 66
Article 2, paragraph 1 a (new)

1a. The prescribed value in any Member State shall be [EUR 2 000 or such higher sum or sums as that Member State may specify] [a sum or sums not less than EUR 2 000 and not more than EUR 10 000 specified by that Member State].

Or. en

Justification

This sets the financial limit for the proposal yet it is crucial to its usefulness. Too low a limit will effectively deny citizens cost-effective access to justice in relatively small cases.

Greater flexibility could be achieved either by allowing Member States to specify a higher sum than € 2000, or, if it that might appear too flexible, by providing a range within which Member States could set their own limits.

Amendment by Maria Berger

Amendment 67
Article 2, paragraph 2, point (f a) (new)

(fa) claims which under national law must be pursued in procedures where the judge is required of his own motion to ascertain the facts relevant to the decision,

Or. de

Justification

The regulation should not be applicable to civil-law claims that are referred to procedures in which, under national law, the judge is required to ascertain the facts relevant to the decision. The ex-officio gathering of evidence by the court serves to protect a weaker party, such as children, tenants etc. But the European small claims procedure is designed as a trial with opposing parties of which the ex-officio collection of evidence forms no part.

Amendment by Maria Berger

Amendment 68
Article 2, paragraph 2, point (f b) (new)

(fb) the termination of tenancies,

Or. de

Justification

The termination of tenancies should not be covered by the regulation. It is not inconceivable that a person might have to vacate their residence on the basis of an order created in the European small claims procedure – which would be enforceable immediately under the terms of the Commission's proposal for a regulation – thus being exposed to the risk of homelessness, only to find out subsequently that the court decision was mistaken.

Amendment by Maria Berger

Amendment 69
Article 2, paragraph 2, point (f c) (new)

(fc) injunctions.

Or. de

Justification

Injunction claims, where the decision often has serious financial consequences for one of the parties, are not suitable for treatment under the European small claims procedure. Rapid decisions in such cases need not be obtained through the small claims procedure but can be sought more appropriately by means of an interim order (German 'einstweilige Verfügung').

Amendment by Diana Wallis

Amendment 70
Article 2, paragraph 2 a (new)

2a. The court may decide that a claim should not proceed under the European Small Claims Procedure if

- the case is unusually complex or of extraordinary importance, or

- a specific procedure exists under national law for dealing with the subject-matter of the claim.

The court or tribunal should inform the claimant to that effect. Unless the claimant withdraws it, the case should proceed in accordance with the relevant procedure applicable in the Member State in which the proceedings are conducted.

Or. en

Amendment by Hans-Peter Mayer

Amendment 71
Article 3, paragraph 1, subparagraphs 1 a and 1 b (new)

The jurisdiction of the court or tribunal for the small-claims procedure shall be determined in accordance with Regulation (EC) No 44/2001.

Relevant evidence, and/or a description of such evidence, shall where necessary be enclosed with the claims form.

Or. de

Justification

The proposal does not contain clear provisions on determining the jurisdiction of the court or tribunal.

The requirement for the submission of evidence, where appropriate, seeks to prevent this from occurring at a later stage and causing delays.

Amendment by Maria Berger

Amendment 72
Article 3, paragraph 4

4. For the purpose of the interruption of periods of prescription or, as the case may be, limitation, the court or tribunal is deemed to be seized when the claim form is registered in accordance with paragraph 3.	***deleted***

Or. de

Justification

Interruption or limitation of the period of prescription should not depend on registration of the claim form before the court on an arbitrary date. In the present wording a claim could lapse because it has been brought under the European small claims procedure, whereas it would not lapse under the claims procedures of national law. The rules on prescription periods are subject to material law in a number of legal systems and depend on the nature of the claim pursued. This issue should not be regulated under the European small claims procedure.

Amendment by Hans-Peter Mayer

Amendment 73
Article 3, paragraph 4 a (new)

	(4a) The claim form, the response, any counterclaim and any description of relevant evidence shall be provided in the language of the court or tribunal.
	If other documents are submitted to the court or tribunal in a language other than the language of the proceedings the court or tribunal may order a translation of the documents concerned.

Or. de

Justification

The rapporteur proposes that the court should only be entitled to order a translation of additional supporting documents if a translation appears necessary. This implies that the court is already aware of their substance. Hence it makes better sense to choose the wording above.

Amendment by Klaus-Heiner Lehne

Amendment 74
Article 3, paragraph 4 a (new)

(4a) It shall not be permissible to increase the value of the claim after commencement of proceedings.

Or. de

Justification

Without the restriction preventing the claim from being increased after proceedings have begun there is a risk that the small claims procedure will be abused. Otherwise claimants supposedly entitled to claim no more than a total of €2000 from the defendant could put in a claim for only part of the full amount so as to benefit from the simplified procedure and then claim the remainder after the proceedings have begun.

Amendment by Hans-Peter Mayer

Amendment 75
Article 3, paragraph 4 b (new)

(4b) The value shall be determined by the court or tribunal when the claim is received, if the subject of the procedure is not a specified monetary amount. This decision may not be challenged.

Or. de

Justification

The Commission draft does not at present stipulate who determines the value at issue in non-

monetary disputes. For reasons of time it should not be possible to challenge the decision.

Amendment by Klaus-Heiner Lehne

Amendment 76
Article 3, paragraph 4 b (new)

(4b) The value shall be determined by the court or tribunal when the claim is received, if the subject of the procedure is not a specified monetary amount. This decision may be challenged.

Or. de

Justification

In the case of non-monetary claims, it is the claimant's interest that determines the value, so that here too there is a risk of abuse unless there is a rule that the judge should determine the value. Unless the regulation settles the matter, how it is handled will depend on the procedural law of the Member States, which is at variance with legal certainty (Article 19, section 4 of the German Basic Law) and the proposal's purpose of creating a uniform procedure. If the subject is a monetary sum that is already determined there is no need for the court to determine the value. The decision must be contestable as it ultimately determines whether the small claims procedure is applicable at all.

Amendment by Jean-Paul Gauzès

Amendment 77
Article 3, paragraph 5

5. Where a claim form does not relate to an action within the scope of this Regulation as set out in Article 2, the court or tribunal shall not treat the claim as a European Small Claim, but proceed to deal with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted. The court or tribunal shall inform the claimant to that effect.	5. Where a claim form does not relate to an action within the scope of this Regulation as set out in Article 2, the court or tribunal shall not treat the claim as a European Small Claim, but proceed to deal with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted. The court or tribunal shall inform the claimant to that effect.

	If the complexity of the case so requires, the court or tribunal may abandon the simplified procedure and follow the procedural law applicable in the Member State in which the procedure is being held. It shall in particular have regard to the observations or requests of the parties in this matter or recourse to an expert if this is indispensable to its decision.

Or. fr

Justification

When a case is complex, and particularly when recourse to an expert is necessary, this gives the judge the option of abandoning the simplified European procedure under way, on his initiative or at the request of the parties, to initiate normal proceedings.

Amendment by Jean-Paul Gauzès

Amendment 78
Article 3, paragraph 5

5. Where a claim form does not relate to an action within the scope of this Regulation as set out in Article 2, the court or tribunal shall ***not treat the claim as a European Small Claim, but*** proceed to deal with it in accordance with the ***relevant*** procedural law applicable in the Member State ***in which the procedure is conducted. The court or tribunal shall inform the claimant to that effect.***	5. Where a claim form does not relate to an action within the scope of this Regulation as set out in Article 2, the court or tribunal shall ***inform the claimant and invite him to initiate new proceedings*** in accordance with the procedural law applicable ***to his claim*** in the Member State ***concerned***.

Or. fr

Justification

To avoid any abuse of the Community instrument proposed, with the sole aim of simplifying the initiation of proceedings, claimants whose claim does not come within the scope of the European procedure should have to initiate 'normal' proceedings instead.

Amendment by Jean-Paul Gauzès

Amendment 79
Article 3, paragraph 7

7. Member States shall ensure that the claim form is available at all courts or tribunals at which the European Small Claims Procedure can be commenced, and that practical assistance is ***available at all such courts or tribunals to assist*** claimants ***to complete*** the form.	7. Member States shall ensure that the claim form is available at all courts or tribunals at which the European Small Claims Procedure can be commenced ***or is accessible electronically***, and that practical assistance is ***made available to*** claimants ***for completing*** the form.

Or. fr

Justification

To respect the principles of subsidiarity and proportionality we should leave it to the Member States to determine arrangements for assisting claimants on procedural questions.

Amendment by Jean-Paul Gauzès

Amendment 80
Article 3, paragraph 7

7. Member States shall ensure that the claim form is available at all courts or tribunals at which the European Small Claims Procedure can be commenced***,*** and ***that practical assistance is available at all such courts or tribunals to assist claimants to complete the form.***	7. Member States shall ensure that the claim form is available at all courts or tribunals at which the European Small Claims Procedure can be commenced and ***is accessible electronically***.

Or. fr

Justification

To ease access to the European small claims procedure, the claim forms should be available electronically, especially on the official websites of the Member States.

Amendment by Adeline Hazan

Amendment 81
Article 4, paragraph 1

1. The European Small Claims Procedure shall be a written procedure, ***unless*** an oral hearing ***is deemed to be necessary by the court or tribunal which shall take into account any observations or demands of*** the parties ***in this respect***.	1. The European Small Claims Procedure shall be a written procedure***. The court or tribunal shall hold*** an oral hearing ***if it considers this*** necessary ***or at the request of one of*** the parties. ***However, the court or tribunal may reject the request if it considers that, having regard to the particular nature of the case, a hearing would clearly be unnecessary to ensure that the case is dealt with properly. It shall give reasons for its rejection.***

Or. fr

Justification

The aim here is to ensure that discussion of the case is published, as required by Article 6(1) of the European Convention of Human Rights. But written procedure may be preferred to avoid unnecessary travelling by the parties to the case, thus incurring extra costs, especially in situations where written procedure is sufficient to deal with the case. However, this situation must not be used arbitrarily; hence the need for the judge to give reasons for rejecting a hearing.

Amendment by Hans-Peter Mayer

Amendment 82
Article 4, paragraph 1

1. The European Small Claims Procedure shall be a written procedure, unless an oral hearing is deemed to be necessary by the court or tribunal which shall take into account any observations ***or demands of the parties*** in this respect.	1. The European Small Claims Procedure shall be a written procedure, unless an oral hearing is deemed to be necessary by the court or tribunal***,*** which shall take into account any observations in this respect***, or one of the parties requests an oral hearing***.

Or. de

Justification

Unless there is a mandatory rule requiring an oral hearing to take place at the parties' request, their interests will clearly be infringed. They will be denied the legitimate right to argue their case through advocacy in an oral procedure. So the regulation must ensure there is an oral hearing at the request of one party. This is one of the central principles of a fair trial. The oral hearing can of course take place in accordance with Article 6(1).

Amendment by Klaus-Heiner Lehne

Amendment 83
Article 4, paragraph 1

1. The European Small Claims Procedure shall be a written procedure, unless an oral hearing is deemed to be necessary by the court or tribunal ***which shall take*** into account any observations ***or demands of the parties*** in this respect.	1. The European Small Claims Procedure shall be a written procedure, unless an oral hearing is deemed to be necessary by the court or tribunal***, taking*** into account any observations in this respect or ***at the request of one of the parties***.

Or. de

Justification

Unless there is a mandatory rule requiring an oral hearing to take place at the parties' request, their interests will clearly be infringed. They will be denied the legitimate right to argue their case through advocacy in an oral procedure. So the regulation must ensure there is an oral hearing at the request of one party. This is one of the central principles of a fair trial.

Amendment by Maria Berger

Amendment 84
Article 4, paragraph 1

1. The European Small Claims Procedure shall be a written procedure, unless an oral hearing is deemed to be necessary by the court or tribunal ***which shall take*** into account any observations ***or demands of the parties*** in this respect.	1. The European Small Claims Procedure shall be a written procedure, unless an oral hearing is deemed to be necessary by the court or tribunal***, taking*** into account any observations in this respect or ***at the request of one of the parties***.

Or. de

Justification

Unless there is a mandatory rule requiring an oral hearing to take place at the parties' request, their interests will clearly be infringed. They will be denied the legitimate right to argue their case through advocacy in an oral procedure. So the regulation must ensure there is an oral hearing at the request of one party.

Amendment by Francesco Enrico Speroni

Amendment 85
Article 4, paragraph 1

1. The European Small Claims Procedure shall be a written procedure, unless an oral hearing is deemed to be necessary by the court or tribunal which shall take into account any observations or demands of the parties in this respect.	1. The European Small Claims Procedure shall be a written procedure, unless an oral hearing is deemed to be necessary by the court or tribunal which shall take into account any observations or demands of ***any of*** the parties ***concerned*** in this respect.

Or. it

Justification

There may be more than two parties.

Amendment by Maria Berger

Amendment 86
Article 4, paragraph 1 a (new)

	(1a) However, at the request of one of the parties the court or tribunal shall hold an oral hearing.

Or. de

Justification

Unless there is a mandatory rule requiring an oral hearing to take place at the parties' request, their interests will clearly be infringed. They will be denied the legitimate right to argue their case through advocacy in an oral procedure. So the regulation must ensure there is an oral hearing at the request of one party.

Amendment by Maria Berger

Amendment 87
Article 4, paragraph 3

3. The defendant shall ***submit his response within one month*** of service of the claim form and answer form, by filling in Part II of the answer form, ***adding*** any ***additional*** documents ***and returning it*** to the court or tribunal, or in any other appropriate way not using the answer form.	3. The defendant shall ***respond within 30 days*** of service of the claim form and answer form, by filling in Part II of the answer form, ***and returning it with*** any ***relevant evidence*** to the court or tribunal, or in any other appropriate way not using the answer form. ***The defendant may demand that the procedure is held in accordance with the national law of the country of the court or tribunal.***

Or. de

Justification

Under the Commission proposal the plaintiff alone decides whether to initiate proceedings for the dispute concerned under this regulation or the normal national law. This offends against the principle of 'equality of arms' inherent in all national legal systems. We therefore need to grant the defendant the right to demand that the procedure is held in accordance with national law.

Amendment by Maria Berger

Amendment 88
Article 4, paragraph 6

6. If the ***total value of the*** counterclaim exceeds the amount set out in Article 2 (1), ***the court or tribunal shall only consider the counterclaim if it arises from the same legal relationship as the claim and if the court or tribunal considers it appropriate to proceed in*** the European Small Claims Procedure.	6. If the counterclaim exceeds the amount set out in Article 2 (1), ***the claim and counterclaim shall be processed not under*** the European Small Claims Procedure ***but under the procedural law of the Member State in which the procedure is being held***. ***Articles 2 and 3 shall apply mutatis mutandis to the counterclaim.***

Or. de

Justification

Under the Commission proposal the European small claims procedure should also adjudicate

on counterclaims of more than €2000. This is not compatible with the present procedure, created for small claims. It is hard to see why only the defendant should be allowed to bring a higher claim before the court. The same admissibility criteria should apply to counterclaims as to the claim itself.

Amendment by Hans-Peter Mayer

Amendment 89
Article 4, paragraph 6

6. If the total value of the counterclaim exceeds the amount set out in Article 2 (1), the court or tribunal shall only consider the counterclaim if it arises from the same legal relationship as the claim and if the court or tribunal considers it appropriate to proceed in the European Small Claims Procedure.	6. If the total value of the counterclaim exceeds the amount set out in Article 2 (1), the court or tribunal shall only consider the counterclaim if it arises from the same legal relationship as the claim and if the court or tribunal considers it appropriate to proceed in the European Small Claims Procedure ***and this does not unduly delay the proceedings***. ***If the defendant claims a set-off, this may also involve a set-off from a different legal relationship. Articles 2 and 3 shall apply mutatis mutandis to counterclaims.***

Or. de

Justification

A counterclaim should only be feasible from the same legal relationship, whereas this need not be required in the case of a set-off, that is, an uncontentious objection, as it will not disproportionately delay the proceedings.

Amendment by Maria Berger

Amendment 90
Article 4, paragraph 7

7. If any additional document received by the court or tribunal is in a language other than the language in which the procedure is conducted, the court or tribunal shall only require a translation of that document, if the translation is necessary for rendering the judgment.	***deleted***

If a party has refused to accept a document because it is not in one of the languages provided for in Article 8 of Regulation (EC) No 1348/2000, the court or tribunal shall inform the other party thereof and advise it to provide a translation.

Or. de

Justification

For reasons of legal certainty and procedural economy correspondence with the court should be conducted in the official language of that court or tribunal.

Amendment by Francesco Enrico Speroni

Amendment 91
Article 4, paragraph 7, subparagraph 1

7. If any additional document received by the court or tribunal is in a language other than the language in which the procedure is conducted, the court or tribunal shall ***only*** require a translation of that document***, if the translation is necessary for rendering the judgment***.	7. If any additional document received by the court or tribunal is in a language other than the language in which the procedure is conducted, the court or tribunal shall require a translation of that document.

Or. it

Justification

The court or tribunal cannot determine whether the documents are necessary unless they are translated.

Amendment by Jean-Paul Gauzès

Amendment 92
Article 4 a (new)

Article 4a

Language

1. The claim form, response, counterclaim, description of evidence and the evidence itself shall be presented in the language of the court or tribunal. They shall be served in accordance with Article 11.

2. However, one party may refuse to accept an item of evidence because it is not written:

(a) in the official language of the Member State required or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where the service or notification is made; or

(b) in a language of the forwarding Member State that the recipient understands.

In the latter case the court or tribunal shall duly inform the other party so that they may obtain a translation of the evidence.

Or. fr

Justification

The quality of justice requires a judge to rule in the light of evidence whose content she understands. So the evidence must be provided in the language of the court. Moreover there is a need for both parties to have the evidence translated, to respect the adversarial principle. This means the parties must have the option of rejecting evidence that they do not understand.

Amendment by Francesco Enrico Speroni

Amendment 93
Article 4 a (new)

Article 4a

Languages

1. The claim form, the answer, any counterclaim and any description of the relevant supporting documents shall be submitted in the language of the court or tribunal.

2. If a party refuses to accept a document because it is not in
a) the official language of the Member State addressed or – if there are several official languages in that Member State – the official language or one of the official languages of the place where service is effected, or
b) a language of the Member State of transmission which the addressee understands,
the court or tribunal shall inform the other party thereof with a view to its producing a translation of the document.

Or. it

Justification

The court or tribunal cannot determine whether the documents are necessary unless they are translated.

Amendment by Maria Berger

Amendment 94
Article 4 a (new)

Article 4a

Languages

The claim form, the response, any counterclaim, any description of relevant evidence and any other documents shall be provided in the language of the court or tribunal.

Or. de

Justification

For reasons of legal certainty and procedural economy correspondence with the court should be conducted in the official language of that court or tribunal.

Amendment by Maria Berger

Amendment 95
Article 5, paragraph 1

1. Within ***one month*** following receipt of the response from the defendant or the claimant within the time limits laid down in Article 4 (3) and (5), the court or tribunal shall	1. Within ***30 days*** following receipt of the response from the defendant or the claimant within the time limits laid down in Article 4 (3) and (5), the court or tribunal shall ***–provided that the defendant has not demanded that the procedure is conducted in accordance with national procedural law – deliver a judgment or – if it considers the accompanying documents to be insufficient – proceed as follows***:
(a) ***deliver a judgment***, or	(a) ***demand further details concerning the claim from the parties within a specified period of time not exceeding 30 days, or***
(b) ***demand further details concerning the claim from the parties within a specified period of time, or***	(b) ***summon the parties to a hearing to be held within 30 days of the summons.***
(c) summon the parties to a hearing.	***If the defendant has demanded that the procedure is conducted in accordance with national procedural law the court or tribunal shall proceed in accordance therewith.***

Or. de

Justification

Follows from the amendment to Article 4(3). Under the Commission proposal the plaintiff alone decides whether to initiate proceedings for the dispute concerned under this regulation or the normal national law. This offends against the principle of 'equality of arms' inherent in all national legal systems. We therefore need to grant the defendant the right to demand that the procedure is held in accordance with national law.

Amendment by Klaus-Heiner Lehne

Amendment 96
Article 6, paragraph 1

1. The court or tribunal may hold a hearing through an audio, video or email conference, if the technical means are available ***and if both parties agree***.	1. The court or tribunal may hold a hearing through an audio, video or email conference, if the technical means are available and if both parties agree. ***The court or tribunal shall take sufficient precautions to ensure that the right party takes part in the hearing.***

Or. de

Justification

In hearings that are not held in the presence of both parties but using technical assistance, sufficient precautions must be taken to ensure that the right party takes part in the hearing.

Amendment by Hans-Peter Mayer

Amendment 97
Article 6 paragraph 1

1. The court or tribunal may hold ***a*** hearing through an audio, video ***or email*** conference, if the technical means are available ***and if both parties agree***.	1. The court or tribunal may hold ***an oral*** hearing through an audio ***or*** video conference ***or a hearing through an email conference***, if the technical means are available. ***In such a case the identity of the parties taking part in the hearing must be established.***

Or. de

Justification

There is a need to establish identification.

A hearing using modern technology may also be conducted as an oral hearing in public.

Amendment by Francesco Enrico Speroni

Amendment 98
Article 6, paragraph 1

1. The court or tribunal may hold a hearing through an audio, video or email conference, if the technical means are available and if ***both*** parties agree.	1. The court or tribunal may hold a hearing through an audio, video or email conference, if the technical means are available and if ***all*** parties agree.

Or. it

Justification

There may be more than two parties.

Amendment by Klaus-Heiner Lehne

Amendment 99
Article 7, paragraph 1

1. ***The court or tribunal may determine the means of proof and the extent to which evidence is taken according to its discretion. In particular, the court may admit*** the taking of evidence ***through telephone, written statements of witnesses, and through an audio, video or email conference***.	1. ***At the request of one of the parties*** the taking of evidence ***shall be carried out immediately***.

Or. de

Justification

It would only be acceptable to grant the court 'Freibeweis' (discretion to determine the means of proof and the procedure) if the parties were informed of the taking of evidence and had the right to put questions. Neither of these conditions obtains in the draft report. But methods of taking evidence that depart from the principle of immediacy are very prone to error. So it is important that on request by the parties evidence should be taken immediately.

Amendment by Maria Berger

Amendment 100
Article 7, paragraph 1

1. The court or tribunal ***may determine*** the means of proof and the extent to which evidence is taken ***according to its discretion***. In particular, the court may admit the taking of evidence through telephone, written statements of witnesses, and through an audio, video or email conference.	1. The court or tribunal ***shall deliver a judgment in accordance with Article 5 on*** the means of proof and the extent to which evidence is taken. In particular, the court may admit the taking of evidence through telephone, written statements of witnesses, and through an audio, video or email conference. ***At the request of one of the parties, however, evidence shall be taken on a personal and hence immediate basis.***

Or. de

Justification

It would violate the individual's right to legal protection if the court could determine the means of proof and the extent to which evidence is taken as it saw fit, without giving reasons for its decisions or discussing them with the parties. They must be given the chance to review these court decisions.

Amendment by Klaus-Heiner Lehne

Amendment 101
Article 7, paragraph 1

1. The court or tribunal may determine the means of proof and the extent to which evidence is taken according to its discretion. ***In particular, the court may admit the taking of evidence through telephone, written statements of witnesses, and through an audio, video or email conference.***	1. The court or tribunal may determine the means of proof and the extent to which evidence is taken according to its discretion. ***It shall decide on submissions of evidence by the parties. The decision may be challenged.***

Or. de

Justification

It would only be acceptable to grant the court 'Freibeweis' (discretion to determine the means of proof and the procedure) if the parties were informed of the taking of evidence and had the right to put questions. Neither of these conditions obtains in the draft report. But methods of taking evidence that depart from the principle of immediacy are very prone to error. So it is important that on request by the parties evidence should be taken immediately.

Amendment by Jean-Paul Gauzès

Amendment 102
Article 7, paragraph 1

1. The court or tribunal ***may*** determine the means of proof and the extent ***to which*** evidence ***is taken according to its discretion***. ***In particular,*** the court may admit the taking of evidence through ***telephone,*** written statements of witnesses, and through ***an audio,*** video ***or email*** conference.	1. The court or tribunal ***shall*** determine the means of proof and the extent ***of*** evidence ***indispensable for its decision under the rules applicable to the burden of proof and admissibility of evidence***. The court may admit the taking of evidence through written statements of witnesses, and through ***a*** video conference ***or by any other communications technology in application of the national law of the court's Member State and if the technical facilities are available***.

Or. fr

Justification

There is a need to reconcile the principle of proportionality of the procedure with that of the quality of the judgment, which must be based on sufficient proof. Besides, the proposal's purpose is to simplify the procedure, but not to the point of allowing the court to dispense with all rules on the burden of proof or the hierarchy of methods of taking evidence.

The most costly methods are those of expert assessment and witness. So paragraph 2 limits recourse to these methods. To use them the judge must first have considered whether or not they are indispensable to his decision.

The final paragraph is of general application and explains the principle of proportionality.

Amendment by Klaus-Heiner Lehne

Amendment 103
Article 7, paragraph 1

1. The court or tribunal may determine the means of proof and the extent to which evidence is taken according to its discretion. In particular, the court may admit the taking of evidence through telephone, written statements of witnesses, and through an audio, video or email conference.	1. The court or tribunal may determine the means of proof and the extent to which evidence is taken according to its discretion. In particular, the court may admit the taking of evidence through telephone, written statements of witnesses, and through an audio, video or email conference. ***At the request of one of the parties evidence shall be taken on a personal and hence immediate basis.***

Or. de

Justification

Where the court has recourse to technical aids in the physical taking of evidence or wishes to use written statements, the parties must be given the opportunity to state their positions on the resulting evidence. The parties must also be informed, which in the case of telephone transcripts is prone to error. It is not inconceivable that the judge will misunderstand the statement or at any rate take it in the light of his own preconception of the case. For this reason at the request of the parties, or of one of them, evidence must taken on a personal and hence immediate basis.

Amendment by Klaus-Heiner Lehne

Amendment 104
Article 7, paragraph 2

2. ***In exceptional circumstances,*** the court or tribunal may receive evidence of expert witnesses ***if it is indispensable for the judgment***.	2. The court or tribunal may receive evidence of expert witnesses. ***In so doing it shall take due account of the cost.***

Or. de

Justification

In asserting a right it is axiomatic that the clearest and most reliable evidence must be admitted. Rejection solely on grounds of cost is not acceptable, as this could amount to a denial of justice in small claims cases. So the court must be able to call expert witnesses but in doing so must also have regard to the costs.

Amendment by Diana Wallis

Amendment 105
Article 7, paragraph 2

2. In exceptional circumstances, the court or tribunal may ***receive*** evidence ***of expert witnesses*** if it is indispensable for the judgment.	2. In exceptional circumstances, the court or tribunal may ***take expert*** evidence ***only*** if it is indispensable for the judgment. ***In making its decision in that regard, the court or tribunal shall take costs into account.***

Or. en

Amendment by Jean-Paul Gauzès

Amendment 106
Article 7, paragraph 2

2. ***In exceptional circumstances,*** the court or tribunal may ***receive*** evidence ***of*** expert ***witnesses*** if it is indispensable for the judgment.	2. The court or tribunal may ***take*** evidence ***by*** expert ***assessment or oral witness only*** if it is indispensable for the judgment.

Or. fr

Justification

There is a need to reconcile the principle of proportionality of the procedure with that of the quality of the judgment, which must be based on sufficient proof. Besides, the proposal's purpose is to simplify the procedure, but not to the point of allowing the court to dispense with all rules on the burden of proof or the hierarchy of methods of taking evidence.

The most costly methods are those of expert assessment and witness. So paragraph 2 limits recourse to these methods. To use them the judge must first have considered whether or not they are indispensable to his decision.

The final paragraph is of general application and explains the principle of proportionality.

Amendment by Jean-Paul Gauzès

Amendment 107
Article 7, paragraph 2 a (new)

2a. The court or tribunal shall select the simplest and least burdensome method of taking evidence.

Or. fr

Justification

There is a need to reconcile the principle of proportionality of the procedure with that of the quality of the judgment, which must be based on sufficient proof. Besides, the proposal's purpose is to simplify the procedure, but not to the point of allowing the court to dispense with all rules on the burden of proof or the hierarchy of methods of taking evidence.

The most costly methods are those of expert assessment and witness. So paragraph 2 limits recourse to these methods. To use them the judge must first have considered whether or not they are indispensable to his decision.

The final paragraph is of general application and explains the principle of proportionality.

Amendment by Maria Berger

Amendment 108
Article 8

Article 8	***deleted***
Representation of parties	
The parties shall not be required to be represented by a lawyer or another legal professional.	

Or. de

Justification

It is precisely in procedures such as the European small claims procedure that it may be appropriate to call in a lawyer. The question of whether to do so and if so, when, should as at present be left to the Member States to decide.

Amendment by Maria Berger

Amendment 109
Article 8 a (new)

Article 8a

Assistance for the parties

Member States shall ensure that the parties can receive practical assistance in completing the forms. Assistance by the courts may be provided only in the official language of the court concerned.

Or. de

Justification

Same text as amendment.

Amendment by Jean-Paul Gauzès

Amendment 110
Article 9, paragraph 3

3. If necessary, the court or tribunal ***shall support the parties in procedural questions and*** may ask ***them*** to provide any factual information relevant to the determination of the issues in the case.	3. If necessary, the court or tribunal may ask ***the parties*** to provide any factual information relevant to the determination of the issues in the case.

Or. fr

Justification

This amendment removes the present contradiction between the right to a fair trial, as expressed in Article 9(1), and the fact that the court may assist a party.

Amendment by Hans-Peter Mayer

Amendment 111
Article 9, paragraph 3

3. If necessary, the court or tribunal shall support the parties in procedural questions and may ask them to provide any factual information relevant to the determination of the issues in the case.	3. If necessary, the court or tribunal shall support the parties in procedural questions and may ask them to provide any factual information relevant to the determination of the issues in the case. ***Assistance by the courts may be confined to the official language of the court concerned. However, in so doing the court shall maintain its function as a neutral and independent body.***

Or. de

Justification

The judge has to decide as an independent arbiter in the case, so he cannot help a party that is unaware of the law to lodge or defend a claim.

The court should have the option of restricting the number of languages.

He must maintain his neutral position in relation to both parties.

Amendment by Jean-Paul Gauzès

Amendment 112
Article 11

1. Where documents ***are to be served in a Member State other than the Member State in which the procedure is conducted, they*** shall be served on the parties by registered letter with acknowledgment of receipt, respecting any additional conditions provided for in Article 14 of Regulation (EC) No 1348/2000, and having regard to Article 8 thereof.	Documents shall be served on the parties by registered letter with acknowledgment of receipt, respecting any additional conditions provided for in Article 14 of Regulation (EC) No 1348/2000, and having regard to Article 8 thereof. ***They may also be served electronically, subject to sufficient guarantees of certification.***

2. Where documents are to be served in the Member State in which the procedure is conducted and the address of the addressee is known with certainty, documents shall be served on the parties by registered letter with acknowledgment of receipt, or by any simpler means such as simple letter, fax or email, if these simpler means are provided for in the procedural law of the Member State in which the procedure is conducted.	
3. If, in exceptional circumstances, it is not possible to effect service in accordance with paragraphs 1 and 2, service may be effected through other means ensuring personal service.	If, in exceptional circumstances, it is not possible to effect service in accordance with paragraphs 1 and 2, service may be effected through other means ensuring personal service.

Or. fr

Justification

To safeguard greater legal certainty we should select only the registered letter with recorded delivery, in paper or electronic form, as the method of serving documents. This would firstly avoid simplified methods of dispatch that do not provide proof of the document's receipt by the defendant and secondly determine with certainty the starting point of the one month's time limit available to the defendant for response.

Amendment by Maria Berger

Amendment 113
Article 13

The judgment shall be immediately enforceable, notwithstanding any possible appeal. It shall not be necessary to provide a security.	***The judgment shall be enforceable immediately it becomes final. A judgment shall become final when the time limit for lodging an appeal has passed without an admissible appeal having been lodged and without application having been made for a review of the judgment in accordance with Article 16. Before it becomes final only a judgment on a payment against submission of a security shall be enforceable.***

Or. de

Justification

The Commission proposal says that a judgment is enforceable even when an appeal against it is admissible, and even without submission of a security. This carries the risk that, in the case where an enforced decision by the first court proves to be mistaken, damage will be done that cannot be redressed. In cross-border contexts repatriation is extremely difficult if not impossible (as the original defendant would first have to receive a new order, and the money might by then have been spent).

Amendment by Hans-Peter Mayer

Amendment 114
Article 14, paragraph 1

1. The unsuccessful party shall bear the costs of the proceedings, except where this would be unfair or unreasonable. In that case, the court or tribunal shall ***make*** any ***order for payment of expenses*** on an equitable basis.	1. The unsuccessful party shall bear the costs of the proceedings, except where this would be unfair or unreasonable. In that case, the court or tribunal shall ***take*** any ***decision on expenses*** on an equitable basis ***in the light of the stage reached in the proceedings***.

Or. de

Justification

The term 'Kostenfestsetzungsbeschluss' used in the German text for 'order for payment of expenses' gives rise to conflicts with German procedural law, which draws a distinction between an initial decision on expenses ('Kostengrundentscheidung') and an order determining the payment of expenses ('Kostenfestsetzungsbeschluss'). The former is the judicial decision on who has to bear the costs of the proceedings. The latter is based on the binding initial decision on costs, and decision on the exact amount of the costs to be paid is taken only in a procedure for the determination of expenses, which is a separate judicial procedure.

The criteria underlying the court's decision on fairness should result in a decision on expenses which respects the proportionality principle.

Amendment by Jean-Paul Gauzès

Amendment 115
Article 14, paragraph 2

2. When the unsuccessful party is a natural person and is not represented by a lawyer or another legal professional, he shall not be obliged to reimburse the fees of a lawyer or another legal professional of the other party.	***deleted***

Or. fr

Justification

This amendment aims to remove a discriminatory principle that would encourage abuse.

The amendment is consistent with the amendment deleting Recital 14.

Amendment by Francesco Enrico Speroni

Amendment 116
Article 14, paragraph 2

2. 2. When the unsuccessful party is a natural person and is not represented by a lawyer or another legal professional, he shall not be obliged to reimburse the fees of a lawyer or another legal professional of the other party.	2. 2. When the unsuccessful party is ***the defendant and*** a natural person and is not represented by a lawyer or another legal professional, he shall not be obliged to reimburse the fees of a lawyer or another legal professional of the other party.

Or. it

Justification

It is unfair for the suing party not to to pay the defendant's expenses if unsuccessful.

Amendment by Hans-Peter Mayer

Amendment 117
Article 15, paragraph 1

1. Member States shall inform the Commission whether an appeal is available under their procedural law against a judgment rendered in a European Small Claims Procedure. The Commission shall make that information publicly available.	1. Member States shall inform the Commission whether an appeal is available under their procedural law against a judgment rendered in a European Small Claims Procedure ***and within what time limit such appeal must be lodged***. The Commission shall make that information publicly available.

Or. de

Justification

The proposal does not yet contain any rules governing the time limit for lodging appeals.

Amendment by Maria Berger

Amendment 118
Article 15, paragraph 1

1. Member States shall inform the Commission ***whether an*** appeal is ***available*** under their procedural law against a judgment rendered in a European Small Claims Procedure. The Commission shall make that information publicly available.	1. Member States shall inform the Commission ***what type of*** appeal is ***admissible*** under their procedural law against a judgment rendered in a European Small Claims Procedure. The Commission shall make that information publicly available.

Or. de

Justification

In accordance with the Rule of Law and with Article 6 of the ECHR, the Member States must ensure that decisions taken by the court or tribunal pursuant to Article 5 are subject to review on appeal.

Amendment by Klaus-Heiner Lehne

Amendment 119
Article 15, paragraph 3

3. There shall be no further ordinary appeal or cassation against an appeal judgment.	***deleted***

Or. de

Justification

Article 15(3) should be deleted. Under national law, each appeal relates to the decision of the court below. It would create an illogical situation if only the first available level of appeal were to be taken from national law.

Amendment by Klaus-Heiner Lehne

Amendment 120
Article 16

Provided that he acts promptly, the defendant shall be entitled to apply for a review of the judgment rendered in a European Small Claims procedure***,*** under the conditions established by the law of the Member State in which the judgment has been rendered ***and communicated to the Commission pursuant to Articles 19 and 30 of Regulation (EC) No 805/2004, where***	***A*** review of the ***default*** judgment rendered in a European Small Claims procedure ***shall take place*** under the conditions established by the law of the Member State in which the judgment has been rendered.
a) i) the claim form or the summons to a hearing were served by a method without proof of receipt by him personally; and	
ii) service was not effected in sufficient time or in such a way as to enable him to arrange for his defence without any fault on his part, or	
b) the defendant was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part.	

Or. de

Justification

Under Article 16 of the proposal for a regulation, an appeal against a default judgment should not be admissible if the defendant is himself to blame for failing to meet a deadline, or deliberately fails to appear at the scheduled hearing or fails to submit a claim. Depriving a party of all his rights in such cases is unacceptable, since there may be good reasons for allowing a default judgment against oneself at the scheduled hearing. The proposal for a regulation also allows no scope for the claimant to request a review of the default judgment handed down against him at the scheduled hearing. To that extent Article 16 as a whole represents a clear curtailment of existing legal protection, which this amendment seeks to rectify.