

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.3.2005
COM(2005) 87 final

2005/0020 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European Small Claims Procedure

(presented by the Commission)

{SEC(2005) 351}
{SEC(2005) 352}

EXPLANATORY MEMORANDUM

1. INTRODUCTION AND BACKGROUND

1.1. Introduction

Following the 1975 Preliminary programme for a consumer protection and information policy[1] and the 1993 Green Paper on Access of consumers to justice and the settlement of consumer disputes in the single market[2], the Commission in 1996 adopted a Communication concerning an action plan on consumer access to justice and the settlement of consumer disputes in the internal market[3]. The action plan focused on the promotion and enhancement of procedures for settling individual consumer disputes, and made provision for the introduction of simplified access to court procedures. With the entry into force of the Treaty of Amsterdam in 1999, the European Union has set itself the objective of progressively establishing an area of freedom, security and justice, amongst others by adopting measures in the field of judicial cooperation in civil matters.

The European Council in Tampere 1999 invited the Council to establish special common procedural rules for simplified and accelerated litigation on small claims, and to abolish the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgment in the requested State for all titles in respect of small claims (i.e. not limited to consumer claims).

The joint programme of the Commission and the Council of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, adopted by the Council on 30 November 2000[4], called for simplifying and speeding up the settlement of small claims litigation. Discussions on simplifying and speeding up the settlement of small claims litigation would also facilitate the recognition and enforcement of judgments.

The need for simplified and accelerated small claims litigation has also been expressed by the European Parliament[5].

1.2. The Green Paper on a European Order for payment procedure and on measures to simplify and speed up small claims litigation

The adoption of this proposal was preceded by a wide-ranging consultation of both Member States and all interested parties of civil society. The Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation[6] presented by the Commission on 20 December 2002 gave an overview of the currently existing Small Claims procedures in the Member States. Based on a comparative study of how Member States deal with the relevant procedural issues it formulated a number of questions concerning the desirable scope and features of a European instrument.

The reactions to the Green Paper that were further debated in a public hearing organised by the Commission on 12 December 2003 revealed that an instrument to simplify and speed up

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1 OJ C 92, 25.4.1975, p. 2.
2 COM(93) 576.
3 COM(96) 13.
4 OJ C 12, 15.1.2001, p. 1.
5 OJ C 146, 17.5.2001, p. 4.
6 COM(2002) 746 final.

small claims litigation is almost unanimously considered a step ahead in the creation of an area of freedom, security and justice.

In its opinion[7] of 18 June 2003 on the Green Paper, the European Economic and Social Committee welcomed the Commission's initiative to launch a consultation on this issue and the Commission's effort to accelerate civil proceedings and to make them cheaper and more efficient. It supported the establishment of a European procedure to simplify and speed up small claims litigation. It considered that suitable measures for speeding up such litigation should be defined without, at the same time, jeopardising the guarantees afforded to the parties in question under the rule of law.

In it opinion[8] of 12 February 2004 on the Green Paper, the European Parliament welcomed the Commission's initiative, and stated that the small claims procedure should not only apply to cases relating to payment of a sum of money, on the understanding that a limit must first be determined on the basis of the amount at issue, but also be extended to cover all other disputes concerning economic relationships falling under the heading of obligations. Furthermore, in the small claims procedure alternative dispute resolution (ADR) methods should be applied, the taking of evidence simplified, and the right of appeal limited.

On 16 March 2004 a meeting of experts of the Member States discussed a draft Regulation establishing a European Small Claims Procedure. The approach taken by this text was generally appreciated by the delegations, namely to adopt a regulation which would have as objectives to simplify and speed up litigation concerning small claims by establishing a European Small Claims Procedure available to litigants as an alternative to the procedures existing under the laws of the Member States which will remain unaffected, and to abolish the intermediate measures to enable the recognition and enforcement of a judgment given in a European Small Claims Procedure in another Member State.

2. OBJECTIVES AND SCOPE

2.1. Overall objective

2.1.1. The significance of efficient Small Claims procedures

Costs, delay and vexation of judicial proceedings do not necessarily decrease proportionally with the amount of the claim. On the contrary, the smaller the claim is, the more the weight of these obstacles increases. This has led to the creation of simplified civil procedures for Small Claims in many Member States. At the same time, the potential number of cross-border disputes is rising as a consequence of the increasing use of the EC Treaty rights of free movement of persons, goods and services. The obstacles to obtaining a fast and inexpensive judgment are clearly intensified in a cross-border context. It will often be necessary to hire two lawyers, there are additional translation and interpretation costs and miscellaneous other factors such as extra travel costs of litigants, witnesses, lawyers etc.

Potential problems are not limited to disputes between individuals. Also the owners of small businesses may face difficulties when they want to pursue their claims in another Member State. But as a consequence of the lack of a procedure which is "proportional" to the value of

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7 OJ C 220, 16.9.2003, p. 5.

8 European Parliament resolution on the prospects for approximating civil procedural law in the European Union (COM(2002) 654 + COM(2002) 746 - C5-0201/2003 - 2003/2087(INI)), A5-0041/2004.

the litigation, the obstacles that the creditor is likely to encounter might make it questionable whether judicial recourse is economically sensible. The expense of obtaining a judgment, in particular against a defendant in another Member State, is often disproportionate to the amount of the claim involved. Many creditors, faced with the expense of the proceedings, and daunted by the practical difficulties that are likely to ensue, abandon any hope of obtaining what they believe is rightfully theirs.

2.1.2. Characteristic features of Small Claims procedures - procedural simplifications

Within the framework of their procedural systems and traditions, many Member States have introduced specific rules with respect to small claims litigation which provide for procedural simplifications compared with the ordinary procedure. It is not surprising that the solutions that have been devised differ from each other. Whereas in some Member States there are specific Small Claims procedures, others provide for certain procedural simplifications in Small Claims cases. There are also differences with respect to the degree to which specific procedural simplifications apply.

There are specific Small Claims Procedures which provide for various simplifications compared with the ordinary procedure in the United Kingdom (England/Wales, Scotland and Northern Ireland), Ireland, Sweden and Spain. In Germany courts may determine their procedures as they see fit in Small Claims cases. In France there is a simplified way of introducing the procedure for Small Claims ("déclaration au greffe"). The Codes of Civil Procedure of Austria, Finland and the Netherlands and other Member States contain several procedural simplifications compared with the ordinary procedure which are applicable in cases below certain thresholds. While one may not consider these procedural simplifications as amounting to a specific Small Claims Procedure in a strict sense, in practice very similar results are achieved.

The most important features of the existing Small Claims procedures and procedural simplifications can be summarised as follows[9]:

– All Member States with Small Claims procedures have quantitative thresholds for these procedures which vary, however, considerably[10]. Some Member States apply the Small Claims procedure additionally also to certain types of litigation, regardless of a threshold. In most Member States with Small Claims procedures, these procedures are available not only for monetary claims. The use of the simplified procedure is in most cases obligatory (for claims below the threshold), but a litigation can be transferred to the ordinary or a more formal procedure by the judge or on application of a party.

– In many existing Small Claims procedures, there are forms for filing the claim. There is no obligation to make legal references in the application in any Member State, i.e. only factual references are required. In most Member States there is support by a court clerk or help desk for the introduction of a procedure. Moreover, the judge gives assistance during the hearing to a party that is not represented by a lawyer (particularly on procedural issues), whilst observing the principle of impartiality. At

9 See for more details Chapter 4.3 of the Green Paper.

10 Between 600 € (Germany) and 8.234 € (England/Wales).

present, no Member States requires mandatory representation by a lawyer in Small Claims procedures.

– The relaxation of rules concerning the taking of evidence is one of the issues crucial in the small claims procedures in most Member States. In many cases, the judge has a certain amount of discretion in this respect. The possibility of a purely written procedure (instead of oral hearings) exists presently in many cases. In some cases, the rules concerning the content of the judgment are relaxed. There is a time limit for the delivery of the judgment in many Member States. The procedural rules with respect to the reimbursement of costs differ significantly. In most Member States all costs have to be paid by the defendant alone if he loses. The laws of the Member States concerning the possibility to appeal against decisions in Small Claims procedures differ considerably.

2.2. Scope

2.2.1. The need for action at Community level

Article 65 of the EC Treaty attributes legislative powers to the Community with regard to judicial cooperation in civil matters having cross-border implications in so far as necessary for the proper functioning of the internal market.

With respect to the internal market requirement, there is a margin of appreciation for the Community institutions in determining whether a measure is necessary for the proper functioning of the internal market. With respect to this proposal, the proper functioning of the internal market is facilitated because the establishment of a European Small Claims procedure will help to eliminate obstacles to the free movement of goods, persons, services or capital. As outlined above (2.1.2.), at present small claims procedures are substantially different in the Member States. The access of economic operators to judicial mechanisms of substantially different performance levels entails a distortion of competition in the internal market regardless of whether the actors are domiciled in different Member States or in the same Member State. If some operators have access to efficient and effective procedures while others do not, there is no level playing field for operators competing in the internal market. The existing disparities in the laws of the Member States put obstacles to the proper functioning of the internal market. Consequently, a situation implying a marked disequilibrium with regard to the efficiency of the procedural means afforded to creditors under different national laws amounts to a distortion of competition within the internal market. A European Small Claims procedure would thus facilitate the proper functioning of the internal market.

Concerning the cross-border requirement, most linguistic versions of the Treaty use the term "matter", and not "measure". It is therefore necessary and sufficient that the "matter" has cross-border implications. This interpretation is confirmed by letter (c) of Article 65 which provides that measures in the field of judicial cooperation in civil matters shall include eliminating obstacles to the good functioning of civil proceedings, and by Article III-269 of the Treaty establishing a Constitution for Europe.

Procedural law by its nature may have cross-border implications. The judge will always apply the lex fori whether or not the litigation has cross-border elements. Small Claims litigation constitutes a matter having cross-border implications since – taking into account the

development of the internal market - most economic operators and consumers will sooner or later be involved in such litigation abroad.

A measure applying also to purely internal cases which is necessary for the proper functioning of the internal market, in particular because it eliminates distortions of competition between economic operators of the different Member States, has necessarily cross-border implications since the putting in place of an efficient Small Claims Procedure in every Member State will facilitate access to justice under equal conditions.

The internal market requirement in Article 65 is thus a restriction of the cross-border requirement. A measure which is necessary for the proper functioning of the internal market has necessarily cross-border implications, whereas a measure having cross-border implications may not always also be necessary for the proper functioning of the internal market. This interpretation is also confirmed by the negotiations leading to the adoption of Article 65 since the internal market requirement was introduced at a late stage of the negotiations in order to limit the scope of the provision. A more restrictive interpretation of Article 65 cannot have been intended by those who drafted it since it would create new obstacles to access to justice in the European Judicial Area. Every legal instrument would have to have its own "cross-border" definition since that definition would almost necessarily have to vary from one issue to another which would cause significant difficulties in the application of those instruments.

It would not only be inappropriate but even counterproductive to constrain the scope of application of the European Small Claims Procedure to cross-border cases.

Firstly, the creation of two different regimes for internal cases and for cases with cross-border aspects should be avoided. Such a duality of regimes would be inconsistent with the objective of a single and coherent area of justice for all.

Furthermore, as outlined above, not in all Member States speedy and inexpensive small claims procedures are available to litigants. The lack of such procedures which are proportional to the value of the litigation make judicial recourse economically questionable in many cases and often creditors abstain from taking legal action. This limitation of effective access to justice causes economic costs which have significant negative macroeconomic impacts on the proper functioning of the internal market.

2.2.2. Subsidiarity and proportionality

The objective of this proposal, to simplify and speed up litigation concerning small claims by establishing a European Small Claims Procedure, cannot be sufficiently accomplished by the Member States themselves as they cannot guarantee the equivalence of rules applicable throughout the Community. The objective can therefore be only achieved at Community level.

The present proposal is fully consistent with the principle of proportionality in that it is strictly limited to what is necessary in order to reach this objective. In that context, it is particularly essential to underscore the effects of the combination of the legal instrument chosen (Regulation) with the optional nature of the European Small Claims Procedure in relation to comparable mechanisms under the national procedural law of the Member States. Whilst ensuring the uniformity and direct applicability of the procedure, the Regulation proposed here would only oblige Member States to make the European procedure available as

an additional tool. It would force them neither to abandon their pre-existing legislation on small claims nor to modify such legislation to bring it into line with Community law. Hence, this proposal for a Regulation which leaves the right of the Member States unaffected to continue the application of their domestic rules alongside the European Small Claims Procedure encroaches much less on their procedural systems than a Directive that would require an adaptation of national legislation to the standards set in that instrument. This legislative technique, in fact, assures a common minimum level in the efficiency of the recovery of small claims but it permits Member States that have developed an even better-functioning domestic system to retain it. Ultimately, it will be left to the creditors to judge which procedure they consider as being either superior in performance or more convenient in terms of accessibility, the latter criterion being particularly relevant for those operating in several Member States and being spared the need to make themselves familiar with the procedural law of every one of them by the availability of a uniform European Small Claims Procedure. Finally, it should be borne in mind that Article 17 of the proposal provides that "subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted". Hence, the introduction of a European Small Claims Procedure does not entail the need for further approximation of national procedural legislation and thus keeps interference with domestic law to an absolute minimum.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61 (c) thereof,

Having regard to the proposal from the Commission[11],

Having regard to the opinion of the Economic and Social Committee[12],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[13],

Whereas:

(1) The European Union has set itself the objective of maintaining and developing the European Union as an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.

(2) In this respect, the Community has among other measures already adopted Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters[14], Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters[15], Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[16] and Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims[17].

(3) On 20 December 2002, the Commission adopted a Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims

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11 OJ C […], […], p. […].
12 OJ C […], […], p. […].
13 OJ C […], […], p. […].
14 OJ L 160, 30.6.2000, p. 37.
15 OJ L 174, 27.6.2001, p. 25.
16 OJ L 12, 16.1.2001, p. 1.
17 OJ L 143, 30.4.2004, p. 15.

litigation[18]. The Green Paper launched a consultation on measures concerning the simplification and the speeding up of small claims litigation.

(4) Many Member States have introduced simplified civil procedures for Small Claims since costs, delay and vexation connected with litigation do not necessarily decrease proportionally with the amount of the claim. The obstacles to obtaining a fast and inexpensive judgment are intensified in cross-border cases. It is therefore necessary to create a European Small Claims Procedure. The objective of such a European procedure should be to facilitate access to justice by purveying a procedure of moderate duration at affordable costs.

(5) The distortion of competition within the internal market due to the disequilibrium with regard to the functioning of the procedural means afforded to creditors in different Member States entails the need for Community legislation which guarantees a level playing field for creditors and debtors throughout the European Union.

(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.

(7) The European Small Claims Procedure should simplify and speed up litigation concerning small claims, whilst reducing costs, by offering an optional tool in addition to the possibilities existing under the laws of the Member States, which will remain unaffected. This Regulation should also make it simpler to obtain the recognition and enforcement of a judgment given in a European Small Claims Procedure in another Member State, including judgements which were initially of a purely domestic nature.

(8) In order to facilitate the introduction of the procedure, the claimant should commence the European Small Claims Procedure by completing a claim form and lodging it at the competent court or tribunal.

(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.

(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.

(11) The court or tribunal should respect the principle of an adversarial process.

(12) In order to speed up the resolution of disputes, the judgment should be rendered within six months following the registration of the claim.

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[18] COM(2002) 746 final.

(13) In order to speed up the recovery of small claims, the judgment should be immediately enforceable notwithstanding any possible appeal and without the condition of the provision of a security.

(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.

(15) In order to facilitate recognition and enforcement, a judgment given in a Member State in a European Small Claims Procedure should be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

(16) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Specifically, it seeks to ensure full respect for the right to a fair trial as recognised in Article 47 of the Charter.

(17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[19].

(18) Since the objectives of the action to be taken namely the establishment of a procedure to simplify and speed up litigation concerning small claims, and reduce costs, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article this Regulation does not go beyond what is necessary to achieve those objectives.

(19) [The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.]

(20) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

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[19] OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND SCOPE

Article 1
Subject matter

This Regulation establishes a European procedure for small claims (hereinafter referred to as the "European Small Claims Procedure"), intended to simplify and speed up litigation concerning small claims, and reduce costs. The European Small Claims Procedure shall be available to litigants as an alternative to the procedures existing under the laws of the Member States.

This Regulation also eliminates the intermediate measures necessary to enable recognition and enforcement, in other Member States, of judgments, with the exception of judgments on uncontested claims, given in one Member State in a European Small Claims Procedure.

Article 2
Scope

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.

2. This Regulation shall not apply to matters concerning:

   (a) the status or legal capacity of natural persons,

   (b) rights in property arising out of a matrimonial relationship, wills and succession,

   (c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings,

   (d) social security,

   (e) arbitration,

   (f) employment law.

3. In this Regulation, the term "Member State" shall mean Member States with the exception of Denmark. [United Kingdom, Ireland]

CHAPTER II

THE EUROPEAN SMALL CLAIMS PROCEDURE

Article 3
Commencement of the Procedure

1. The claimant shall commence the European Small Claims Procedure by completing the claim form set out in Annex I and lodging it with any relevant additional documents at the competent court or tribunal. The claim form may be lodged directly, by post or by any other means of communication such as fax or email acceptable to the Member State in which the procedure is commenced.

2. Member States shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available.

3. The court or tribunal shall register the claim form immediately on receipt and note the date and time of receipt of all other documents it receives in the European Small Claims Procedure.

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.

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.

6. Where the court or tribunal considers that the information provided by the claimant is insufficiently clear or adequate or if the claim form is not completed properly, it may give the claimant the opportunity to complete or rectify the form or to supply such supplementary information or documents as it may specify.

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.

Article 4
Conduct of the Procedure

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.

2. After receiving the claim form, the court or tribunal shall complete part I of the answer form set out in Annex II.

It shall serve a copy of the claim form, together with the answer form thus completed on the defendant within 8 days of receiving the claim form, in accordance with Article 11.

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.

4. Within eight days of receipt of the response from the defendant, the court or tribunal shall serve a copy of the response and any additional documents on the claimant in accordance with Article 11.

5. If, in his response, the defendant makes a counterclaim against the claimant, the court or tribunal shall inform the claimant of that counterclaim. The claimant shall respond to the counterclaim within one month of service of the response.

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.

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.

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.

Article 5
Conclusion of the Procedure

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

(a) deliver a judgment, or

(b) demand further details concerning the claim from the parties within a specified period of time, or

(c) summon the parties to a hearing.

2. If the court or tribunal has not received an answer from the defendant within the time limit laid down in Article 4 (3), the court or tribunal shall deliver a default judgment.

Article 6
Hearing

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.

2. If a party does not attend the hearing and another person represents that party, the court or tribunal may ask that person to present a mandate or other authorization in writing from that party, if this is required by the procedural law applicable in the Member State in which the procedure is conducted.

Article 7
Taking of evidence

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.

2. In exceptional circumstances, the court or tribunal may receive evidence of expert witnesses if it is indispensable for the judgment.

Article 8
Representation of parties

The parties shall not be required to be represented by a lawyer or another legal professional.

Article 9
Remit of the court or tribunal

1. The court or tribunal shall respect the right to a fair trial and the principle of an adversarial process, in particular when deciding on the necessity of an oral hearing and on the means of proof and the extent to which evidence is taken.

2. The court or tribunal shall not oblige the parties to make any legal assessment of the claim.

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.

4. Whenever appropriate, the court or tribunal shall seek to reach a settlement between the parties.

Article 10
Judgment

1. The judgment shall be rendered within six months following the registration of the claim form.

2. The court or tribunal shall serve the judgment on the parties in accordance with Article 11, unless it is delivered orally at the conclusion of a hearing at which both parties are present.

Article 11
Service of documents

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.

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.

Article 12
Time limits

1. The court or tribunal may prolong the time limits provided for in Article 4 (3) and (5), in exceptional circumstances, if necessary in order to guarantee an effective defence of the parties.

2. If, in exceptional circumstances, it is not possible for the court or tribunal to respect the time limits provided for in Articles 4 (2) and (4), Article 5 (1) and Article 10 (1) without jeopardising the proper conduct of proceedings, it shall take the necessary steps as soon as possible.

3. For the purpose of calculating the time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits[20] shall apply.

[20] OJ L 124, 8.6.1971, p. 1.

Article 13
Enforceability of the judgment

The judgment shall be immediately enforceable, notwithstanding any possible appeal. It shall not be necessary to provide a security.

Article 14
Costs

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.

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.

Article 15
Appeal

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.

2. In an appeal procedure against a judgment rendered in a European Small Claims Procedure, parties shall not be required to be represented by a lawyer or another legal professional.

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

Article 16
Review of the judgment

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) (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.

Article 17
Applicable procedural law

Subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted.

CHAPTER III

RECOGNITION AND ENFORCEMENT

Article 18
Recognition and enforcement

1. A judgment delivered in a Member State in a European Small Claims Procedure shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if it has been certified by the court or tribunal in the Member State of origin using the form set out in Annex III to this Regulation.

2. The judgment delivered in a European Small Claims Procedure shall be certified if it does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001.

   The certificate shall be established in the language of the judgment.

   No appeal shall lie against the issuing of the certificate.

   The law of the Member State in which the procedure is conducted shall apply to any rectification of the certificate.

3. Where, at the time when the judgment is delivered, it is likely that it will have to be enforced in another Member State, the certificate shall be issued ex officio at the time of the delivery of the judgment. Otherwise the certificate shall be issued if requested by one of the parties.

4. A party seeking enforcement of a judgment shall produce:

   (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

   (b) the certificate referred to in paragraph 1.

5. Paragraphs 1 to 4 shall not apply to judgments on uncontested claims within the meaning of Article 3 (1) of Regulation (EC) No 805/2004.

CHAPTER IV

RELATIONSHIP WITH OTHER COMMUNITY INSTRUMENTS

Article 19

Relationship with Regulation (EC) No 805/2004 and with Regulation (EC) No 44/2001

This Regulation shall not affect the application of Regulation (EC) No 805/2004 and of Regulation (EC) No 44/2001.

CHAPTER V

FINAL PROVISIONS

Article 20
Information

The competent national authorities shall cooperate to provide the general public and professional circles with information on the European Small Claims Procedure, in particular via the European Judicial Network in Civil and Commercial Matters established by Decision 2001/470/EC.

Article 21
Implementing measures

The measures necessary for the implementation of this Regulation relating to modification of the threshold established in Article 2 (1) and updates or technical amendments to the forms in the Annexes, or the introduction of additional forms shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 22 (2).

Article 22
Committee

1. The Commission shall be assisted by the Committee provided for by Article 75 of Regulation (EC) No 44/2001.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply having regard to the provisions of Article 8 thereof.

3. The Committee shall adopt its rules of procedure.

Article 23
Entry into force

This Regulation shall enter into force on […].

This Regulation shall be binding in its entirety and directly applicable in all Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, […]

For the European Parliament	*For the Council*
The President	*The President*
[...]	*[...]*