EUROPEAN PARLIAMENT

2004 *2009*

Committee on Legal Affairs

PROVISIONAL
2005/0020(COD)

8.2.2006

***I
DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council establishing a European Small Claims Procedure
(COM(2005)0087 – C6-0082/2005 – 2005/0020(COD))

Committee on Legal Affairs

Rapporteur: Hans-Peter Mayer

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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on the proposal for a regulation of the European Parliament and of the Council establishing a European Small Claims Procedure
(COM(2005)0087 – C6-0082/2005 – 2005/0020(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0087)[1],

– having regard to Article 251(2) and Article 61(c) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0082/2005),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2006),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
Amendment 1 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.	***deleted***

[1] Not yet published in OJ.

Amendment 2
Recital 7

(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***.	(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.

Amendment 3
Recital 8

(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.	(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 ***solely*** at the competent court or tribunal.

Amendment 4
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. ***Upon application by both parties, the court or tribunal shall hold an oral hearing,*** unless ***it considers*** an oral hearing ***to be unnecessary***. ***Where such application is refused, reasons must be given and the decision may not be contested.*** The parties should not be obliged to be represented by a lawyer.

Amendment 5
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 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***, where the appropriate means are available***.

Amendment 6
Recital 11

(11) The court or tribunal ***should*** respect the principle of an adversarial process.	(11) The court or tribunal ***shall*** respect ***the right to a fair process and*** the principle of an adversarial process***, in particular when deciding on the need for an oral hearing and on the means of proof and the extent of the taking of evidence***.

Amendment 7
Recital 13

(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.	***deleted***

Amendment 8
Recital 13 a (new)

	(13a) The court or tribunal must include a person qualified to hold the office of judge. In order to ensure an inexpensive procedure, the judge shall be entitled to exercise discretion with the aim of avoiding disproportionate costs.

Amendment 9
Recital 13 b (new)

(13b) Whenever the court or tribunal is required to set a deadline, the claimant must be informed of the consequences of missing that deadline.

Amendment 10
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

Amendment 11
Recital 17 a (new)

(17a) The threshold laid down in this Regulation may only be altered in accordance with the procedure laid down in Article 251 of the EC Treaty.

Amendment 12
Recital 17 b (new)

(17b) Three years after the adoption of this Regulation, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European Small Claims Procedure. That report shall contain an assessment of the procedure as it has operated and an extended impact assessment for each Member State.

Amendment 13

Article 1, paragraph 1

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 ***shall establish*** a European procedure for small claims (hereinafter referred to as the 'European Small Claims Procedure'), intended to simplify and speed up litigation ***in cross-border cases*** 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.

Amendment 14
Article 1, paragraph 2

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

Amendment 15
Article 1 a (new)

	Article 1a
	Cross-border cases
	1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seized.
	2. Domicile shall be determined in accordance with Articles 59 and 60 of Council Regulation (EC) No 44/2001 of 22 December 2000.
	3. The relevant moment for determining whether there is a cross-border case is the time when the claim form is received by the competent court or tribunal.

Amendment 16
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 ***cross-border*** civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim excluding interests ***attaching thereto and excluding*** expenses and outlays does not exceed EUR 2000 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***.

Amendment 17
Article 2, paragraph 2, letter b

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

Amendment 18
Article 2, paragraph 3

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

Amendment 19
Article 3, paragraph 1

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.	1. The claimant shall commence the European Small Claims Procedure by completing the claim form set out in Annex I and lodging it at the competent court or tribunal 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. ***Relevant evidence and/or a description thereof may be attached to the claim form where appropriate.***

Amendment 20
Article 3, paragraph 3

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.	3. The court or tribunal shall ***record receipt of*** 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.

Amendment 21
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.	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 ***received*** in accordance with paragraph 3. ***A claim form is deemed to be received when it becomes accessible to the court or tribunal in such a way that the court or tribunal is able, under normal circumstances, to familiarise itself with the substance of the claim.***

Amendment 22
Article 3, paragraph 6

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.	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 ***shall*** give the claimant the opportunity ***– provided the claim is not manifestly unfounded –*** to complete or rectify the form or to supply such supplementary information or documents as it may specify***, and shall set a time limit of 30 days for that purpose***. ***Where the claim is manifestly unfounded or where the claimant fails to complete or rectify the form within the time limit, the claim shall be dismissed.***

Amendment 23
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 ***both*** parties in this respect.

Amendment 24
Article 4, paragraph 1 a (new)

	(1a) Upon application by both parties, however, the court or tribunal shall hold an oral hearing, unless it considers an oral hearing to be unnecessary. A decision to refuse such application may not be contested.

Amendment 25
Article 4, paragraph 2, subparagraph 1

Does not affect the English version.

Amendment 26
Article 4, paragraph 2, subparagraph 2

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.***	***In accordance with Article 11***, it shall serve ***on the defendant*** a copy of the claim form ***and the evidence received***, together with the answer form completed ***accordingly***. ***The court or tribunal shall serve these documents within eight days of receipt.***

Amendment 27
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	3. The defendant shall ***have 30 days from when*** the claim form and answer form ***are served in which to respond***, by filling in Part II of the answer form, adding any ***relevant evidence*** and returning it to the

tribunal, or in any other appropriate way not using the answer form.	court or tribunal, or in any other appropriate way not using the answer form.

Amendment 28
Article 4, paragraph 4

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***.	4. Within eight days of receipt of the response from the defendant, the court or tribunal shall serve a copy of the ***answer form together with copies of the evidence*** on the claimant.

Amendment 29
Article 4, paragraph 5

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.	***5. Copies of counterclaims and relevant evidence shall be served on the claimant in accordance with Article 11. The court or tribunal shall effect service within eight days of receipt.***
	The claimant shall respond to a counterclaim within 30 days of the service thereof.

Amendment 30
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 ***may allow the counterclaim provided it does not unreasonably delay the procedure.***
	Articles 2 and 3 shall apply mutatis mutandis to counterclaims.

Amendment 31
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. 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.	***deleted***

Amendment 32
Article 4 a (new)

	Article 4a
	Language
	1. Answer forms, responses, any counterclaims and any descriptions of relevant evidence shall be submitted in the language of the court or tribunal.
	2. 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 may only require a translation of that document if the translation is necessary for rendering the judgment.
	3. 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 is more than one official language in that Member State, the official language or one of the official languages of the place where service is to be 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 in order for it to provide a translation.

Amendment 33
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 ***deliver a judgment or, if it considers the documents provided to be inadequate:***
(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.***	

Amendment 34
Article 5, paragraph 2

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.***	2. ***The court or tribunal shall deliver its judgment immediately after any oral hearing or within 30 days following receipt of all information required for the judgment. The judgment shall be served on the parties in accordance with Article 11.***

Amendment 35
Article 5, paragraph 2 a (new)

	(2a) If the court or tribunal has not received an answer from the party concerned within the time limit laid down in Article 4(3) or (5), the court or tribunal shall deliver a default judgment in respect of the claim or counterclaim.

Amendment 36

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.

Amendment 37
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.

Amendment 38
Article 10, paragraph 1

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

Amendment 39
Article 10, paragraph 2

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.	***deleted***

Amendment 40
Article 11, paragraph 1

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***	1. ***Documents shall be served by post with proof of receipt showing the date of receipt.***

conditions provided for in Article 14 of Regulation (EC) No 1348/2000, and having regard to Article 8 thereof.

Amendment 41
Article 11, paragraph 2

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.***	2. ***If it is not possible to effect service in accordance with paragraph 1, service may be effected through one of the means set out in Articles 13 and 14 of Regulation (EC) No 805/2004 creating a European enforcement order for uncontested claims.***

Amendment 42
Article 11, paragraph 3

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.	***deleted***

Amendment 43
Article 12, paragraph 1

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***.	1. The court or tribunal may prolong the time limits provided for in Article ***3(6), Article 4(2) and (5) and Article 5(2)***, in exceptional circumstances, if necessary in order to ***protect the parties' rights***.

Amendment 44
Article 12, paragraph 2

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)***	2. If, in exceptional circumstances, it is not possible for the court or tribunal to respect the time limits provided for in ***Article 3(6), Article 4(2) and (5) and Article 5(2)***

without jeopardising the proper conduct of proceedings, it shall take the ***necessary*** steps as soon as possible.	without jeopardising the proper conduct of proceedings, it shall take the steps ***required in accordance with those provisions*** as soon as possible.

Amendment 45
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. If an appeal is lodged, the judgment shall only be enforceable on provision of a security proportionate to the amount to be enforced.***

Amendment 46
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***

Amendment 47
Article 15, paragraph 2

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.	***deleted***

Amendment 48
Article 16, paragraph 1, introduction

Provided that he acts promptly, the defendant shall be entitled to apply for a	***(1)*** 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:	review of the judgment rendered in a European Small Claims *Procedure* ***by the competent court or tribunal in the Member State of origin*** where:

Amendment 49
Article 16, paragraph 1, letter a, point (i)

(i) the claim form or the summons to ***a*** hearing were served by a method without proof of receipt by him personally; and	(i) the claim form or the summons to ***an oral*** hearing were served by a method without proof of receipt by him personally ***in accordance with Article 14 of Regulation (EC) 805/2004***; and

Amendment 50
Article 16, paragraph 1 a (new)

	(1a) Where the court or tribunal refuses an application for a review on the grounds that none of the reasons specified in paragraph 1 apply, the judgment shall remain valid. Where the court or tribunal finds that a review is justified for one of the reasons specified in paragraph 1, the judgment rendered in the European Small Claims Procedure shall be void.

Amendment 51
Article 18, paragraph 3

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.***	3. ***The court or tribunal shall draw up the form for a judgment in a European Small Claims Procedure set out in Annex III ex officio at the time of the delivery of the judgment.***

Amendment 52

Article 18, paragraph 4

(4) A party seeking enforcement of a judgment shall produce:	***deleted***
(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and	
(b) the certificate referred to in paragraph 1.	

Amendment 53
Article 21 a (new)

Article 21a

The threshold laid down in this Regulation may only be altered in accordance with the procedure laid down in Article 251 of the Treaty.

Amendment 54
Article 22 a (new)

Article 22a

By .... [1], the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European Small Claims Procedure. That report shall contain an assessment of the procedure as it has operated and an extended impact assessment for each Member State.

To this end and in order to ensure that best practice in the European Union is duly taken into account and reflects the principles of better legislation, Member States shall provide the Commission with information relating to the cross-border operation of the European Small Claims Procedure. This information should cover court fees, speed of the procedure, efficiency, ease of use and the internal procedures of the Member States.

The Commission's report shall be accompanied, if appropriate, by proposals for adaptation.

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[1] ***Three years after the entry into force of this Regulation***.