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Annex to the **:**

Regulation of the European Parliament and of the Council

establishing a European Small Claims Procedure

EXTENDED IMPACT ASSESSMENT

{COM(2005)87 final}

This Extended Impact Assessment has been made on the basis of a "Report concerning an Extended Impact Assessment on a Proposal for a Community Small Claims Instrument" which has been prepared for the Commission by an external contractor.

1. What problem is the proposal expected to tackle?

1.1. The Problem

The disproportionate cost of litigation for small claims has led many Member States to provide simplified procedures for claims of small value which are intended to provide access to justice at a lower cost, thus influencing one of the three factors that determine the rationales in dispute resolution. The details of these procedures have been investigated and documented in detail in studies prepared for the Commission[1]. The evidence from these reports suggests that the costs and timescale associated with the domestic simplified measures, and thus their use and utility to claimants, varies widely.

The increasing volume of cross-border transactions with in the European Union, driven by the increasing use of the EC Treaty rights of free movement of persons, goods and services, adds a further dimension to the small claims problem. The obstacles to a fast and inexpensive judgement are intensified in a cross-border context. It may 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. In the absence of a procedure that is "proportional" to the value of the litigation, the obstacles that the creditor is likely to encounter are such that the claim is not pursued.

A 1995 study for the Commission[2] found evidence of how costs of cross-border claims were significant compared to the size of most potential claims, and that these costs varied substantially between Member States. The total costs of pursuing a cross-border claim with a value of € 2.000 was found to vary, depending on the combination of Member States, from € 980 to € 6.600, with an average quoted figure of € 2.489 for a proceeding at the plaintiff's residence. The study also showed that due to different and conflicting costing rules part of the costs have to be paid even by successful plaintiffs. Taking into account the risk of having to cover the full cost in unsuccessful cases plus a major part of

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1 *The Cost of Legal Obstacles to the Disadvantage of Consumers in the Single Market*, Von Freyhold, Vial & Partner Consultants, A Report for the European Commission, DG XXIV Consumer Policy and Consumer Health Protection, 1998; *Des procédures de traitement judiciaire des demandes de faible importance ou non contestées dans les droits des Etats membres de l'Union Européenne*, Rapport final, Centre National de la Recherche Scientifique IDHE-ENS CACHAN, 2001.

2 *Cost of Judicial Barriers for Consumers in the Single Market*. Hanno von Freyhold, Volkmar Gessner, Enzo L Vial, Helmut Wagner (Eds), A report for the European Commission (Directorate General XXIV). Zentrum für Europäische Rechtspolitik an der Universität Bremen, October/November 1995.

the opponents' costs, the study concluded that a reasonable consumer would not sue for € 2.000. This conclusion is supported by the limited empirical evidence that suggests that currently only a small number of cross-border civil cases are filed with a value of € 2.000 or less.

Time was found to be an important additional factor dissuading plaintiffs from taking action. Whereas some Member States offered proceedings which took a year or less, courts in some countries needed several years. The average duration of a cross-border civil law suit in the European Union was approximately two years when the proceedings took place at the defendant's residence and five months more when the proceedings took place at the plaintiff's residence (where service of documents abroad and the procedure for recognition and enforcement add to the time required).

Legal uncertainty creates barriers to the development of the Single Market. The 1995 study estimated an aggregate cost of cross-border legal uncertainty, with an estimate in the range € 7.230 million - € 74.790 million, with a central estimate of € 27.530 million. The bulk of this cost was attributable to consumers' risk-averse consuming behaviour – an outcome consistent with the findings of *Eurobarometer* surveys. With successful legal redress being unlikely in cross-border situations, consumers gain the impression that the risk of losing out in such a transaction is enhanced exactly because legal redress cannot be expected and, in addition, because rogue sellers and service providers may take advantage of this situation.

1.2. The Size of the Problem

Establishing the scale of the problem that the proposed Regulation will target, i.e. the potential number of small claims currently abandoned, is difficult for one simple reason: Small claims that are not pursued because of the disproportionate cost of litigation are not observable in the legal system and thus cannot be counted. In places where effective and affordable procedures for small claims are in place, they are used (usually for entirely domestic claims rather than cross-border matters). Where procedures are not cost-effective, or are absent, claims are not pursued and so data are not available. One is left searching for indirect indicators of the problem.

There is a further complication. Litigation is one means of seeking settlement of a grievance. For a case to come to court requires that (i) a transaction has, from the perspective of at least one party, been incomplete or satisfactory and (ii) that the plaintiff has decided to use court process to seek settlement. The potential population of claims is not the same as the number of "problematic" transactions, especially where the value is small. The plaintiff must want resolution strongly enough to bother to embark upon a court action. There is an argument that, without seeking to deny prompt access to justice, litigation is seen as the option of last resort, as something to be used only after direct dialogue and or alternative dispute resolution mechanisms have been tried but have failed.

On the other hand the outcome of small-claims that are pursued has an influence on the

behaviour of the parties beyond the proceeding (i.e. on the number of transactions, and the proportion in this number of transactions in which expectations are not met and grievance occurs). In an ideal environment, efficient dispute resolution and legal certainty should lead to more transactions but to fewer disputes.

1.2.1. Cross-Border Claims

A survey of the available information suggests that the size and nature of the actual problem is an under-researched area. Evidence of the existence of consumers and businesses having problems resolving cross-border disputes comes, *inter alia,* from anecdotal reports from consumer bodies, including the European Consumer Centres, and indirect indicators arising from *Eurobarometer* surveys.

1.2.1.1 Data concerning Cross-Border Purchases

Eurobarometer 43.0 found in 1995 that 24% of the citizens of Member States bought goods or services of up to € 2.000 in other Member States on a sporadic basis, mostly while travelling abroad. 10% of these consumers were unsatisfied with their purchases and two thirds of those were unable or unwilling to pursue their claims. The survey conducted for this study suggested that, at that time, a Single Market for durable goods hardly existed. People were put off buying abroad due to the risks of not being able to claim repair or refund money.

Other *Eurobarometer* surveys provide periodic information on cross-border purchasing behaviour by consumers[3].

Of the more recent relevant surveys, *Eurobarometer* 57.2 focused on cross-border purchases by consumers, interviewing 16129 consumers in all Member States. EB 57.2 found that only 13,3 % of consumers had bought or ordered services or products for private use from shops or vendors in another Member State in the previous 12 months (excluding travel, accommodation, meals, subsistence expenditure), little different from the results of previous such surveys over the preceding decade (see *Table 1.1,* Annex I). 57% of purchases had been made on a holiday or business trip; 34% on cross-border shopping trips (see *Table 1.2,* Annex II). EB 57.2 provides survey data on the size of purchases but the largest category is "€ 200 or more", well below the threshold of most small claims procedures. However the vast majority of purchases captured in the survey were of less than € 200 (72% of holiday and shopping trips purchases and 83% of Internet purchases). Only where visiting sales reps from another Member State were involved did purchases above € 200 account for more than half of the sampled population. Most cross-border purchasing is of comparatively small value items, notwithstanding the fact that

[3] Questions on cross-border purchasing have featured in *Eurobarometer* EB 35.1 (1991), EB 38.1 (1992), EB 39.1 (1993), EB 43.0 (1995), EB 43.1bis (1995), EB52.1 (1999), EB 56.0 (2001) and EB 57.2 (2002). Flash *Eurobarometer* 117 (01/2002) examined consumer rights. *Eurobarometer* 57.2 focused on cross-border purchases by consumers, interviewing 16129 consumers in all Member States.

especially in border regions values of larger transactions take place frequently as well, especially in financing, insurance and in the construction business.

1.2.1.2. Data concerning Cross-Border Litigation

If the data on cross-border shopping are relatively limited, information on how and how often such purchases lead to disputes is scarcer still.

A 2002 study[4] conducted a survey of European Consumer Centres (ECCs) and requested a ranking of the most important subjects of the requests for information related to cross-border trade in 2001. The results are shown in *Table 2.1* (Annex III). Access to justice appeared at the bottom of the list for all the ECCs. However telephone interviews conducted in conjunction with the survey suggested that many consumers would not pursue claims against dealers from another Member State if initial approaches were not successful. Again, the apparent "visibility" of the problem is not necessarily representative of its scale.

These results contrast with the results of *Eurobarometer* 35.1 (Spring 1991) and 43.1bis (Summer 1995) questions about what EU consumers saw as the main obstacles to buying or selling with another Member State. 29% of respondents in 1991 and 33% in 1995 identified that it was "too difficult to settle disputes"[5]. The more recent EB 57.2 and the 2002 survey of European Consumer Centres support these findings, with "difficulty of taking legal action through the courts" being ranked second among the lack of consumer confidence in cross-border trade (see *Table 2.2*, Annex IV).

By contrast, participants in focus groups for a qualitative study on cross-border shopping published in May 2004 put much less weight on legal issues[6]. Practical issues of delivery, price, branding and language appeared to be more significant to consumers considering cross-border purchases.

1.2.1.3. Data concerning Mutual Recognition

Other surveys suggest that there is support for mutual recognition of judicial decisions in relation to consumer rights or business disputes. *Table 2.3* (Annex V) shows the results of a more recent *Eurobarometer* survey[7] in which 85% of the sample of EU consumers questioned were broadly in favour of judicial decisions in commercial matters being recognised throughout the European Union. Coordinated action to simplify citizen's access to courts was similarly popular (*Table 2.4*, Annex VI).

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4 *Ex-ante Impact Assessment of the options outlined in the Green Paper on EU Consumer Protection*. GFA Management GmbH for European Commission, DG SANCO. 2002.

5 *Eurobarometer* 43.1bis split the question into two sub-questions. Composite rankings here are taken from GFA Management, 2002.

6 *Qualitative Study on Cross-border Shopping in 28 European Countries*, May, 2004, Optem/Eurobarometer, DG Health and Consumer Protection.

7 European Opinion Research Group – 59.2 – Summer 2003.

The popularity of the mutual recognition principle appears to extend into the new Member States and Candidate Countries, based on *Eurobarometer* 2003.3, as reproduced in *Table 2.5* (Annex VII).

1.2.1.4. Conclusion

In summary, there is less information than would be desirable on the population of potential beneficiaries from a new procedure available for facilitating cross-border claims. There are more data on the functionality and costs of the legal processes relevant to small claims across the European Union than there are on the cases brought or those claims not pursued by virtue of the cost, time, complexity or uncertainty of litigation.

1.2.2. Domestic Claims

Data on cases pursued within Member States, which in many instances have small claims procedures in place designed primarily for domestic cases, are more readily available.

In Germany, which has a population of 82 million, more than 1,8 million general civil cases are filed (not counting undisputed payment orders ("*Mahnbescheid*"), family matters or labour law)[8]. Almost 1,5 million of these cases are filed in the *Amtsgericht*, the lower court having a threshold of € 5.000 in general matters and exclusive jurisdiction in landlord-tenant disputes. Two thirds (i.e. almost a million) of these cases have a value of € 2.000 and below.

In England and Wales, with a population of 52 million, 1 million civil cases are filed annually; almost half of the total cases have a value of less than £ 1.000 (€ 1.400). The county courts hear most of the proceedings that would fall within the scope of the Regulation. Out of the 1 million cases filed, another 700.000 end in a judgment by default. Only 70.000 are disposed of by trial or small claims hearing[9].

In France, with a population of 60 million, about 2 million civil and commercial cases are filed, annually. Excluding family and personal law cases, about 300.000 civil and commercial cases are settled by the lower courts, the *Tribunaux d'Instance*. 80% fall within the scope of the proposed Regulation[10].

In Sweden (pop. 9 million), 30.000 rent and tenancy matters are dealt with in special tribunals and various consumer complaints boards deal with 10.000 cases annually.[11] Other than these, about 65.000 civil cases are filed annually.[12] In addition, there is a

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8 Source: Statistisches Bundesamt, *Fachserie 10 / Reihe 2.1, Rechtspflege*, Wiesbaden, 2002.

9 [U.K./England & Wales] Department for Constitutional Affairs, *Judicial Statistics*, London, 2002.

10 Direction de l'Administration générale et de l'Équipement, *Les chiffres-clés de la Justice*, Paris, 2003.

11 Statistiska centralbyran, Statistical *Yearbook of Sweden*, Stockholm, 2004.

12 For comparative purposes, in Denmark, approximately annually 110.000 civil cases are filed,

summary debt recovery procedure that is administered by the enforcement service, rather than the courts, with almost 700.000 annual proceedings[13].

In Ireland (pop. 4 Million), 20.000 civil matters are filed in the High Court every year, 40.000 with the circuit court and 80.000 with the district courts[14]. A small claims procedure exists which disposed of 3.000 cases in 2001[15].

2. What main objective is the proposal supposed to reach?

2.1. Background

The background to the current proposal lies in the entry into force of the Amsterdam Treaty and the conclusions of the Tampere European Council, which set the goal of progressively establishing an "area of freedom, security and justice".

The *Vienna Action Plan of the Council and the Commission*[16] (adopted by the Council in 1998) called for the identification of the rules on civil procedure which are urgent to approximate for the purpose of facilitating access to justice for the citizens of Europe and for the examination of the elaboration of additional measures to improve compatibility of civil procedure.

The *Conclusions of the Tampere European Council* of October 1999 called for a simplification and acceleration of cross-border litigation on small consumer and commercial claims, and for further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgement in the requested State[17].

The *Programme of the Commission and the Council of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters*[18] of November 2000 called for simplifying and speeding up the settlement of cross-border litigation on Small Claims. It stated that the concept of litigation on small claims referred to by the Tampere European Council covered various situations of varying degrees of importance that give rise to different procedures according to the Member State concerned. Discussions on simplifying and speeding up the settlement of cross-border

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84.000 of which have values below € 2.600.

13 Source: "statteverket" *http://www.rsv.se/kronofogden/ ->Nyehetter ->statistics*, source date: 16.04.2004.

14 [Ireland] Court Service Annual Report 2001, published 2002, *http://www.courts.ie/Home.nsf/Content/Press+Releases+Opening*, source date: 16.04.2004.

15 Irish Department of Justice, Equality and Law Reform, *Annual Report of the Court Service 2001*, *http://www.courts.ie/Home.nsf/Content/Press+Releases+Opening -> Annual report,* source date: 26.04.2004.

16 OJ C 19, 23.1.1999, p.1, point 41 (d).

17 "V. Better access to justice in Europe

18 OJ C 12, 15.1.2001, p. 1.

litigation on small claims, in line with the Tampere conclusions, would also, through the establishment of specific common rules of procedure or minimum standards, facilitate the recognition and enforcement of judgments. The programme, while being focused on facilitating the recognition and enforcement of judgments, makes thus also reference to the approximation of procedural law as an accompanying measure that may, in some areas, be a precondition for the desired progress in attempting to gradually dispense with any exequatur procedure.

2.2. The Objectives

The objectives of the Regulation as stated in the proposal are

– 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 judgement given in a European Small Claims Procedure in another Member State.

As specified in the Tampere conclusions, these two (proximate) objectives are part of two broader objectives, namely

– to provide better access to justice, and

– to enhance the mutual recognition of judgments.

2.2.1. Better Access to Justice

An effective administration of justice requires "access to justice" to the parties. Where financial, organisational and psychological barriers keep parties from seeking redress in court then it is the same as if such courts do not exist, cases are not resolved.

Legal-sociological research has shown that perspectives on the legal system and "access to justice" vary[19]:

- A first group ("power players") are actors who utilize economic and other powers to reach their goals and can thus avoid court proceedings almost entirely.
- A second group ("repeat players") utilize court proceedings regularly to achieve their goals. For these, going to court is a strategy among others that pays if the overall average proceeds are higher than the overall costs of these proceedings. For them, and only for them, the "average costs" of proceedings for the parties are therefore most important.
- A third group ("one-shotters") may have one, or sometimes two, legal cases in their

[19] Galanter, Marc, "The Legal Malaise: Or, Justice Observed," 19 Law and Society Review 537, 545 (1985); Vial, Enzo L., *Die Gerichtsstandswahl und der Zugang zum internationalen Zivilprozeß im deutsch-italienischen Rechtsverkehr*, Baden-Baden, 1999.

lifetime. Their decision to litigate is an important one connected to special circumstances but they take it. The one case being so important for them, it is particularly important that - especially as claimants, they have a chance to fully recover the expenses.

- The final group ("no-shotters") do not go to court when aggrieved because any of the barriers prove to be too high to them. For them, in part, it is the risks of costs involved that play an important role.

An effective administration of justice also requires a resolution within reasonable time. Justice delayed is justice denied, and where it takes too long to obtain a resolution, such a decision will not be able to provide guidance to the parties of the case nor to other parties in similar circumstances. The parties are aggrieved when they do not receive a resolution within reasonable time. The economic actors lose the very thing they needed: the predictability of the law and in many cases the money or goods they needed to continue with business. On the other hand, speed must never compromise justice itself. Throwing a dice is extremely fast, efficient and cheap but it lacks the predictability the economic actor requires and it does not fulfil the citizen's emotional needs. Nothing is gained with second-class law and justice for the small cases and the poor.

A simplified procedure is simplified because some of the stricter rules of civil procedure give way to discretion: the judge is trusted to be better able to make the right discretionary decisions appropriate to the individual case than the lawmaker. At the same time, certain limitations have to remain imposed and guidance as to the "preferable" decision might be given. One of the main features of the rule of law is the full predictability of the law, its theoretical forseeability in every detail, as opposed to the ancient "kadi" rule. Rules that apply to the procedure itself are an additional safeguard against injustice making for justice.

2.2.2. Mutual Recognition

At present, judicial decisions rendered in one Member State are not automatically recognised in another Member State. Individuals or companies wishing for a judicial decision to be recognised and enforced in another Member State must go through special intermediate proceedings ("exequatur") for its recognition in another Member State.

These proceedings often entail delays and additional costs and can in certain cases eventually lead to a refusal of recognition by the Member State concerned. Therefore the ultimate goal of the *Programme of the Commission and the Council of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters*[20] is the abolition of all intermediate measures for the recognition of judicial decisions among the Member States of the European Union. Judicial decisions will then no longer be treated differently or be subject to additional procedures because they were handed down in another Member State.

[20] OJ C 12, 15.1.2001, p. 1.

Through the adoption of *Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000*,[21] and *Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims*[22] the exequatur requirement has been abolished for certain cases and under specific conditions.

The paramount importance of the principle of mutual recognition for a genuine European Area of Justice in which individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States was confirmed by the conclusions of the Tampere European Council. They stated that "enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities."[23]

Article III-170 paragraph 1 of the *Draft Treaty establishing a Constitution for Europe* provides that "the Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases."

2.3. An Economic Perspective

From an economic point of view, an objective of the proposal is to provide a procedure which is economically viable, i.e. it should, for at least a proportion of claimants, provide the prospect of redress at an expected cost lower than the value of their claim. The last study to examine this issue in 1995 found that the average cost of pursuing a € 2000 claim was between € 980 and € 6.600 depending on the combination of Member States involved (in 1995 prices).

There is a population of disputed cross-border transactions in which the problem is not resolved by dialogue or ADR mechanisms. There is a frequency distribution to the size of such claims, and if the pattern of disputes broadly reflects the size distribution of purchase, there will be more small claims than large ones. Where a large amount of money is at stake, the expected cost of litigation is more likely to be smaller than the value of the claim and the claimants are more likely to make use of the law. However, there is a large population of claims where the expected cost of litigation is more than the value of the claim. The rational claimant would not litigate in these circumstances.

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21 OJ L 338, 23.12.2003, p. 1.

22 OJ L 143, 30.04.2004, p. 15.

23 No. 33.

This basic economic argument is important, but one should not be overly simplistic. The comparative advantage of the procedure is influenced by much more than just the court fees applied to its use. Parameters such as the balance it strikes between the interests of plaintiff and defendant, the simplicity and transparency of the process and its timeliness, can be at least as important.

Even determination of the expected cost can be a complex calculation reflecting:

– the court charges associated with use of the procedure,

– the charges levied by legal advisers, where they are used (possibly including the lawyers of the opposing party),

– the probability of success in pursuing the claim,

– the rules governing reimbursement of costs and the allocation of costs between the successful and unsuccessful parties.

The expected cost of litigation of small claims through domestic procedures varies between Member States. Differences in legal process, court fees, lawyers' charges, etc. all give rise to variation in cost.

If the expected cost of litigation can be reduced, through a simplified, low-cost, mechanism that enjoys recognition across the European Union, there is the prospect of reducing the economic loss associated with the problem and increasing access to justice. The economic value of the claims viable under the new procedure is not, however, the limit of the economic benefit to the procedure. The major benefit is the increased trade (cross-border purchasing) triggered through the increased consumer and business confidence arising from the improved transparency and certainty of the legal process. Uncertainty about legal procedures in other Member States has emerged in surveys as a significant barrier to the development of the Internal Market. The primary cost of the status quo is the suppressed level of cross-border transactions. Removing this barrier should increase aggregate welfare for consumers and businesses.

The comparative cost arguments developed above for cross-border cases apply equally in the case of domestic cases.

3. What are the main policy options available to reach the objective?

In order to understand the impacts of the proposal it is necessary to define a counter-factual, or "do nothing" scenario which represents the collective understanding of what is likely to unfold in the absence of the proposed new legislation.

The "do-nothing" scenario is defined by:

– A set of assumptions with regards to the civil law procedures available at Member State and European levels and the cost, duration and support given to those applicable to small claims;

– An assumption that there will be continued development of the Internal Market and the movement of people, goods and services.

The body of civil procedural law of the Member States is subject to on-going and incremental change. There is, however, nothing in prospect that will have a material impact on the problem of small claims as a European issue. It is to be hoped that where small claims procedures designed primarily for domestic cases are less effective they will be improved, but whilst helpful to domestic cases this will not, even where it happens, necessarily assist in making a cross-border small claim a more attractive proposition than it is today.

The implications of the do-nothing scenario are that increased intra-EU trade and exchange will only increase the number of interactions and transactions, a proportion of which will unavoidably lead to disputes. Some proportion of those will prove intractable and lead to the plaintiff seeking redress through litigation. There is little sign that access to justice in respect small claims will improve without a new instrument. The number of EU citizens denied that justice will increase, and the economic costs of the inefficiency and uncertainty rise with it.

4. What are the expected impacts?

The following assessment of the impacts of the proposal focuses on the scope of the proposal (numbers of cases potential cases and parties concerned, financial volume, 4.1.), the time limit for rendering the judgement (4.2.), the issue of mutual recognition (4.3.), a cost assessment (4.4.), and other issues (such as the interplay between the European Small Claims Procedure and existing instruments, 4.5.).

4.1. Scope

4.1.1. Scope of Proposal

The proposal provides that the scope of application of the European Small Claims Procedure covers both domestic and cross-border cases. The availability of the procedure for domestic cases has profound ramifications for the range and scale of potential impacts.

The question of the appropriate level of the threshold was asked in the *Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation.*[24] Amounts between € 300 and € 5.000 were suggested.

[24] COM 2002 746 final, Section 5.1.

Currently, out of 17 jurisdictions in 15 Member States, at least 8 have existing small claims schemes in place, 6 do not have such procedure with no current information available for another 3 jurisdictions.[25] The proposed threshold amount of € 2.000 itself is more or less an "average" of the threshold amounts in place for small claims proceedings in these Member States. It amounts to about the average monthly income in Europe for 1.5 months.[26]

4.1.2. Numbers of Potential Cases and Parties Concerned

Given the availability of the Regulation also for domestic cases, and based on the data available on small civil cases processed within the Member States, the Report estimates that the theoretical scope of the Regulation is in the range of 5 million cases per year in the European Union. The Report assumes that a procedure that provided an attractive route to litigation on cross-border small claims would be expected to lead to an initial increase in the number of cross-border small claims. This proportionate increase would not necessarily be sustained: To the extent that it gradually reduces legal uncertainty in relation to cross-border transactions it could even be expected that proportionately fewer claims would come to litigation.

The Report estimates furthermore that, discounting repeat players, probably 7 million European citizens are potentially directly involved in these disputes per year. Thus, over a period of several years, a very significant proportion of the population of the Member States may be directly affected by the Regulation.

4.1.3. Financial Volume

While the threshold is set at € 2.000, obviously not all cases will reach this amount. While few statistical data are available in this respect, the Report states that it is reasonable to presume that the average claim value within this threshold will be € 1.000. Accordingly, within the scope of the Regulation are cases that directly decide the fate of € 5 billion.

In order to estimate the costs of these proceedings, the Report attempts to follow a most simple and ideal domestic small claim in order to understand the transactional costs of a proceeding.

The individual claimant being sufficiently aggrieved and having decided to pursue a claim in court, will need to gather information on the potential rights and the proper proceeding, compile the necessary documents, where applicable, and prepare the case for filing in court. While this is very much guesswork and only serves as a possible scenario, a very well educated and fully literate person but without extensive prior knowledge may

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[25] CNRS Report, 2001. The Netherlands, Italy and Greece were not covered in the CNRS report.

[26] Cepremap, Distribution of Disposable Income in 2000 (EU 15 / Enlarged EU) *http://www.cepremap.ens.fr/~askenazy/tablesarticle.pdf* (calculated in pps: World Bank, Relative prices and exchange rates, *http://siteresources.worldbank.org/ICPINT/Resources/Table5_7.pdf*, source date: 25.04.2004.

possibly be able to do all that in (maybe) six hours. By asking a professional for assistance - be it a lawyer, a consumer advice bureau, or a court clerk - the claimant may be able to significantly reduce this time. The claimant may be able to explain the case orally in half an hour, and a very efficient professional may be able to complete the complaint in another half an hour including support staff time. In preparation of a sufficiently simple claim for filing in court under an ideal situation, for either the own time invested by the claimant, or the professional time, it is thus reasonable to allocate an investment of € 100.

Once the claim is received at the court, it is reasonable to assume at least half an hour support staff time for the processing of the claim into the system, presenting the prepared case to a judge or legal clerk for initial review and preparing the service of claim to the defendant. Thereafter, service itself needs to take place. Almost another hour of labour will go into the initial processing of the claim, plus material and the overhead for office and equipment used by the court staff etc. All in all, maybe another € 100 can be assigned to the process.

The defendant, having been served will need to understand, gather information and documents and prepare an answer. Probably the same applies for the defendant, as for the claimant (= € 100).

Again, the file will need to be processed in court (€ 50).

Finally, a judge will need to review the entire case file, make a factual and legal appraisal of the case and write a judgment and the reasons for such judgment (€ 200), including a proportionate time for legal research.

The judgment needs to be served on the parties, and this service needs to be supervised and documented again. Eventually, the file will need to be stored at the court for some time and probably be destroyed after 30 years or whatever the laws provide (€ 100).

The Report states that based on this very crude outline, the processing of a simple small claim will require transactional costs of € 650 (without the enforcement which may have to take place after judgment is obtained).[27]

The Report concludes that based on these considerations and the current situation in some existing small claims schemes, the cost of these proceedings that are potentially governed by the scope of the Regulation, whoever bears them, be it the parties or be it the tax payer is at least another € 3 billion.[28]

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27 In a common law system, it is on the average more difficult to determine the law of the case on a case-by-case basis than when the law can be determined on the basis of organized statutory provisions as in civil law systems. Thus the time to be allocated for the judges' legal research, their education and experience and thus the transactional costs might be increased in common law systems.

28 See also, Freitag, Jan, *Staatliche Handlungspflichten im Justizbereich, - Eine Arbeit über die Überlastung der Bundesdeutschen Justiz in den 90er Jahren,* Diss-Hamburg, Berlin, 2000, p.

Adding the case value to the direct cost of the proceedings potentially governed by the Regulation gives a "turnover" of at least € 8 billion.[29]

4.2. Time limit for rendering the Judgement

The proposal provides that a judgment shall be rendered with 6 months after the introduction of the procedure. If in exceptional circumstances it is not possible for the court or tribunal to respect this time limit in order not to jeopardize the proper conduct of proceedings, it shall take the necessary steps as soon as possible.

The impact of this rule is largely dependent on the average time proceedings will take and on the usual reasons why proceedings would take more than these 6 months. The current position varies widely across the Member States.

In Germany, more than a million out of the 1,5 million general civil cases go to trial or hearing.[30] Almost 80% of the cases at the *Amtsgericht* are disposed of within 6 months. About a third of the cases are settled, usually during the hearing and based on a suggestion of the judge. The average time for a disputed judgment, if settlement or other solution cannot be reached, is 7 months from the date of filing. Trials or hearings at the *Amtsgerichte* are usually about between 15-30 minutes and hardly ever take more than an hour and a half. There are approximately 700 *Amtsgerichte* and 15.000 judges for civil, criminal and family matters.

In the United Kingdom, according to official statistics, the average waiting time for a judgment in civil matters is 14 months from the date of filing, and the trials or hearings take 4 hours on average.[31] There are about 1.000 judges in England for all civil, criminal and family matters, large or small.

Official statistics, even where available, are often flawed by the fact that they include default judgements, acceptance, early settlements, claim withdrawals or other types of proceedings that end in a "fast" fashion. What is interesting here are the cases that actually "go to trial", where the case is discussed on the merits and witnesses heard.

Not the statistical average, but the reasonably expectable duration of full first instance civil proceedings in the Member States lies between 4 months and 24 months.[32] For these figures, practicing attorneys were asked on their general estimate based on the experience

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152.

29 These estimates are based on current data - notably without certain possible changes of (current) plaintiff behaviour. If the Instrument works as intended, lowering the barriers of access to the courts, these numbers might become higher.

30 Source: Statistisches Bundesamt, *Fachserie 10 / Reihe 2.1, Rechtspflege*, Wiesbaden, 2002.

31 [U.K./England & Wales] Department for Constitutional Affairs, *Judicial Statistics*, London, 2002.

32 Von Freyhold, Gessner, Vial, Wagner, *Cost of Judicial Barriers for Consumers in the Single Market, A Report for the European Commission*, Bremen/Brussels 1995.

with the courts and to give further reasons and descriptions in order to make these non-representative estimates more reliable.[33] Under-funding of the legal system, lack of modern office management and equipment, lack of staff, together with inefficient procedural rules, can be considered to be the most significant contributing factors to most, if not all, procedural delays beyond a year. Compared to up to 24 months proceedings usually take in some Member States, a maximum duration of 6 months would be a significant improvement.

4.3. Mutual Recognition

The Report estimates that the abolition of the recognition and enforcement procedure will reduce the potential duration of cross-border proceedings by between 1 month and 18 months and will reduce the costs by € 250 to € 1.300.[34] This impact is of considerable significance, reducing costs and duration in appropriate cases by 20%.

In this context, it should, however, be stressed that cases of recognition and enforcement are not very common. Most judgments are paid voluntarily and the more consensual the outcome of the proceeding was and the more the debtor has participated, the more is it likely that he will pay.[35] As an example, in Germany, compared to 1,8 million general civil and commercial matters (plus 700.000 labour disputes), annually there are fewer than 5.500 applications for recognition of foreign judgments.[36] The numbers of recognition proceedings are particularly high in the United Kingdom which applies the Brussels I Regulation on internal matters between the three jurisdictions.

If judgments have to be enforced, the enforcement itself takes between 4 and 8 months. Due to the substantial amount of work, or work time, the transaction costs involved with the execution of judgments are quite substantial. The bailiff, judge or other execution official might have to physically visit the debtor's or third party premises, might have to attach items for sale, or might have to question the debtor to take his oath. Unless borne (in part) by the government when the fees are set too low, these costs have to be paid by the creditor and, should execution be successful, by the debtor. For a claim for € 2.000, the execution costs average € 300.

4.4. Cost Assessment

There is no "typical" European small claim: There is variation in the substance as well as

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33 Please note that these figures relate to a disputed but not unusually difficult civil matter and do not include "pure" small-claims proceedings even if by the value of the matter these cases are handled by "lower" courts in some Member States.

34 Von Freyhold, Gessner, Vial, Wagner, *Cost of Judicial Barriers for Consumers in the Single Market, A Report for the European Commission*, Bremen/Brussels 1995.

35 Schedler, et. al., *Arbeitsplatz Gericht, Effizienz der Zwangsvollstreckung,* interim report, Praktikerforschungsgruppe der Universität Konstanz, Stuttgart 1997.

36 Source: Statistisches Bundesamt, *Fachserie 10 / Reihe 2.1, Rechtspflege*, Wiesbaden, 2002. The figure 5.500 contains other types of applications as well.

the variation in the laws, court procedures, working practices and other idiosyncrasies of the Member States. The complex contextual environment for the proposed Regulation makes explanation and analysis of the costs of pursuing a small claim difficult – there are too many possible variants. Nonetheless an attempt has been made in the Report, as set out in the tables below.

*Table 3.1 (*Annex VIII) details the various activities that may be involved in pursuit of a cross-border claim under the new Regulation. Within a given Member State the actual cost will vary according to whether, for instance:

– lawyers are used,

– enforcement is required,

– the Member State is the domicile of the defendant or the plaintiff.

There is then the variation across Member States, which is substantial in almost every respect.

Table 3.2 (Annex IX) gives a summary of how these elements build into an aggregate cost and duration for a small claim in both the defendant's Member State of residence and in the plaintiff's domicile. The compilation of the summary data in *Table 3.2* is shown in *Table 3.3* (Annex X) and *Table 3.4* (Annex XI) for cases in the defendant and plaintiff's domiciles respectively. In all instances the costs of a typical activity have been estimated, actual costs may vary.

The distilled results are shown below. Depending on the Member State and the claim, the potential cost of a € 2.000 small claim varies between € 520 and € 5.400.

	Cost (€)			**Duration (months)**		
	Min	**Max**	**Mean**	**Min**	**Max**	**Mean**
Defendant's place of residence	780	5400	2097	12	22	14.5
Plaintiff's place of residence	520	4300	1733	13	34	18.2

This analysis suggests that the potential plaintiff will need to be well informed about the costs that may arise in his particular circumstances if he is to proceed without risk of finding that the costs outweigh the value of the claim.

4.5. Other Issues

The European Small Claims Procedure would be available to litigants as an alternative to the procedures existing under the laws of the Member States which will remain unaffected. The Report states that the outcome of the interplay between the European Small Claims Procedure procedure and existing instruments is uncertain. It can be expected that individual claimants will compare factors such as the expected duration,

expected cost, transparency, treatment of evidence, process of enforcement, uncertainties etc. of the new and existing procedures on a case-by-case basis. The existing procedures vary widely across the European Union across all of these parameters and the resulting shift in use of different court procedures cannot be predicted at this time.

The Report concludes furthermore that although the Regulation introduces a Europe-wide procedure with common basic rules, participants' experience of it, and the costs born by the parties will vary from Member State to Member State because the issues not directly addressed by the Regulation will be subject to national laws which vary widely.

The Report assumes furthermore that the Regulation will also affect most legal professionals (500.000 lawyers[37], judges and court clerks, bailiffs and a few hundred thousand of other employees at courts, law firms, debt collection agencies and many businesses).

4.6. Summary of Impacts

The potential impacts of the proposal can be summarised as follows:

(1) It can be estimated that the theoretical scope of the Regulation is in the range of **5.000.000 cases per year**. An **initial increase in the number of cross-border small claims** can be expected which would, however, not necessarily be sustained.

(2) It can be estimated that **7.000.000 citizens** are potentially directly involved in a European Small Claims litigation per year.

(3) Based on the presumption that the **average claim value** will be **€ 1.000**, there are cases within the **scope of the proposal** that decide the fate of **€ 5.000.000.000**.

(4) It can be estimated that the **cost of the proceedings** that are potentially governed by the scope of the Regulation is at least another **€ 3.000.000.000**. Adding case value to the direct cost of the proceedings potentially governed by the Regulation gives a **"turnover" of at least € 8.000.000.000**.

(5) A reduction of the current **duration of procedures** between **4 and 24 months** to a **maximum of 6 month (as a rule)** would be a significant improvement.

(6) It is estimated that the abolition of the recognition and enforcement procedure will **reduce the potential duration** of cross-border proceedings by **between 1 and 18 months** and will **reduce the costs** by **€ 250 to € 1.300**. This will **reduce the cost and duration** in appropriate cases **by 20%.**

(7) Depending on the Member State and the claim, the **potential cost of a € 2.000 small claim** varies between **€ 520 and € 5.400**. Therefore a potential plaintiff will

[37] Source: CCBE, *http://www.ccbe.org/en/ccbe/ccbe_en.htm*, source date: 16.04.2004.

need to be **well informed about the costs** that may arise in his particular circumstances if he is to proceed without risk of finding that the costs outweigh the value of the claim.

(8) The outcome of the **interplay between the new procedure and existing procedures** is **uncertain**. It can be expected that individual claimants will compare factors such as the expected duration, expected cost, transparency, treatment of evidence, process of enforcement, uncertainties etc. of the new and existing procedures on a case-by-case basis.

(9) The **experience of participants** of the new procedure and the **costs** born by the parties will **vary between Member States**.

(10) The Regulation will **affect most legal professionals** (500.000 lawyers, judges and court clerks, bailiffs and a few hundred thousand of other employees at courts, law firms, debt collection agencies and many businesses).

5. How to monitor and evaluate the results and impacts of the proposal after implementation?

There are proximate and ultimate aspects to the monitoring and evaluation requirements of the proposed European Small Claims Procedure. These may be summarised as follows:

Proximate aspects:

– Monitoring the implementation of the Regulation by Member States;

– Monitoring the extent to which consumers and businesses become aware of the Regulation and understand how to use it;

– Monitoring the extent to which it is used, how, where and in relation to what.

Ultimate aspects:

– Increased confidence in the availability of the legal process to bring resolution to small claims (in relation to domestic and cross-border cases);

– Reduction in the extent to which uncertainty about legal process is a barrier to cross-border trade;

– Increase in intra-EU trade.

Consumer and business awareness of the procedure is best assessed through EU-wide surveys. An ex-post evaluation of the procedure would need to examine issues such as the following:

- Are consumers generally aware of the procedure?
- Are consumers who have had attempted to pursue a claim aware of the procedure?
- If so, did they make use of it?

  If not:

  – Why not?
  – Was another procedure used instead or the claim abandoned?

  If so:

  – How straightforward was the experience?
  – Was the advice available from the court adequate?
  – Was legal advice used?
  – Was an oral hearing required?
  – How long did it take to get a decision?
  – Was enforcement subsequently required?
  – What were the costs?

If the Regulation is successfully used, the ultimate impact would be seen in consumers having fewer concerns about the difficulty of taking legal action through the courts and being more willing to participate in cross-border trade. It is likely that it would take some years for awareness and use of the new procedure to filter through to public opinion surveys. There would nonetheless appear to be a benefit to *Eurobarometer* surveys on consumers' attitudes to the single market and cross-border trade being a more regular occurrence than they have been in the past; and if possible adopt a core set of standard questions so that time-series analysis of changing in attitude would be possible. The *Eurobarometer* surveys appear to be the best available mechanism for testing end-consumer attitudes to the issues that the Regulation is targeted at.

6. Stakeholder consultation

The adoption of the proposal was preceded by a wide-ranging consultation of both Member States and all interested parties of civil society.

6.1. Meeting of Expert Group

In order to prepare a Green Paper on the issue of Small Claims, the Commission held a meeting of an expert group in May 2002. A paper produced by the Commission which summarised existing procedures and listed possible questions for a Green Paper was the discussed at this meeting.

6.2. Green Paper

The *Green Paper on a European order for payment procedure and on measures to*

simplify and speed up small claims litigation[38] was adopted by the Commission in December 2002. It 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.

There were more than sixty responses to the Green Paper (from other Community institutions,[39] governments of Member States, representatives of interest groups, business associations, lawyers' representative bodies, consumer associations and academic researchers).

6.3. Public Hearing

The reactions to the Green Paper that were debated in a public hearing organised by the Commission in December 2003 revealed that an instrument to simplify and speed up small claims litigation is almost unanimously considered a step ahead in the creation of an area of freedom, security and justice. A discussion paper[40] presented a general synthesis of the responses to the Green Paper.

6.4. Meeting of Expert Group

In March 2004 a meeting of experts of the Member States discussed a draft Regulation creating 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 creating 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 judgement given

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38 COM (2002) 746 final.

39 In its opinion 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 (OJ C 220, 16.9.2003, p. 5). In its opinion 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 (*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*).

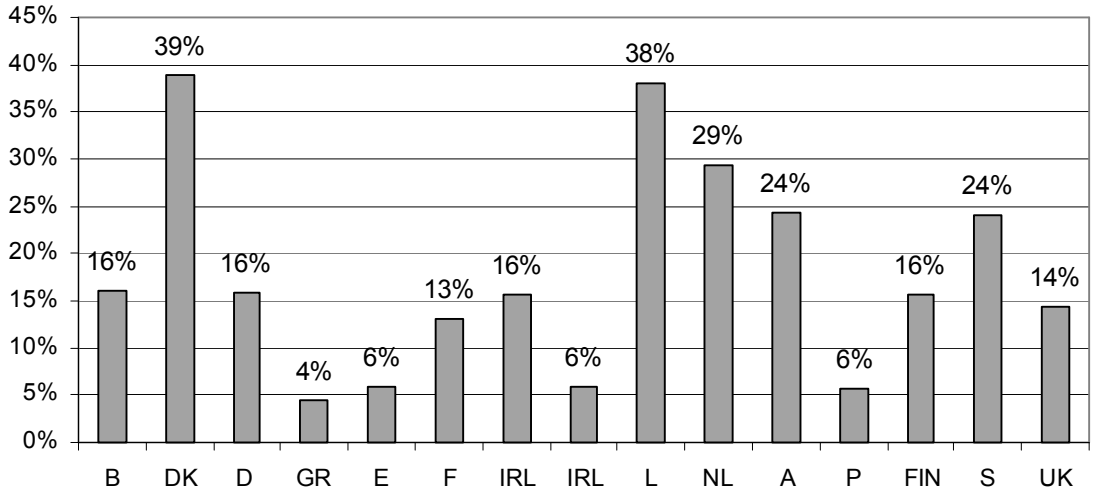
40 http://europa.eu.int/comm/justice_home/news/consulting_public/12122003/discussion_paper_en.pdf

in a European Small Claims Procedure in the another Member State.

Annex I

Table 1.1:[41]

Consumers purchasing from shops or vendors located in another EU countries in the previous 12 months, by Member State (%)

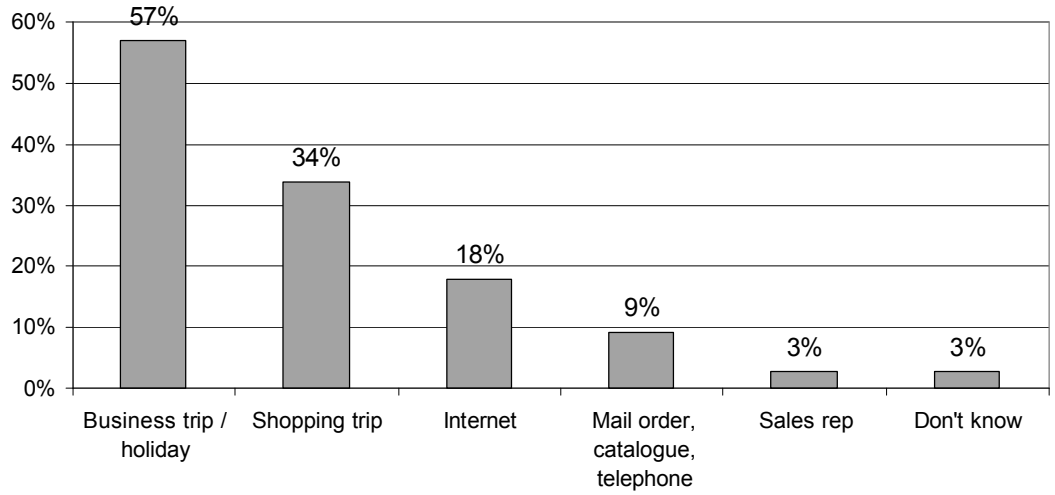


[41] Source: *Eurobarometer* 57.2 – 2002.

Annex II

Table 1.2:[42]

How people conducted their cross-border shopping



Note: Multiple answers were possible, hence replies total more than 100%.

[42] Source: *Eurobarometer* 57.2 – 2002.

Annex III

Table 2.1:[43]

Ranking of main subjects of requests for information to ECCs

Subject	Rank
1	House rental and purchase
2	Car purchase
3	Furniture, household appliances, electronic devices
4	The euro
5	Timesharing
6	Travel
7	Financial services
8	Textiles
9	Distance selling in general
10	Foodstuffs (mainly safety of such)
11	Contracts/guarantees
12	Access to justice

[43] ECC survey, GFA Management GmbH, 2002.

Annex IV

Table 2.2:[44]

Main reasons for lack of confidence/obstacles in cross-border trade from a consumer perspective

	Eurobarometer 57.2 (2002)		**European Consumer Centre Survey (2002)**	
	Average	Rank	Average	Rank
Difficult resolution of after-sales problems – complaints, returns, refunds, guarantees	3.57	1	3.92	1
Difficulty to take legal action through the courts	3.47	2	3.83	2
Greater difficulty to ask public authorities or consumer associations to intervene on one's behalf	3.41	3	3.25	3
Greater risk of practical problems (delivery problems etc.)	3.34	4	3.25	4
Lack of information about consumer protection laws in other EU countries	3.32	5	3.33	5
Lack of trust in foreign shops or sellers, greater risk of fraud or deception	3.18	6	3.08	6
Lower standards of consumer protection laws in other EU countries	3.18	6	2.5	7
Lack of trust in safety of goods and services purchased from foreign sellers	3.15	8	2.16	8

Notes: Scoring - 4 = very important, 1 = not at all important
Eurobarometer data only drew on respondents who were less confident buying from a shop or seller in another EU Member State. 12 of 14 ECCs were covered.

[44] Sources: *Eurobarometer* 57.2; GFA Management, 2002.

Annex V

Table 2.3:[45]

Guarantee that judicial decisions in commercial matters, such as consumer rights or business disputes, are recognised throughout the European Union

	Completely in favour	Somewhat in favour	Somewhat against	Completely against	Don't know
Belgium	54	34	3	2	7
Denmark	39	38	8	4	11
Germany	53	33	4	2	8
Greece	49	33	3	1	14
Spain	50	38	3	1	8
France	43	45	4	2	6
Ireland	44	38	2	1	16
Italy	45	45	4	1	6
Luxembourg	60	32	3	0	5
Netherlands	52	36	5	1	7
Austria	37	41	7	2	13
Portugal	43	41	5	2	9
Finland	36	51	6	1	7
Sweden	52	32	5	3	8
UK	32	42	7	4	15
EU 15	45	40	5	2	9

[45] Source: EB 59.2 (Summer 2003)

Annex VI

Table 2.4:[46]

Set up European Union-wide measures to simplify citizens' access to courts

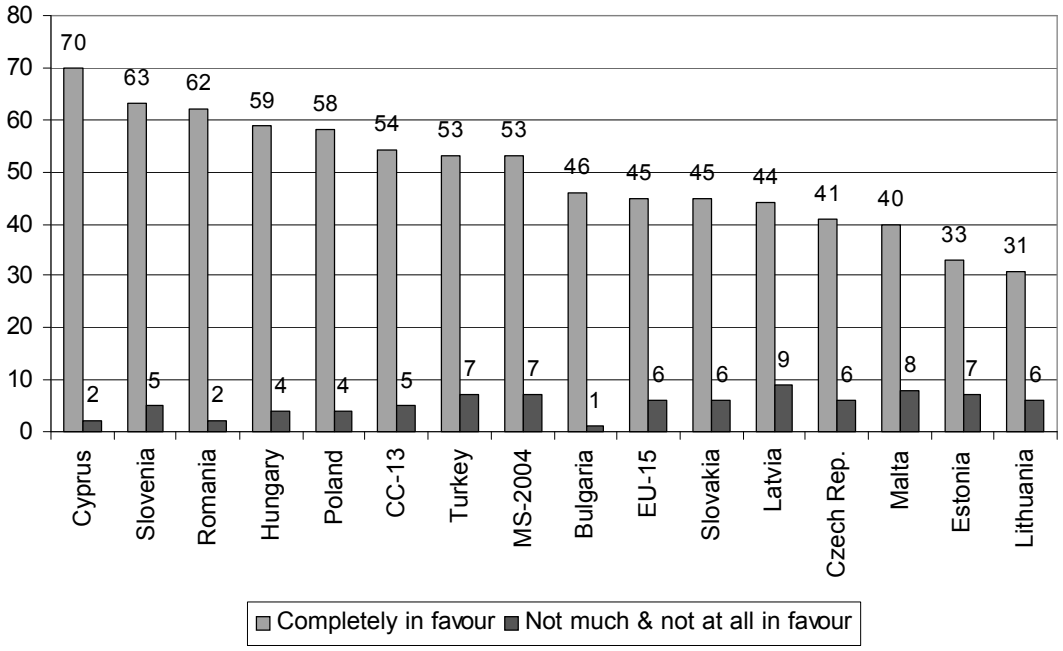
	Completely in favour	Somewhat in favour	Somewhat against	Completely against	Don't know
Belgium	55	37	2	1	6
Denmark	43	37	7	3	10
Germany	50	35	5	2	9
Greece	55	29	2	0	13
Spain	50	38	3	1	9
France	44	46	4	1	5
Ireland	45	39	2	0	15
Italy	41	45	3	1	11
Luxembourg	55	38	4	0	3
Netherlands	49	37	6	2	6
Austria	40	40	8	1	11
Portugal	49	40	4	1	7
Finland	43	45	5	0	7
Sweden	58	30	4	2	6
UK	31	43	7	5	15
EU 15	45	40	4	2	9

[46] Source: EB 59.2 (Summer 2003)

Annex VII

Table 2.5:[47]

Guarantee that judicial decisions in commercial matters are recognised across the European Union (New Member States and Candidate Countries)



[47] Sources: EU-15: Standard *Eurobarometer* 59.2 Spring 2003; Candidate Countries: *Eurobarometer* 2003.3 – Justice and Home Affairs; EU-

Annex VIII

Table 3.1: Activities and their associated cost and duration for a cross-border court dispute by Member State under the proposal

(All costs are in given in 2004 €, Duration in months

	Member State:	B		DK		D		GR		E		F		IRL		I	
	Activity	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.
1.	Preparation of proceeding abroad	120	1	250	1	160	1	50	2	250	1	250	1	250	1	200	2
2.	Additional for foreign client	100	1	50	1	30	1	80	1	50	1	50	1	150	1	50	2
3.	Domestic service of process	20	1	0	1	0	1	20	2	30	1	20	1	20	1	20	2
4.	First instance proceeding	450	5	850	5	740	5	250	5	600	5	1000	5	1000	5	1000	5
5.	Correspondent counsel	60	0	100	0	160	0	30	0	80	0	400	0	300	0	300	0
6.	Domestic enforcement	100	4	250	4	200	4	500	12	200	6	300	4	500	4	450	6
7.	Preparation of service abroad	50	1	0	1	0	1	50	2	50	1	50	1	50	3	50	2
8.	Preparation of enforcement abroad	100	1	400	1	160	1	100	10	500	1	650	1	500	3	200	2
9.	Recognition of foreign judgment	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1
10.	Incoming service requests	20	2	0	2	0	1	0	2	20	10	40	11	0	2	0	2

... cont ...

	Member State:	L		NL		A		P		SF		S		UK			

	Activity	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.		
1.	Preparation of proceeding abroad	120	1	120	1	250	1	300	2	600	1	400	2	350	1		
2.	Additional for foreign client	50	1	50	1	50	1	50	2	500	1	500	1	350	1		
3.	Domestic service of process	0	1	20	1	0	1	0	2	0	1	0	1	250	1		
4.	First instance proceeding	800	5	700	5	730	5	900	5	3000	5	3000	5	1500	5		
5.	Correspondent counsel	0	0	100	0	0	0	300	2	1000	0	1000	0	300	0		
6.	Domestic enforcement	250	4	250	4	300	6	600	8	180	8	300	8	250	4		
7.	Preparation of service abroad	50	1	200	1	0	1	0	2	50	1	0	1	100	1		
8.	Preparation of enforcement abroad	200	1	100	1	100	1	200	2	500	1	150	2	300	1		
9.	Recognition of foreign judgment	0	1	0	1	0	1	0	1	0	1	0	1	500	1		
10.	Incoming service requests	0	1	0	3	0	2	0	3	0	2	0	2	0	3		

Notes:

1. A procedure at the defendant's place of residence is the standard under the Brussels Convention; 2. All calculations were made on a conservative, or realistic minimum basis. VAT, translation costs (note 4) and expert witness costs were excluded; 3. For stamp duty, certifications and other costs calculated by pages in some member states, a four page document served as basis; 4. Translation costs of € 50-60 per page (Greece: € 8,30 per page) have to be added; 5.Bank transaction costs of approx. ECU 15 have to be added twice (once for payment to foreign counsel and once for the transmission of the proceeds); 6.Potential recovery of costs by winning plaintiff is complex and ranges between 0% and 80% as foreign counsel fees and additional expenses are generally not recoverable even in member states providing for full recovery in principle; 7.All cost and duration refer to the side of the plaintiff only; 8. figures in 2004 prices (or best estimate of based on available information).

Annex IX

Table 3.2:

Summary of cost and duration for a cross-border court dispute under the proposed Regulation

I.: For a procedure at the defendant's place of residence

Member State:	B	DK	D	GR	E	F	IRL	I	L	NL	A	SF	S	P	UK
Activity	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost
A Preparation Duration	1	1	1	2	1	1	1	2	1	1	1	2	1	2	1
B Proceeding & Enforcement	11	11	11	20	13	11	11	15	11	11	13	19	15	15	11
A Preparation Costs	120	250	160	50	250	250	250	200	120	120	250	300	600	400	350
B Proceeding & Enforcement	730	1250	1130	880	960	1770	1970	1820	1100	1120	1080	1850	4680	4800	2650

Cost			Duration		
Min	Max	Average	Min	Max	Average
780	5400	2097	12	22	14,5

II.: For a procedure at the plaintiff's residence

Member State:	B	DK	D	GR	E	F	IRL	I	L	NL	A	SF	S	P	UK
Activity	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost

C Typical preparation & proceeding duration	7	7	7	17	7	7	11	9	7	7	7	9	7	8	7
D Typical enforcement	7	7	6	15	17	16	7	9	6	8	9	12	11	11	8
C Typical preparation & proceeding costs	600	1250	900	400	1150	1700	1550	1250	1050	1000	830	1100	3550	3150	1900
D Typical enforcement	120	250	200	500	220	340	500	450	250	250	300	600	180	300	750

Cost			Duration		
Min	Max	Average	Min	Max	Average
520	4300	1773	13	34	18,2

Notes: In Total, 400 combinations are possible. The Table gives an overview on an indicative basis only.

Annex X

Table 3.3:

Costs and Durations related to a proceeding at defendant's residence

	Member State:	B		DK		D		GR		E		F		IRL		I	
	Activity	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.
A1	Prep. of proceeding	120	1	250	1	160	1	50	2	250	1	250	1	250	1	200	2
A	Total (A1)	120	1	250	1	160	1	50	2	250	1	250	1	250	1	200	2
B2	Add. for foreign client	100	1	50	1	30	1	80	1	50	1	50	1	150	1	50	2
B3	Service of process	20	1	0	1	0	1	20	2	30	1	20	1	20	1	20	2
B4	Court proceeding	450	5	850	5	740	5	250	5	600	5	1000	5	1000	5	1000	5
B5	Correspondent counsel	60	0	100	0	160	0	30	0	80	0	400	0	300	0	300	0
B6	Domestic enforcement	100	4	250	4	200	4	500	12	200	6	300	4	500	4	450	6
B	Total (B2-B6)	730	11	1250	11	1130	11	880	20	960	13	1770	11	1970	11	1820	15

... cont ...

	Member State:	L		NL		A		P		SF		S		UK			
	Activity	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.		
A1	Prep. of proceeding	120	1	120	1	250	1	300	2	600	1	400	2	350	1		
A	Total (A1)	120	1	120	1	250	1	300	2	600	1	400	2	350	1		

B2	Add. for foreign client	50	1	50	1	50	1	50	2	500	1	500	1	350	1		
B3	Service of process	0	1	20	1	0	1	0	2	0	1	0	1	250	1		
B4	Court proceeding	800	5	700	5	730	5	900	5	3000	5	3000	5	1500	5		
B5	Correspondent counsel	0	0	100	0	0	0	300	2	1000	0	1000	0	300	0		
B6	Domestic enforcement	250	4	250	4	300	6	600	8	180	8	300	8	250	4		
B	Total (B2-B6)	1100	11	1120	11	1080	13	1850	19	4680	15	4800	15	2650	11		

Notes:

1. A procedure at the defendant's place of residence is the standard under the Brussels Convention.

2. This table is for comparative purposes only, as the cost arise separately in the Member States.

Annex XI

Table 3.4:

Costs and Durations related to a proceeding at plaintiff's residence

	Member State:	B		DK		D		GR		E		F		IRL		I	
	Activity	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.
C7	Prep. service abroad	50	1	0	1	0	1	50	2	50	1	50	1	50	3	50	2
D10	Incoming request	20	2	0	2	0	1	0	2	20	10	40	11	0	2	0	2
C4	Court proceeding	450	5	850	5	740	5	250	5	600	5	1000	5	1000	5	1000	5
C8	Preparation of enforcement abroad	100	1	400	1	160	1	100	10	500	1	650	1	500	3	200	2
D9	Exequatur	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1
D6	Domestic enforcement	100	4	250	4	200	4	500	12	200	6	300	4	500	4	450	6
C	Total (C7,C4,C8)	600	7	1250	7	900	7	400	17	1150	7	1700	7	1550	11	1250	9
D	Total (D10,D9,D6)	120	7	250	7	200	6	500	15	220	17	340	16	500	7	450	9

… cont …

	Member State:	L		NL		A		P		SF		S		UK			
	Activity	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.	Cost	Dur.		
C7	Prep. service abroad	50	1	200	1	0	1	0	2	50	1	0	1	100	1		
D10	Incoming request	0	1	0	3	0	2	0	3	0	2	0	2	0	3		

C4	Court proceeding	800	5	700	5	730	5	900	5	3000	5	3000	5	1500	5		
C8	Preparation of enforcement abroad	200	1	100	1	100	1	200	2	500	1	150	2	300	1		
D9	Exequatur	0	1	0	1	0	1	0	1	0	1	0	1	500	1		
D6	Domestic enforcement	250	4	250	4	300	6	600	8	180	8	300	8	250	4		
C	Total (C7,C4,C8)	1050	7	1000	7	830	7	1100	9	3550	7	3150	8	1900	7		
D	Total (D10,D9,D6)	250	6	250	8	300	9	600	12	180	11	300	11	750	8		