

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.3.2005
SEC(2005) 352

COMMISSION STAFF WORKING DOCUMENT

Annex to the **:**

Regulation of the European Parliament and of the Council

establishing a European Small Claims Procedure

COMMENTS ON THE SPECIFIC ARTICLES OF THE PROPOSAL

{COM(2005)87 final}

COMMENTS ON THE SPECIFIC ARTICLES OF THE PROPOSAL FOR A REGULATION ESTABLISHING A EUROPEAN SMALL CLAIMS PROCEDURE

Article 1 – Subject matter

This Article summarises the subject matterof the proposal.

On the one hand, the Regulation establishes a "European Small Claims Procedure" intended to simplify and speed up litigation concerning small claims, and reduce costs. It shall be available to litigants as an alternative to the procedures existing under the laws of the Member States which will remain unaffected.

It would be disproportionate to introduce a simplified and less costly European Small Claims procedure, but refrain from abolishing the exequatur procedure for judgments rendered in that procedure since the creditor who seeks enforcement of the judgment obtained in the simplified procedure in another Member State would have to go through a second procedure. Therefore the proposal 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, including – as is the case in Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims - judgments which were initially of a purely domestic nature.

The procedural rules concerning the European Small Claims Procedure (Chapter 2) aim at striking the balance between on the one hand accelerating Small Claims proceedings and making them cheaper and more efficient, and on the other hand guaranteeing the right to a fair trial as provided for by Article 6 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union to the parties.

Article 2 - Scope

The scope of application (civil and commercial matters) coincides with that of Council Regulation (EC) No 44/2001 (Brussels I Regulation). However, the Regulation shall not apply to employment law since for employment matters there are special procedural rules and in some cases even specialized court in many Member States.

In line with the answers to the Green Paper, a quantitative threshold is considered appropriate. A claim is considered as a Small Claim where its value excluding interests, expenses and outlays does not exceed € 2.000. This threshold is appropriate in view of the threshold of the existing Small Claims procedures in the Member States which are currently between 600 € (Germany) and 8234 € (England/Wales). A threshold of € 2000 is high enough so that the European Small Claims procedure has a scope of application with a sufficient practical significance and thus – in accordance with the Tampere conclusions – a direct impact on the lives of citizens. On the other hand, it is not too high so that the simplification of procedural rules could not be justified (such a justification exists only in cases where the costs of the proceedings are out of proportion with the value of the claim at stake). The threshold can be modified in accordance with the procedure referred to in Article 22.

It was the prevailing view in the answers to the Green Paper that Small Claims should not be restricted to monetary claims since – unlike an application for a payment order – the case will

be heard by a judge. Accordingly, the scope of application includes also non-monetary claims.

The value of the claim is to be determined according to national law.

The definition of the scope implies in relation to non-monetary claims that the claims can be quantified in order to determine whether any such claim would be within the scope of the Regulation. The basis of calculation is left to national law.

The scope of application includes cross-border cases as well as purely internal cases (see point 2.2.1 of the Explanatory Memorandum).

Article 3 - Commencement of the Procedure

Nearly all contributions to the Green Paper considered the introduction of a form as important in order to facilitate the introduction of the procedure. Paragraph 1 provides that 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 information required for filling in the form is limited to what is absolutely necessary in order to enable the claimant to fill in the form without the assistance of a lawyer. In particular, the form does not require the claimant to make any legal references in the application. The claimant can lodge the form at the competent court or tribunal either 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.

In order to ensure that all claimants, including those who do not have a residence in the Member State where the claim is commenced, have easy access to the form, paragraph 6 provides that Member States shall ensure that the claim form is available at all courts or tribunals at which the Small Claims procedure can be commenced. Considering the fact that in most Member States there is support by a court clerk or help desk for the introduction of a procedure, Paragraph 6 also provides that Member States shall ensure that practical assistance is available to assist claimants to complete the form. The purpose of this provision is to further facilitate the filling in of the form and to guarantee effective assistance to parties not represented by a lawyer which is not mandatory (see Article 8). There are further rules concerning the assistance of parties by the court in Article 9 (2) and (3).

Article 4 –Conduct of the Procedure

The answers to the Green Paper show that the use of a written procedure (instead of oral hearings) as a rule is considered as important in order to reduce costs and speed up the procedure. Most contributions stress, however, that there must be exceptions in order to guarantee a fair trial. Considering the fact that the possibility of a purely written procedure exists in many Member States, Paragraph 1 provides that the European Small Claims Procedure shall be a written procedure. However, an oral hearing is held if it is deemed necessary by the court or tribunal which shall take into account possible any observations or demands of the parties in this respect. Article 9 paragraph 1 which provides that the court or tribunal shall respect the right to a fair trial and the principle of an adversarial process must be respected in this context.

Paragraphs 2 to 5 of this Article provide for specific rules on the use of the forms in Annexes I

and II and establish time limits for the parties and the court. The use of the forms will facilitate the procedure. The time limits in this Article (and those in Articles 5 (1) and 10 (1)) will speed up the procedure. Article 12 provides for rules in cases in which the times limits set in the Regulation can not be kept.

Paragraphs 2 and 4 (and Article 10 paragraph 2) provide that the court shall serve documents to the parties in accordance with Article 11.

Paragraphs 5 and 6 provide for rules in the case that in his answer the defendant makes a counterclaim against the claimant. If the total value of the counterclaim exceeds the amount set out in Article 2 (1), the court or tribunal shall consider the counterclaim only 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. Consequently, the court or tribunal has certain discretion and can deal with a counterclaim which exceeds the threshold in the European Small Claims Procedure. However, there must be a legal relationship of the counterclaim with the claim in order to avoid that counterclaims exceeding the threshold substantially are dealt with in the European Small Claims Procedure. In such cases, the court or tribunal continues to apply the rules of the European Small Claims Procedure with respect to the claim, whereas the defendant can commence an ordinary procedure with respect to the counterclaim.

The objective of Paragraph 7 is to reduce translation costs by ensuring that a document is only translated when this is necessary.

Article 5 - Conclusion of the Procedure

Paragraph 1 provides that within one month following receipt of the response from the defendant or the claimant within the time limits, the court or tribunal shall deliver a judgment, or demand further details concerning the claim from the parties within a specified period of time, or summon the parties to a hearing.

Paragraph 2 provides that if the court or tribunal has not received an answer from the defendant within the time limit, the court or tribunal shall deliver a default judgment.

Article 6 - Hearing

As a further means in order to reduce costs, paragraph 1 provides that the court or tribunal may hold a hearing through an audio, video or email conference, if the technical means are available and both parties agree.

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

Article 7 - Taking of evidence

One main characteristic of existing Small Claims procedures is that the rules concerning the taking of evidence are relaxed compared with the ordinary procedure in order to reduce costs and delays. The question of the relaxation of these rules was also considered as crucial by most contributions to the Green Paper. Considering the fact that in many existing Small Claims procedures the judge has a certain amount of discretion with respect to the taking of evidence, this article provides for a flexible model according to which the court may determine the means of proof and the extent to which evidence is taken according to its discretion. In particular, the court may admit the taking of evidence through telephone, written statements of witnesses, and an audio, video or email conference. Accordingly, the court can also decide to apply the rules concerning the taking of evidence applicable in the ordinary procedure, if it considers it necessary. The application of procedural simplifications with respect to the taking of evidence is thus facultative (subject to considerations of the court). The court shall, however, not receive evidence of expert witnesses, unless it is indispensable for the judgment. Article 9 paragraph 1 which must be respected in this context provides that the court or tribunal shall respect the right to a fair trial and the principle of an adversial process.

Article 8 - Representation of parties

In the light of the objective of this proposal to provide creditors with a simple and cost-effective mechanism for the recovery of small claims it would be a contradiction in terms to make the use of this procedure conditional upon the representation by a lawyer. On the contrary, it is – in line with most contributions to the Green Paper and considering that fact that at present no Member States requires mandatory representation by a lawyer in Small Claims procedures - the purpose of this provision to leave it up the parties whether they want to employ legal assistance. Accordingly, in order to reduce the costs of the procedure, the article provides that the parties shall not be required to be represented by a lawyer or another legal professional.

Article 9 - Remit of the court or tribunal

Paragraph 1 provides as a general rule that the court or tribunal shall respect the right to a fair trial and the principle of an adversial process. This principle shall be respected by the court or tribunal in particular when it decides on the necessity of an oral hearing and on the means of proof and the extent to which evidence is taken.

The objective of paragraphs 2 and 3 is to ensure that parties are not de facto obliged to employ a lawyer. In order to guarantee effective assistance to parties not represented by a lawyer (which is not mandatory, see Article 8), paragraph 2 provides that the court shall not oblige the parties to make any legal assessments of the claim. In the same spirit, paragraph 3 provides that the court shall, if necessary, support the parties in procedural questions and may ask them to provide factual information.

In order to encourage settlements between the parties, paragraph 4 provides that whenever appropriate, the court or tribunal shall seek to reach a settlement between the parties.

Article 10 – Judgment

In line with many contributions to the Green Paper, the purpose of this Article is to reduce the

delays for rendering the judgement. Taking into account the time limits set in Articles 4 and 5, paragraph 1 provides that the judgment shall be rendered within six months following the registration of the claim form. Article 12 (2) provides for a rule in case this time limit can not be kept.

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

Article 11 - Service of documents

This purpose of this Article is to limit the costs for the service of documents by providing that documents shall be served as a rule by registered letter with acknowledgment of receipt. Article 14 of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters[1] is based on the assumption that service by post guarantees with sufficient certainty that the addressee receives the document instituting the proceedings.[2] If documents are to be served in the Member State in which the procedure is conducted, Member States can serve documents also by any simpler means (such as simple letter, fax or email), if these simpler means are provided for in their procedural law. If in exceptional circumstances it is not possible to effect service by registered letter with acknowledgment of receipt (or by any simpler means), service may by effected through other means ensuring personal service.

Article 12 - Time limits

Paragraph 1 and 2 provide for rules in cases in which the time limits set in the Regulation can not be kept.

Paragraph 3 provides that for the purpose of calculating the time limits provided for in this Regulation, Regulation No 1182/71 of the Council determining the rules applicable to periods, dates and time limits shall apply.

Article 13 - Enforceability of the judgment

This Article stipulates that the judgment shall be immediately enforceable, notwithstanding any possible appeal, and that it shall not be necessary to provide a security. For the purposes of speeding up the recovery of Small Claims, it is sufficient that judgements are immediately enforceable, whereas the rules concerning the admissibility of appeals remain subject to national law (see Article 15).

Article 14 - Costs

The purpose of this Article is to reduce costs as far as possible and to improve access to justice.

---

1 OJ L 160, 30.6.2000, p. 37. Article 14 provides that that each Member State shall be free to effect service of judicial documents directly by post to persons residing in another Member State.

2 Most Member States require a registered letter with acknowledgment of receipt under Article 14 (2) in order to have proof that the service has been effected.

In order not to deter creditors from introducing a European Small Claims procedure, Paragraph 1 provides that the unsuccessful party shall bear the expenses and outlays of the proceedings, except where this would be unfair or unreasonable.

In order to encourage the parties not to employ a lawyer, paragraph 2 provides that when the unsuccessful party is a natural person and is not represented by a lawyer or another legal professional, he shall not be obliged to reimburse the fees of a lawyer or another legal professional of the other party.

Article 15 - Appeal

Considering the fact that the rules of the Member States on the possibility to appeal differ significantly, this Article provides in paragraph 1 that Member States shall communicate to the Commission whether there is an appeal against a judgment rendered in a European Small Claims Procedure, and that the Commission shall make that information publicly available.

In line with Article 8, paragraph 2 of this Article provides that 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.

Paragraph 3 provides that there shall be no further ordinary appeal or cassation against an appeal judgment in order to speed up the time required for rendering a final judgment.

Article 16 - Review of the judgment

The purpose of this Article is to ensure that there is effective legal protection for the defendant in cases where the judgment is to be enforced in the Member State where it was rendered, but the defendant has not been served properly with the form in Annex I or the summons to a hearing.

Article 17 - Applicable procedural law

This Article provides that where this Regulation does not contain any specific provisions, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted.

Articles 18 - Recognition and enforcement

In line with the Tampere conclusions, this Article eliminates the intermediate measures to enable the recognition and enforcement of a judgement given in a European Small Claims Procedure. It shall not apply to judgments on uncontested claims within the meaning of Article 3 (1) of Regulation (EC) No 805/2004 (see Article 19 for those cases).

Article 19 - Relationship with Regulation (EC) No 805/2004 and with Regulation (EC) No 44/2001

This Article provides that this Regulation shall not affect the application of Regulations (EC) 805/2004 and 44/2001. In particular in cases where recognition and enforcement of a judgement rendered in a European Small Claims procedure is not possible in accordance with Article 18 of this Regulation since the judgment was given on an uncontested claim, recognition and enforcement may be sought in accordance with the provisions of those Regulations.

Article 20 – Information

It is particularly important that the competent national authorities cooperate to provide the general public and professional circles with information on the European Small Claims Procedure, in particular via the European Judicial Network in Civil and Commercial Matters established by Council Decision 2001/470/EC. Improvements to the possibilities of access to justice, in particular in the case of litigation having a cross-border dimension, are likely to be of little effect if possible recipients are not aware of them. The characteristics of national small claims procedures have been published on the site of the European Judicial Network.

Article 21 - Implementing measures and Article 22 - Committee

These Articles refer to the Advisory Committee provided for by Regulation (EC) No 44/2001 that will assist the Commission in the implementation of the Regulation.