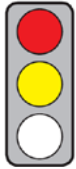


KEY ISSUES

Objective of the Regulation: The European small claims procedure will be made more attractive for consumers and small businesses.

Affected parties: Consumers, the self-employed and companies.



Pro: The limit on court fees reduces reluctance to bring legal actions and thus encourages the enforcement of rights.

Contra: (1) The error rate in the largely written procedure is unacceptable where claims may be worth 10,000 euro.

(2) The EU has no power to extend the European procedure by redefining cross-border claims to include in effect domestic cases.

CONTENT

Title

Proposal COM(2013) 794 of 19 November 2013 for a **Regulation amending** Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a **European Small Claims Procedure** and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure

Brief Summary

Note: In the absence of any indication to the contrary, references to Articles relate to the Regulation (EC) No. 861/2007.

► Background and objectives

- The European small claims procedure allows cross-border litigation concerning small claims to be decided more quickly and at lower cost, in particular by the application of strict time limits and the use of standard forms.
- Since 2009, claimants have been able to choose the procedure EU-wide - except in Denmark - as an alternative to civil proceedings under national law (Art. 1 and Art. 2 (4)). According to the Commission, however, it is still "little" known (p. 3).
- Revision of the procedure will make it better known and easier to apply. In particular, the "costs and time of litigation" will be reduced (Recitals No. 3 and 13).

► Area of application and competent court

- Claimants can choose the procedure for cross-border claims in civil and commercial matters with a value up to 10,000 euro - previously 2,000 euro - (amended Art. 2 (1)).
- A cross-border claim exists where, at the time of filing the claim, at least two of the following locations are in different Member States (new Art. 2 (2)):
 - the domicile or habitual residence of the claimant,
 - the domicile or habitual residence of the defendant,
 - the place of performance of the contract,
 - the place where the claim arose,
 - the place of enforcement of the judgement,
 - the location of the competent court.
- In the case of consumer contracts, the court in the place where the consumer is domiciled has jurisdiction; in all other cases it is the court in the place of performance or where the contract has its main focus (Recital No. 6 in conjunction with "Brussels I").
- The Regulation does not apply, in particular, to matters of status or legal capacity, matrimonial property, maintenance, wills and succession, bankruptcy or composition proceedings or employment law (Art. 2 (3)).

► Principle of the written form, oral hearing and representation

- In principle, the whole procedure is carried out in writing (Art. 5 (1)).
- Representation by a lawyer is not mandatory (Art. 10).
- Correspondence between the competent court and the parties takes place electronically provided that the parties agree. Service can be attested by an automatic confirmation of delivery (amended Art. 13 (1)).
- Member States can specify exceptions for (amended Art. 13)
 - the courts notification to the defendant that proceedings have been initiated against him,

- the court judgement and
- where no electronic service is available under national law.
- Where there is insufficient evidence or on application of one of the parties, the court can hold an oral hearing. The court cannot refuse an application for an oral hearing if (amended Art. 5 (1))
 - both the claimant and the defendant request an oral hearing, because they want to conclude a settlement, or
 - the value of the claim exceeds 2,000 euro.
- An oral hearing takes place (amended Art. 8)
 - through videoconference, teleconference or other "appropriate" distance communication technology, where the party to be heard is not domiciled in the Member State of the court, or
 - in person if requested.
- ▶ **Procedure**
 - The procedure is commenced, when the claimant lodges the application form and any relevant supporting documents with the court (Art. 4 (1)). The application form must be available in electronic and paper form (amended Art. 4 (5)).
 - The court dismisses the claim where (amended Art. 4 (4))
 - it is clearly unfounded or inadmissible or
 - the claimant has failed to complete or rectify a wrongly completed claim form within the time specified. The court notifies the claimant of the dismissal of the claim.
 - Where the court admits the claim, it sends the defendant a copy of the claim form within 14 days.
 - The defendant submits a response within 30 days by way of an answer form. The court sends the claimant a copy of the answer form within 14 days. (Art. 5 (3) and (4))
 - The defendant can assert its own claims in the same dispute by way of a "counter-claim". The claimant must respond to this within 30 days. (Art. 5 (6))
 - All courts responsible for the European procedure will in future inform the parties about domestic authorities or organisations that can assist in filling in the forms and at the same time determine whether the European procedure is applicable, which court has jurisdiction, what interest can be claimed and which documents need to be attached (amended Art. 11).
- ▶ **Judgement, taking of evidence and conclusion of the procedure**
 - Within 30 days of receipt of the response, the court gives a judgement or (Art. 7 (1))
 - demands further details from the parties, which they must provide within 30 days,
 - holds an oral hearing within 30 days of the summons or
 - takes evidence.
 - Evidence consists of statements from the claimant or defendant, from witnesses or experts. In principle, evidence is taken in writing. An oral hearing is possible; the same provisions apply to this as to the oral proceedings. (Art. 9 (1))
 - The court gives judgement by default, where the defendant fails to respond within the time limit (Art. 7 (3)).
 - Judgement and judgement by default are issued on a form ("certificate concerning a judgement"). The certificate contains a section entitled "Substance of the Judgement". (Art. 20 (2); Annex IV)
- ▶ **Appeal, review, EU-wide recognition and translation of the judgement; enforcement**
 - An appeal can be brought against the judgement, if this remedy is available in the Member State of the competent court. The Member States notify the Commission about this remedy. (Art. 17 (1))
 - In addition, the defendant can have the judgement "reviewed" within 30 days provided he did not fail to challenge the judgement when it was possible for him to do so and (amended Art. 18)
 - he was served with the claim form late and in such a way that he could not defend himself, or
 - he was prevented from contesting the claim "without any fault on his part".
 - The judgement is recognised in all Member States - apart from Denmark - and can be enforced directly (Art. 15 (1); Art. 20 (1)). A special exequatur procedure is thus not necessary (Recital No. 1). The applicable enforcement procedure is that of the Member State in which enforcement is carried out.
 - The court's certificate concerning a judgement must be attached to the enforcement application. Of this, only the section entitled "Substance of the Judgement" must be translated into an official language recognised by the enforcing country (amended Art. 21 (2) b).
- ▶ **Costs of the proceedings**
 - The necessary costs of the proceedings are borne by the losing party (Art. 16).
 - Court fees are limited to 10% of the value of the claim - excluding all interest, expenses and disbursements. Minimum court fees must not exceed 35 euro. (new Art. 15a (1)).
 - Member States must ensure that court fees can be paid by means of "distance payment methods" - bank transfer or on-line by credit or debit card (new Art. 15a (2)).
- ▶ **Relationship of the European order for payment procedure to the European small claims procedure**

An objection may be lodged to an order for payment issued in the course of the European order for payment procedure. This may be pursued in national civil proceedings or under the European small claims procedure. [amended Art. 17 of Regulation (EC) No. 1896/2006]

Main Changes to the Status Quo

- ▶ The ceiling for the value of claims is raised from 2,000 euro to 10,000 euro.
- ▶ New is the definition of "cross-border claim": Previously, the domicile or habitual residence of at least one party had to be in a Member State other than that of the competent court. Now other cross-border elements are sufficient.
- ▶ New is the provision that the court cannot, under certain circumstances, reject a request for an oral hearing.
- ▶ The use of electronic means of communication between the court and the parties involved as well as in oral hearings is extended and largely mandatory.
- ▶ New is the obligation of the court to inform the parties about authorities and organisations that can assist them and the extension of the assistance to include determining whether the European procedure is applicable and which court has jurisdiction.
- ▶ For enforcement, only the section entitled "Substance of the Judgement" in the certificate concerning a judgement has to be translated.
- ▶ New is the limit on court fees.

Statement on Subsidiarity by the Commission

An existing Regulation can only be amended by way of EU action (p. 25).

Policy Context

In its Communication on the European Consumer Agenda [COM(2012) 225; see [cepPolicyBrief](#)], the Commission announced an evaluation of the European small claims procedure. The results of the evaluation have now prompted it to propose this amendment regulation.

Legislative Procedure

19 November 2013	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Justice (leading)
Committees of the European Parliament:	Legal Affairs (leading), Rapporteur Lidia Joanna Geringer de Oedenberg (S&D Group, PL); Industry, Research and Energy; Internal Market and Consumer Protection; Civil Liberties, Justice and Home Affairs
Federal Ministries:	Justice and Consumer Protection (leading)
Committees of the German Bundestag:	Legal Affairs and Consumer Protection (leading); EU Affairs
Decision mode in the Council:	Qualified majority (Adoption by a majority of the Member States and with 260 of 352 votes; Germany: 29 votes)

Formalities

Legal competence:	Art. 81 TFEU (Judicial cooperation in civil matters)
Form of legislative competence:	Shared competence (Art. 4 (2) j TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Today's European small claims procedure facilitates the judicial enforcement of legal claims thereby increasing legal certainty in cross-border civil litigation.

It reduces costs for consumers, companies and the courts in cross-border disputes concerning small claims due to the fact that it is a largely written procedure, legal representation is not mandatory and personal appearance at hearings is generally not required. This also results in enforceable judgements within a short period of time. Thus claims can be asserted, which might not otherwise be brought due to unforeseeable costs, language barriers or geographical distances. This enhances legal certainty particularly for companies with cross-border operations.

However, by increasing the ceiling for the value of claims to 10,000 euro serious weaknesses inherent in the procedure are brought to bear: **The largely written procedure - oral hearings being the exception** - can mean that the clarification of supposedly secondary matters is left out. Although this makes proceedings quicker, as a result, the European procedure **is far more susceptible to errors than national proceedings, which provide for oral hearings as standard**. The resulting errors also have a direct effect on enforcement due to the lack of any exequatur procedure and may ultimately result in the insolvency of private persons and small businesses that are subject to proceedings. This applies most notably in Member States with a low income level such as Bulgaria and Romania, where the average gross monthly earnings of a single-person

household in 2012 was 382.50 euro or 469.58 euro (Source: Eurostat). Claims amounting to 26-times the monthly income cannot however be regarded as "small". **Where the claim value may amount to 10,000 euro, therefore, the identified error rate is unacceptable.**

In addition, the fact that the presence of a lawyer is not mandatory may lead to defendants dispensing with legal representation for reasons of cost, even for this relatively high claim value of up to 10,000 euro, without being aware of the procedure's susceptibility to errors and the consequent risks involved.

Limiting court fees to 10% of the value of the claim makes the costs of the European procedure calculable in advance. This **reduces the reluctance to bring legal action and thus encourages the enforcement of rights.**

Appropriate infrastructure must be provided for holding oral hearings via video and teleconferencing as well as via other "appropriate" distance communication technology - e.g. video-conferencing systems - the installation of which will place a heavy cost burden on the courts.

Extending the assistance given to claimants and defendants by domestic authorities and organisations may, on the one hand, cause the latter to incur additional costs. In particular, examining whether the European small claims procedure can be applied and which court has jurisdiction may, depending on the case, be time consuming and therefore costly. On the other hand, expertly completed forms may enable the courts to carry out the proceedings effectively and efficiently.

The fact that electronic service of the judgement can be attested by automatic confirmation of delivery unlawfully shifts the risk of the use of a false email address from the court into the recipient's sphere of influence.

Legal Assessment

Legislative Competency

The EU has, inter alia, the competence to adopt measures for the mutual recognition and enforcement of judgements and decisions in extra-judicial cases, for the compatibility of the rules concerning conflict of laws and for the elimination of obstacles to the proper functioning of civil proceedings (Art. 81 (2) a, c and f TFEU). The competence is, however, limited to judicial cooperation in civil matters, which have cross-border implications (Art. 81 (1) TFEU). The EU already acted beyond the powers accorded to it (former Art. 65 TEC), in the Regulation which is the subject of this amendment (Regulation No. 861/2007), by creating an independent European civil procedure for the cross-border enforcement of small claims (Art. 1, Regulation No. 861/2007), which was not necessary in that form. An exemption to the exequatur procedure (Art. 38 to 52 Regulation No. 44/2001, "Brussels I") for small claims would have sufficed.

This breach of the rules on the division of powers has now been exacerbated. The requirement for EU competence is a "real and sufficient" cross-border implication (Judgement Owusu, EU:C:2002:281, para. 34).

The EU has no power to extend the European procedure by redefining cross-border claims to include in effect domestic cases which - due to their possible enforcement in another Member State - only have a theoretical cross-border implication arising at a later date.

Compatibility with EU Law in other Respects

The court fees specified (new Art. 15a (1)) are, in some cases, lower than national fees in similar proceedings conducted under national procedural law. This results in discrimination between citizens in cases where parties are unable to switch over to the European procedure due to the lack of a cross-border implication. This is contrary to Art. 21 (2) Charter of Fundamental Rights of the EU.

Impact on German Law

Changes to the European small claims procedure would have to be incorporated into Book 11 Section 6 of the Code of Civil Procedure. The far-reaching rules on practical assistance would have to be covered by the law on providing legal advice as, at the very least, calculating interest and determining the documents to be attached would amount to legal advice.

Alternative Approach

The minimum requirement for a cross-border claim must continue to be that the parties are domiciled in different Member States.

Conclusion

The largely written procedure is much more susceptible to errors than proceedings where oral hearings are standard. Where the claim value may amount to 10,000 euro, the error rate is unacceptable. The limit on court fees reduces reluctance to bring legal actions and thus encourages the enforcement of rights. The EU has no power to extend the European procedure by redefining cross-border claims to include in effect domestic cases.