CASE STUDY

European Small Claims Procedure

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Thursday, 7 – Friday, 8 July 2016

EJTN CIVIL LAW PROJECT
EUROPEAN CIVIL PROCEDURE

Escuela Judicial CGPJ, Ctra. De Vallvidrera 43-45,
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This case study is composed by three parts. Firstly, Explanatory Memorandum of the Commission (2005) for the adoption of the European Small Claims Procedure (hereinafter ESCP) is included as legal background, as well as the more recent Explanatory Memorandum for the amendment of this procedure (2013). Both documents are interesting in order to explain the legal context of the European procedures and its reading may be recommendable in advance and previously to the lecture to be hold on Friday, 8 July 2016, since 9.30.

The second part of this document is strictly the case-study and contains the more important practical cases for the workshop to be made on Friday, 8 July 2016, concerning European Small Claims, since 10.15 h. until 11.45 h. After that, the outcomes of workshop will be discussed since 11.45 h. to 12.30 h. The selection of cases has been made regarding the profile of the participants, mainly judges of the Member States. For these reasons, the selection focuses on the aspects in which the courts or tribunals have more importance (reception of the claim, sending the claim, reception of the answer form, conducting the procedure, issuing the judgment and enforcement of it) rather than the aspects in which the role of parties is more significance (commencing the procedure or strategy of the defendant). The model of “mini-cases” has been preferred with the aim of dealing with a wide number of problems. Nevertheless, each case study is introduced with a general conceptual map.

The Annexes are the third part of this document. They contain the REGULATION (EC) No 861/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 July 2007 establishing a European Small Claims Procedure and the REGULATION (EU) 2015/2421 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure. The amendments are basically applied from 14 July 2017, although the cases should be solved taking into account the new rules. The last Annex is a selection of rules of the REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This act is very linked to the ESCP not only by the grounds of jurisdiction of the court but also it includes the definition of domicile of the parties, which is very important for the application of the ESCP.
LEGAL BACKGROUND

1. Explanatory Memorandum of the Commission for the adoption of ESCP


Brussels, 15.3.2005
COM(2005) 87 final
2005/0020 (COD)
Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing a European Small Claims Procedure
(presented by the Commission) {SEC(2005) 351} {SEC(2005) 352}
EXPLANATORY MEMORANDUM
1. INTRODUCTION AND BACKGROUND
1.1. Introduction
Following the 1975 Preliminary programme for a consumer protection and information policy[1] and the 1993 Green Paper on Access of consumers to justice and the settlement of consumer disputes in the single market[2], the Commission in 1996 adopted a Communication concerning an action plan on consumer access to justice and the settlement of consumer disputes in the internal market[3]. The action plan focused on the promotion and enhancement of procedures for settling individual consumer disputes, and made provision for the introduction of simplified access to court procedures. With the entry into force of the Treaty of Amsterdam in 1999, the European Union has set itself the objective of progressively establishing an area of freedom, security and justice, amongst others by adopting measures in the field of judicial cooperation in civil matters.
The European Council in Tampere 1999 invited the Council to establish special common procedural rules for simplified and accelerated litigation on small claims, and to abolish the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgment in the requested State for all titles in respect of small claims (i.e. not limited to consumer claims).
The joint programme of the Commission and the Council of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, adopted by the Council on 30 November 2000[4], called for simplifying and speeding up the settlement of small claims litigation. Discussions on simplifying and speeding up the settlement of small claims litigation would also facilitate the recognition and enforcement of judgments.
The need for simplified and accelerated small claims litigation has also been expressed by the European Parliament[5].
1.2. The Green Paper on a European Order for payment procedure and on measures to simplify and speed up small claims litigation
The adoption of this proposal was preceded by a wide-ranging consultation of both Member States and all interested parties of civil society. The Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation [6] presented by the Commission on 20 December 2002 gave an overview of the currently existing Small Claims procedures in the Member States. Based on a comparative study of how Member States deal with the relevant procedural issues it formulated a number of questions concerning the desirable scope and features of a European instrument.

The reactions to the Green Paper that were further debated in a public hearing organised by the Commission on 12 December 2003 revealed that an instrument to simplify and speed up small claims litigation is almost unanimously considered a step ahead in the creation of an area of freedom, security and justice.

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

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

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

2. OBJECTIVES AND SCOPE

2.1. Overall objective

2.1.1. The significance of efficient Small Claims procedures

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

Potential problems are not limited to disputes between individuals. Also the owners of small businesses may face difficulties when they want to pursue their claims in another Member State. But as a consequence of the lack of a procedure which is “proportional” to the value of the litigation, the obstacles that the creditor is likely to encounter might make it questionable whether judicial recourse is economically sensible. The expense of obtaining a judgment, in particular
against a defendant in another Member State, is often disproportionate to the amount of the claim involved. Many creditors, faced with the expense of the proceedings, and daunted by the practical difficulties that are likely to ensue, abandon any hope of obtaining what they believe is rightfully theirs.

2.1.2. Characteristic features of Small Claims procedures - procedural simplifications

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

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

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

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

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

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

2.2. Scope

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

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

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

Procedural law by its nature may have cross-border implications. The judge will always apply the lex fori whether or not the litigation has cross-border elements. Small Claims litigation constitutes a matter having cross-border implications since – taking into account the development of the internal market - most economic operators and consumers will sooner or later be involved in such litigation abroad.

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

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

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

Firstly, the creation of two different regimes for internal cases and for cases with cross-border aspects should be avoided. Such a duality of regimes would be inconsistent with the objective of a single and coherent area of justice for all.
Furthermore, as outlined above, not in all Member States speedy and inexpensive small claims procedures are available to litigants. The lack of such procedures which are proportional to the value of the litigation make judicial recourse economically questionable in many cases and often creditors abstain from taking legal action. This limitation of effective access to justice causes economic costs which have significant negative macroeconomic impacts on the proper functioning of the internal market.

2.2.2. Subsidiarity and proportionality

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

The present proposal is fully consistent with the principle of proportionality in that it is strictly limited to what is necessary in order to reach this objective. In that context, it is particularly essential to underscore the effects of the combination of the legal instrument chosen (Regulation) with the optional nature of the European Small Claims Procedure in relation to comparable mechanisms under the national procedural law of the Member States. Whilst ensuring the uniformity and direct applicability of the procedure, the Regulation proposed here would only oblige Member States to make the European procedure available as an additional tool. It would force them neither to abandon their pre-existing legislation on small claims nor to modify such legislation to bring it into line with Community law. Hence, this proposal for a Regulation which leaves the right of the Member States unaffected to continue the application of their domestic rules alongside the European Small Claims Procedure encroaches much less on their procedural systems than a Directive that would require an adaptation of national legislation to the standards set in that instrument. This legislative technique, in fact, assures a common minimum level in the efficiency of the recovery of small claims but it permits Member States that have developed an even better-functioning domestic system to retain it. Ultimately, it will be left to the creditors to judge which procedure they consider as being either superior in performance or more convenient in terms of accessibility, the latter criterion being particularly relevant for those operating in several Member States and being spared the need to make themselves familiar with the procedural law of every one of them by the availability of a uniform European Small Claims Procedure. Finally, it should be borne in mind that Article 17 of the proposal provides that “subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted”. Hence, the introduction of a European Small Claims Procedure does not entail the need for further approximation of national procedural legislation and thus keeps interference with domestic law to an absolute minimum.
2. Explanatory Memorandum of the Commission for the amendment of the ESCP


EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. General context of the proposal

Regulation 861/2007 establishing a European Small Claims Procedure was adopted on 11 July 2007[1] with the aim to enhance access to justice by simplifying and speeding up cross-border litigation concerning small claims and reducing the costs of such litigation. Furthermore, the Regulation aimed at facilitating enforcement by eliminating the need for intermediate proceedings (exequatur) to enable recognition and enforcement in other Member States than the country where the judgment was given.

The Regulation introduced an alternative procedure, in addition to the procedures existing under the laws of the Member States, for cross-border cases concerning claims which do not exceed EUR 2 000. The Regulation is applied in the EU (except in Denmark) as of 1 January 2009. The procedure is in principle a written procedure on the basis of standard forms and is governed by strict deadlines. Representation by a lawyer is not mandatory and the use of electronic means of communication is encouraged. Furthermore, the unsuccessful party only has to bear the costs of the proceedings of the successful party to the extent that they are proportionate to the claim. The procedure is available for use by both consumers and businesses doing cross-border transactions in the EU as a means of improving access to justice and enforcement of their rights.

Article 28 of the Regulation requires the Commission to present by 1 January 2014 to the European Parliament, the Council and the European Economic and Social Committee a detailed report on the operation of this Regulation, including in particular the EUR 2 000 threshold. The report should be accompanied, if appropriate, by proposals for amendments.

1.2. Need for a revision of the European Small Claims Procedure

At a time where the European Union is facing the biggest economic crisis in its history, improving the efficiency of justice in the European Union has become an important factor in supporting the economic activity[2]. One of the measures promoting the efficiency of justice in the EU is the revision of the Regulation establishing a European Small Claims Procedure.

The Regulation was adopted in recognition of the fact that the problems of inefficient litigation of small claims are amplified when claims of low value are made across the borders of the EU Member States. Additional problems arise in such situations, such as the unfamiliarity of the parties with the foreign laws and procedures of the foreign courts, the increased need for translation and interpretation, and the need to travel abroad for oral hearings. With the increase in cross-border trade in the EU in the recent years and the further increase expected in the years to come, the need to provide for efficient redress mechanisms as a means of supporting the economic activity will become even more acute.
By providing for standard forms and free assistance for the parties in filling in the forms, the procedure enables courts to process applications entirely by means of a written procedure, removing the need to travel for oral hearings - except in exceptional circumstances where a judgment cannot be given on the basis of written evidence - as well as the need to be represented by a lawyer. The Regulation also encourages the courts and tribunals to use distance means of communication for accepting claim forms and for organising oral hearings. Finally, the resulting judgment circulates freely among Member States, without the need for any additional intermediate proceedings necessary to enable recognition and enforcement[3].

However, despite the benefits it could bring in terms of reducing the costs and time of litigating cross-border claims, the procedure is still little known and remains under-used several years after the entry into application of the Regulation. The European Parliament affirmed in a 2011 Resolution[4] that more needs to be done in terms of legal certainty, language barriers and transparency of proceedings. It called on the Commission to take steps to ensure that consumers and businesses are made more aware and make use of existing legislative instruments, such as the ESCP. Consumer and business stakeholders have also raised the fact that the Regulation should be further improved to benefit consumers and businesses, in particular SMEs. Member States have also identified certain shortcomings in the current Regulation which should be addressed.

The problems are arising mainly from the deficiencies in the current rules, such as the limited scope of application in terms of low threshold as well as cross-border coverage, and a procedure that is still too cumbersome, costly and lengthy and which does not reflect the technological progress achieved in the Member States' justice systems since the adoption of the Regulation. Even where problems are related to the poor implementation of the current rules – as is the case to a certain extent with the problem of the lack of transparency - it must be acknowledged that the rules of the Regulation are not always clear. In order to address the problem of lack of awareness, the European Commission launched already several actions, for example a series of thematic seminars in the Member States to inform SMEs about this procedure, the publication of a practice guide and the distribution of teaching modules to train European entrepreneurs on this subject.

The Commission identified the revision of the Regulation in the 2013 EU Citizenship Report[5] as one of the actions to strengthen the rights of Union citizens, by facilitating the settling of disputes regarding purchases made in another Member State. The initiative is also included in the European Consumer Agenda[6] as a means of improving enforcement of consumer rights. Moreover, the modernisation of the Regulation supports the EU’s current political priorities to promote economic recovery and sustainable growth, by advancing more efficient, simplified court procedures and by making them more accessible to SMEs.


In the context of the European order for payment procedure, a statement of opposition entered by the defendant leads to an automatic continuation of proceedings under ordinary civil procedures. Since the European Small Claims Procedure has been put in place however, this restriction is no longer justified in respect of claims falling within the scope of Regulation 861/2007.

Therefore, it should be clarified in Regulation (EC) No 1896/2006 that where a dispute falls within the scope of the European Small Claims Procedure, this procedure should also be available to a party in a European Order for Payment Procedure who has lodged a statement of opposition to a European order for payment.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Commission has carried out several consultations to gather information about the current application of the Regulation as well as of the possible elements of its revision. The results gave useful policy indication of the positions of the stakeholders and the Member States and were taken into account throughout the IA process.
A Eurobarometer survey to assess awareness, expectations and experiences of the European citizens with regard to the application of the Regulation was carried out in November-December 2012[7]. According to the survey, 71% of consumer claims are currently within the €2,000 threshold set up by the Regulation. The average minimum amount for which consumers are willing to litigate in another Member State is €786. 12% of the respondents were aware of the existence of the ESCP, with 1% of all respondents declaring that they already used the procedure. 69% of those who already used the ESCP were satisfied. 97% of all respondents who took businesses to court and won within last 2 years (both domestically and cross-border) had their judgements enforced successfully. The most important factors which would encourage citizens to go to court are: the possibility to carry out proceedings in writing without appearing in the court (33%), carrying out the proceedings without instructing a lawyer (26%), carrying out the proceedings on-line (20%) and using their own language (24%).

A web-based public consultation was carried out between 9 March and 10 June 2013. The consultation gathered views on the possible improvements and further simplification which could further enhance the benefits of the ESCP, in particular for the consumers and SMEs. 80 responses were received from a broad range of stakeholders, such as consumer and business associations, judges, lawyers and academics. The results[8] of the consultation show that 66% of respondents support an extension of the threshold up to €10,000, 63% are in favour of using electronic means in the course of the procedure and 71% support the idea of courts being equipped with videoconferencing or other electronic communication equipment. Only 28% of respondents thought that free of charge assistance is provided by the Member States.

A detailed questionnaire on the operation and practical application of the Regulation was sent to the Member States at the beginning of April 2013 and to the European Judicial Network. The questions sought to gather data about the number of cases using the ESCP in the Member States, the use of electronic means of communication used in court proceedings, the existence and modalities of assistance to citizens in completing the forms, procedural deadlines, hearing and evidence, costs of proceedings and the need for increasing the threshold for eligible small claims. The deadline for answers was 15 May 2013. In total, 20 Member States have sent their replies[9].

The European Judicial Network has on several occasions discussed the application of the European Small Claims Procedure, the measures to be taken to raise awareness of its existence and operation as well as the possible elements of its revision. At the meeting of 17 May 2011, some Member States noted that the ESCP was not used in practice to its full potential and that procedural improvements as well as awareness raising measures should be taken. A working group was created and mandated to draft a Practice Guide on the ESCP for the benefit of legal practitioners. At the meeting of 29/30 May 2013, several aspects amenable to review were discussed such as an increase of the threshold, the use of electronic means of communication between courts and parties, the establishment of EU minimum standards for the conduct of the procedure such as: the availability of videoconferencing to carry out oral hearings and the transparency of court fees calculation and payment and the assistance to the users of the procedure, including legal representation.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Main elements of the proposed action

The main elements of the proposed revision are:

- Extension of the scope of the Regulation to cross-border claims up to EUR 10,000;
- Extension of the definition of cross-border cases;
- Improving the use of electronic communication, including for service of certain documents;
- Imposing an obligation on courts to use videoconferencing, teleconferencing and other means of distance communication for the conduct of oral hearings and taking of evidence;
· Providing a maximum limitation on court fees charged for the procedure;

· Providing for an obligation on the Member States to put in place distance means of payment of court fees;

· Limiting the requirement to translate Form D, containing the Certificate of enforcement, to only the substance of the judgment;

· Imposing information obligations on the Member States in respect of court fees, methods of payment of court fees and the availability of assistance in filling in the forms.

3.1.1. Extension of the scope of the Regulation to cross-border claims up to EUR 10 000

The threshold of EUR 2,000 limits the scope of the Regulation. While this is less important for consumers, since most of their claims do not exceed EUR 2,000, it severely limits the availability of the procedure for SMEs. Only 20% of business claims are below EUR 2,000, while claims between EUR 2,000 and EUR 10,000 amount to approximately 30% of all cross-border business claims.

45% of companies which experience a cross-border dispute do not go to court because the costs of proceedings are disproportionate to the value of the claims, while 27% do not go to court because proceedings would take too long. By making the European simplified procedure available also to cross-border claims with a value between EUR 2,000 and EUR 10,000, the costs and length of litigation in such cases will be considerably reduced.

In recent years, a number of Member States increased the scope of their national simplified procedures by raising the thresholds. This on-going trend testifies to the need to modernise justice systems and make them more accessible to citizens by providing simplified, cost-effective and speedy procedures for more claims of a low value. In this context, the current threshold of EUR 2,000 for the European Small Claims Procedure must also be raised.

Raising the current threshold will allow parties to litigate a substantially bigger number of cases on the basis of the simplified European procedure. Due to the increased simplification, the reduction of costs and length of the proceedings it is to be expected that claims that were abandoned and not pursued will be recovered. The main group benefiting from this solution will be SMEs, but consumers will also benefit, since about one fifth of consumer claims exceed EUR 2,000. Both businesses and consumers will benefit from the fact that an increased use of the procedure will allow judges, court clerks and lawyers to become more acquainted with the procedure and will conduct it better and more efficiently.

3.1.2. Extension of the definition of cross border cases

The Regulation currently applies only to disputes where at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seized. However, disputes involving parties domiciled in the same Member State which have an important cross-border element and could therefore benefit from the European simplified procedure are left outside the scope of the Regulation. Examples include cases where:

· the place of performance of the contract is in another Member State, for example a lease contract for a holiday property situated in another Member State; or

· the place of occurrence of the harmful event is in another Member State, for example when parties are involved in a car accident in a border region situated in another Member State; or

· the enforcement of the judgment is to take place in another Member State, for example when a judgment must be executed on the defendants salary which he receives in another Member State.

In particular, where the claimant may choose under the provisions of Regulation [(EC) No 44/2001]/[(EU) No 1215/2012] between the jurisdiction of the courts of the Member State where both him and the defendant are domiciled and the jurisdiction of the Member State where for example the contract is performed or the harmful event took place, the actual choice of the claimant
in favour of the courts or tribunals of the Member State of the common domicile should not have the effect of depriving him of the possibility to use the European Small Claims Procedure which would otherwise be available.

Furthermore, the current limitation bars applications under the European Small Claims Procedure lodged before courts of EU Member States by or against third country residents, while no national procedure in Europe is reserved for nationals of the country concerned or for EU citizens. The amendment would result in making the European Small Claims Procedure available in all cases with a cross-border element, including those involving third countries. This would lead to a simplification and reduction of the costs and length of litigating for those citizens who could benefit from the European simplified procedure, for example where experts need to be heard in the Member State where the contract was performed or the harmful event took place. Similarly, a judgment given under the European Small Claims Procedure would be easier to enforce in another Member State where the procedure which led to the particular judgment is also well-known and trusted.

Since courts have according to Article 4(3) of the Regulation the power to examine if the grounds for jurisdiction under the Regulation are fulfilled, the risk of abuse on the part of claimants is minimal.

3.1.3. Improving the use of electronic means of communication, including for service of documents

Several communications between the parties and the courts could in principle be carried out by electronic means, which would save time and costs with the procedure in cross-border cases, especially where long distances are involved. The initial application can already be lodged via electronic means where Member States accept this method. However, in those instances where documents need to be served on the parties during the procedure[10], the Regulation sets postal service with acknowledgement of receipt as the primary method of service. Other service methods could be applied only if service by post is not possible.

Nevertheless, electronic service is already in place in several Member States. The proposal will put postal service and electronic service on the same footing, in order to allow these Member States to make these electronic means available to the parties using the European Small Claims Procedure. Simplification, time and cost savings would be possible only for litigation in the Member States that decide to implement electronic service of documents; however it is expected that the number of Member States taking advantage of these technological developments will continue to increase.

For other, less important communications between the parties and the courts, the proposal will make electronic communication the rule, subject only to the agreement of the parties.

3.1.4. Imposing an obligation on courts to use videoconferencing, teleconferencing or other means of distance communication for the conduct of oral hearings and taking of evidence

The European Small Claims Procedure is essentially a written procedure. However, in exceptional circumstances, where an oral hearing or the hearings of an expert or witness are necessary for rendering a judgment, the court or tribunal may organise an oral hearing. Oral hearings may be conducted through videoconferencing or other means of distance communication. In practice however, oral hearings are routinely organised and often the physical presence of the parties is required, leading to increased travel costs and delays for the parties.

The amendment would first emphasize more strongly the exceptional nature of oral hearings in the context of this simplified procedure. Second, it would impose an obligation on courts and tribunals to always make use of distance means of communication such as videoconference or teleconference where an oral hearing is held. In order to safeguard the rights of the parties, an exception will be made for the party who expressly requests to be present in court.
This amendment may require Member States to equip their courts with appropriate communication technology, where such technology is not yet in place. The technological possibilities at the Member States’ disposal are varied, and include cost efficient Internet facilities.

3.1.5. Providing a maximum limitation on court fees charged for the procedure

Court fees are levied up-front when an application is lodged. When these court fees are above 10% of the value of the claim they are considered to be disproportionate. In such cases, claimants may be dissuaded from pursuing their claims. In many Member States, minimum fees are also put in place to discourage frivolous or abusive litigation. The average minimum court fee is €34.

The proposed provision will not harmonise court fees in the Member States. Instead, it would set a maximum cap on court fees for applications under the Regulation, calculated as a percentage of the value of the claim above which court fees are considered to be disproportionate to the value of the claim and therefore to impede access to justice for claimants with small value claims. Setting a maximum limit on court fees for the European Small Claims Procedure would reduce costs in those Member States where the fees are disproportionate to the value of such claims. This would increase the attractiveness of the procedure for claimants.

Furthermore, the measure allows the Member States to maintain a fixed minimum court fee which however should not prohibit access to justice for claims of a lower value. The measure is proportionate given the specific nature of cross-border disputes which – as opposed to domestic disputes – routinely require the claimant to incur additional costs, such as translation costs and, if oral hearings are organised, travel and interpretation costs.

3.1.6. Providing for an obligation on the Member States to put in place on-line means of payment of court fees

Payment methods concerning court fees differ across Member States. Especially when payment in cash or stamps is the only acceptable means of payment, parties need to incur travel costs or hire a lawyer in the Member State of the court, which may discourage them from pursuing their claims. Similar problems arise when payment is accepted only by cheques, which are not in general use in many Member States, or only through lawyers.

The proposal aims at obliging Member States to put in place distance means of payment, as a minimum bank transfers and credit/debit card on-line payment systems. The overall efficiency of the judicial system is likely to increase, since parties will experience reduced time and cost savings.

3.1.7. Limiting the requirement to translate the certificate of enforcement in Form D to only the substance of the judgment

At the stage of enforcing a judgment, the party seeking enforcement must translate the certificate of enforcement in Form D by a certified translator into the language(s) of the Member State of enforcement. Only a few Member States accept Form D in other languages than their own.

The obligation to translate Form D imposes unnecessary costs in that only Section 4.3 of the form (Substance of the judgment) should need to be translated, as the other fields are already available in all languages. However, translators often charge for translating the whole form. For the party wishing to enforce a judgment, the resulting unnecessary costs, added to other costs, may act as a disincentive to pursuing a claim or seeking its enforcement.

The amendment will limit the requirement of translation to only the substance of the judgment in point 4.3 of Form D.

3.1.8. Imposing information obligations on the Member States in respect of court fees, methods of payment of court fees and the availability of assistance in filling in the forms

Although Member States are currently required to notify the Commission, for the purposes of making the information publicly available, of competent courts, accepted means of communication, availability of appeal, accepted languages for enforcement and enforcement authorities (Article
information on court fees and methods of payment of court fees is currently missing. The obligation of cooperation between the Member States in making information on costs available to the public (Article 24) has not resulted in more transparency on these elements. Furthermore, the obligation of Member States to provide practical assistance in filling in the forms (Article 11) has in many cases not been implemented.

Imposing an obligation on Member States to inform the Commission of court fees and methods of payment for the European Small Claims Procedure, as well as of the availability of practical assistance to the parties, and the Commission's obligation to make such information publicly available would improve transparency and ultimately access to justice.

3.2. Other technical amendments

Several provisions of Regulation (EC) No 861/2007 can be improved, to take into account the latest developments, such as the entry into force of the Treaty of Lisbon and the case law of the Court of Justice of the European Union.

First, Article 26 and 27 of the Regulation need to be brought in line with the new delegation procedure established by Article 290 of the Treaty on the Functioning of the European Union. Second, Article 18 of the Regulation will need to be clarified in order to avoid difficulties in practice similar to those raised in a recent request for a preliminary ruling lodged before the Court of Justice, in which the Court was called to interpret a similarly provision in the context of Regulation (EC) No 1896/2006[11]. The same right to apply for review is formulated in a slightly different, but already clearer way, in Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. There is no reason why these provisions on review, which pursue exactly the same objective, are formulated differently in the various European regulations. The proposed revision aims at clarifying the right to apply for a review in a manner consistent with Regulation 4/2009.

3.3. Legal basis

Regulation (EC) No 861/2007 was adopted under Article 61(c) TEC stipulating that the Council shall adopt measures in the field of judicial cooperation in civil matters and Article 67(1) TEC defining the legislative procedure to be followed. Following the entry into force of the Lisbon Treaty, any revision to Regulation (EC) No 861/2007 will be based on Articles 81(2) (a), (c) and (f) TFEU.

3.4. Subsidiarity and proportionality

The need for EU action has already been established in 2007 when the Regulation (EC) No 861/2007 was adopted. The issue being addressed has transnational aspects, which cannot satisfactorily be dealt with by the Member States’ individual action. The objective of enhancing the confidence of consumers and businesses, particularly SMEs, in cross-border trade and access to justice in cross-border disputes cannot be achieved without an amendment of the existing Regulation to better reflect developments since 2007 and reported short-comings in the application of Regulation (EC) No 861/2007.

National simplified procedures, where they exist, are extremely diverse both in terms of threshold and the procedural simplification achieved. In the absence of uniform EU-wide procedural standards, the additional inherent complexity and cost of pursuing a cross-border claim, resulting from the lack of familiarity of the parties with a foreign procedural law, the need for translation and interpretation and the need to travel for oral hearings, would amplify the disproportionate costs and length of litigation as compared to domestic disputes. Distortions of competition within the internal market due to imbalances with regard to the functioning of the procedural means afforded to claimants/creditors in different Member States entails the need for EU action that guarantees a level-playing field for creditors and debtors throughout the EU. For example, in the absence of a revision, the current threshold will continue to leave many SMEs having a cross-border dispute without access to a simplified and uniform court procedure in all the Member States. Similarly, in
the absence of a EU-wide cap on disproportionate court fees and of a EU-wide possibility to pay court fees via distance means of payment, many creditors would not have access to courts.

Furthermore, action at EU level would produce clear benefits compared to Member States’ action in terms of effectiveness as the amended Regulation will set up uniform procedural tools for all cross-border claims within its scope, regardless of where in the EU the court hearing the case is situated. The revision will improve access to justice in particular for a large proportion of SME’s small claims which are now outside the scope of the Regulation, as well as for consumers and SMEs which have cross-border claims outside the current definition of the Regulation. Furthermore, the revision would make the procedure more efficient for all claims within its scope, by making available uniform procedural rules which further simplify and make less costly litigation in cross-border disputes. Better access to efficient judicial procedures for more creditors having claims of a small value will un-block the flow of capital, leading to increased confidence in cross-border trade and to a better functioning of the internal market.

The revision will also further simplify the enforcement of judgments, especially for claims above the current threshold, and create more trust among the courts and enforcement authorities who would become familiar with the European Small Claims Procedure.

3.5. Fundamental rights

As set out in detail in the Impact Assessment accompanying this proposal and in accordance with the Union’s strategy for the effective implementation of the Charter of Fundamental Rights of the European Union, all elements of the reform respect the rights set out in the European Charter of Fundamental Rights.

The right to a fair trial (Article 47(2) of the Charter) is guaranteed, since the amendment will result in increased access to justice for claims of a small value in all cross-border cases. Furthermore, procedural safeguards are put in place to ensure that the increased simplification of the procedure achieved by the proposed amendments does not negatively impact on the rights of the parties. Thus, electronic services with an acknowledgement of receipt will be used only when parties so agree; an exception to compulsory videoconference or teleconference hearing will always be made for the party who wishes to appear in court; and, for claims above EUR 2,000, courts will not be able to refuse an oral hearing carried out by distance means of communication if at least one party requests it.

3.6. Budgetary implications

The only implications for the budget of the European Union resulting from the proposed Regulation consist of the one-off costs for the preparation of a report 5 years after the date of application of the Regulation.
CASE 1. COMMENCING THE PROCEDURE BY THE APPLICANT

The claimant is a corporation with central administration in the Member State A, although the registered office is located in a third country. It applies for an ESCP before the court of the Member State B, where the defendant has its domicile.

Answer:
CASE 2: RECEPTION OF THE CLAIM

2. Reception Of The Claim By The Court

Checking the claim form
- Dismissal: clearly unfounded claim
- Information claim outside the scope ESCP
- Rectification or Completion: Form B

Case 2.1: Low value of the claim?

The claim form is referred to 4,900 euros plus 150 euros of interests. However, regarding the facts, the court considers that it could be possible to apply for 6,000 euros plus interests. What should the court do?

Answer:

Case 2.2. Dismissal of the claim by unfounded claim?

The claim form does not include any description of evidence supporting the claim and is not accompanied by any relevant supporting documents. What should the court do?

Answer:
Case 3.1. How shall the court send the documents to the defendant?

The Court shall to have the documents and forms to another Member State. What should the court do?

Answer:

Case 3.2. Fictitious Service?

The Court uses a fictitious method of service based on the notification by edicts due to the service by other means was not success or the address is unknown.

Answer:
CASE 4. STRATEGY OF THE DEFENDANT

The court receives a counter-claim of the defendant included in the answer form which is not filled in properly. What should the court do?

Answer:
Case 5.1. Answer form arguing that the ESCP is not applicable?

The court of the Member State A, where the claimant who is a consumer has its domicile, receives a claim form. The defendant is a professional with domicile in a third country who directed activities to the Member State A by on line means through a branch located in the Member State C. The defendant responds that the claim is outside the ESCP because his domicile is located in a third country

Answer:

Case 5.2. High value of the counter-claim?

After receiving form C, the defendant applies for a counter-claim referred to 6,000 euros, what should the court do?

Answer:
CASE 6. CONDUCTING THE PROCEDURE

Case 6.1. Oral hearing without petition of the parties?

Any party has not applied for an oral hearing but the court considers that it is not possible to give the judgment on the basis of the written evidence. The person to be heard has habitual residence in the Member State of the court seized. What should the court do?

Answer:

Case 6.2. Oral hearing by petition of one party although the court considers that it is not necessary?

A party has applied for an oral hearing but the court does not consider that the oral hearing is necessary. The court considers that it could give the judgment on the basis of the written evidence. The person to be heard has habitual residence in a Member State other than the Member State of the court seized. What should the court do?
Answer:
7.1. Review of the judgment when the defendant was not served?

The defendant applies for the review of the judgment in exceptional cases 20 days after receiving the judgment. He did not enter an appearance before the court because he was not served.

Answer:

7.2. Review of the judgment when the defendant was not summoned to oral hearing?

The defendant applies for the review of the judgment in exceptional cases 40 days after receiving the judgment. He entered an appearance before the court but he was not summoned to the oral hearing.

Answer:
The claimant applied for the enforcement of a judgment in other Member State, which was favorable because the defendant did not enter an appearance and he could not allege a first judgment from the first Member State. Shall the second judgment be enforced?

Answer:
This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents.
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee (1),

Acting in accordance with the procedure laid down in Article 251 of the Treaty (2),

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, inter alia, measures in the field of judicial cooperation in civil matters having cross-border implications and needed for the proper functioning of the internal market.

(2) According to Article 65(c) of the Treaty, those measures are to include those eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.


(4) The European Council meeting in Tampere on 15 and 16 October 1999 invited the Council and the Commission to establish common procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims.

(5) On 30 November 2000, the Council adopted a joint programme of the Commission and the Council of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters (8). The programme refers to simplifying and speeding up the settlement of cross-border litigation on small claims. This was taken forward by the Hague Programme (9), adopted by the European Council on 5 November 2004, which called for work on small claims to be actively pursued.

(6) On 20 December 2002, the Commission adopted a Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation. The Green Paper launched a consultation on measures concerning the simplification and the speeding up of small claims litigation.

(7) Many Member States have introduced simplified civil procedures for small claims since costs, delays and complexities connected with litigation do not necessarily decrease proportionally with the value of the claim. The obstacles to obtaining a fast and inexpensive judgment are exacerbated in cross-border cases. It is therefore necessary to
establish a European procedure for small claims (European Small Claims Procedure). The objective of such a procedure should be to facilitate access to justice. The distortion of competition within the internal market due to imbalances with regard to the functioning of the procedural means afforded to creditors in different Member States entails the need for Community legislation that guarantees a level playing-field for creditors and debtors throughout the European Union. It should be necessary to have regard to the principles of simplicity, speed and proportionality when setting the costs of dealing with a claim under the European Small Claims Procedure. It is appropriate that details of the costs to be charged be made public, and that the means of setting any such costs be transparent.

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

(9) This Regulation seeks to promote fundamental rights and takes into account, in particular, the principles recognised by the Charter of Fundamental Rights of the European Union. The court or tribunal should respect the right to a fair trial and the principle of an adversarial process, in particular when deciding on the necessity of an oral hearing and on the means of taking evidence and the extent to which evidence is to be taken.

(10) For the purposes of facilitating calculation of the value of a claim, all interest, expenses and disbursements should be disregarded. This should affect neither the power of the court or tribunal to award these in its judgment nor the national rules on the calculation of interest.

(11) In order to facilitate the commencement of the European Small Claims Procedure, the claimant should make an application by filling in a standard claim form and lodging it with the court or tribunal. The claim form should be submitted only to a court or tribunal that has jurisdiction.

(12) The claim form should be accompanied, where appropriate, by any relevant supporting documents. However, this does not prevent the claimant from submitting, where appropriate, further evidence during the procedure. The same principle should apply to the response by the defendant.

(13) The concepts of ‘clearly unfounded’ in the context of the dismissal of a claim and of ‘inadmissible’ in the context of the dismissal of an application should be determined in accordance with national law.

(14) The European Small Claims Procedure should be a written procedure, unless an oral hearing is considered necessary by the court or tribunal or a party so requests. The court or tribunal may refuse such a request. Such refusal may not be contested separately.

(15) The parties should not be obliged to be represented by a lawyer or another legal professional.

(16) The concept of ‘counterclaim’ should be interpreted within the meaning of Article 6(3) of Regulation (EC) No 44/2001 as arising from the same contract or facts on which the original claim was based. Articles 2 and 4 as well as Article 5(3), (4) and (5) should
apply, *mutatis mutandis*, to counterclaims.

(17) In cases where the defendant invokes a right of set-off during the proceedings, such claim should not constitute a counterclaim for the purposes of this Regulation. Therefore, the defendant should not be obliged to use standard Form A, as set out in Annex I, for invoking such a right.

(18) The Member State addressed for the purposes of the application of Article 6 is the Member State where service is to be effected or to where the document is to be dispatched. In order to reduce costs and delays, documents should be served on the parties primarily by postal service attested by an acknowledgment of receipt, including the date of receipt.

(19) A party may refuse to accept a document at the time of service or by returning the document within one week if it is not written in, or accompanied by a translation into, the official language of the Member State addressed (or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched) or a language which the addressee understands.

(20) In the context of oral hearings and the taking of evidence, the Member States should encourage the use of modern communication technology subject to the national law of the Member State where the court or tribunal is situated. The court or tribunal should use the simplest and least costly method of taking evidence.

(21) The practical assistance to be made available to the parties should include technical information concerning the availability and the filling in of the forms.

(22) The information about procedural questions can also be given by the court or tribunal staff in accordance with national law.

(23) As the objective of this Regulation is to simplify and speed up litigation concerning small claims in cross-border cases, the court or tribunal should act as soon as possible even when this Regulation does not prescribe any time limit for a specific phase of the procedure.

(24) For the purposes of calculating time limits as provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (10) should apply.

(25) In order to speed up the recovery of small claims, the judgment should be enforceable notwithstanding any possible appeal and without the condition of the provision of a security except as provided for in this Regulation.

(26) Any reference in this Regulation to an appeal should include any possible means of appeal available under national law.

(27) The court or tribunal must include a person qualified to serve as a judge in accordance with national law.

(28) Whenever the court or tribunal is required to set a time limit, the party concerned should be informed of the consequences of not complying with it.

(29) The unsuccessful party should bear the costs of the proceedings. The costs of the proceedings should be determined in accordance with national law. Having regard to the objectives of simplicity and cost-effectiveness, the court or tribunal should order that an unsuccessful party be obliged to pay only the costs of the proceedings, including for example any costs resulting from the fact that the other party was
represented by a lawyer or another legal professional, or any costs arising from the service or translation of documents, which are proportionate to the value of the claim or which were necessarily incurred.

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

(31) There should be minimum standards for the review of a judgment in situations where the defendant was not able to contest the claim.

(32) Having regard to the objectives of simplicity and cost-effectiveness, the party seeking enforcement shall not be required to have an authorised representative or a postal address in the Member State of enforcement, other than with agents having competence for the enforcement procedure in accordance with the national law of that Member State.

(33) Chapter III of this Regulation should also apply to the determination of costs and expenses made by officers of the court or tribunal due to a judgment given pursuant to the procedure specified in this Regulation.

(34) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (11).

(35) In particular, power should be conferred on the Commission to adopt measures necessary to update or make technical amendments to the forms set out in the Annexes. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation and/or to supplement this Regulation by the addition of new non-essential elements, they should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

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

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

(38) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:
CHAPTER I

SUBJECT MATTER AND SCOPE

Article 1

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

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

Article 2

Scope
1. This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (acta jure imperii).

2. This Regulation shall not apply to matters concerning:
   (a) the status or legal capacity of natural persons;
   (b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession;
   (c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
   (d) social security;
   (e) arbitration;
   (f) employment law;
   (g) tenancies of immovable property, with the exception of actions on monetary claims; or
   (h) violations of privacy and of rights relating to personality, including defamation.

3. In this Regulation, the term ‘Member State’ shall mean Member States with the exception of Denmark.

Article 3

Cross-border cases
1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised.

2. Domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.

3. The relevant moment for determining whether there is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction.

CHAPTER II
THE EUROPEAN SMALL CLAIMS PROCEDURE

Article 4
Commencement of the Procedure
1. The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Annex I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced. The claim form shall include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.

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

3. Where a claim is outside the scope of this Regulation, the court or tribunal shall inform the claimant to that effect. Unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.

4. Where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear or if the claim form is not filled in properly, it shall, unless the claim appears to be clearly unfounded or the application inadmissible, give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies. The court or tribunal shall use standard Form B, as set out in Annex II, for this purpose.

Where the claim appears to be clearly unfounded or the application inadmissible or where the claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed.

5. Member States shall ensure that the claim form is available at all courts and tribunals at which the European Small Claims Procedure can be commenced.

Article 5
Conduct of the Procedure
1. The European Small Claims Procedure shall be a written procedure. The court or tribunal shall hold an oral hearing if it considers this to be necessary or if a party so requests. The court or tribunal may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair
conduct of the proceedings. The reasons for refusal shall be given in writing. The refusal may not be contested separately.

2. After receiving the properly filled in claim form, the court or tribunal shall fill in Part I of the standard answer Form C, as set out in Annex III.

A copy of the claim form, and, where applicable, of the supporting documents, together with the answer form thus filled in, shall be served on the defendant in accordance with Article 13. These documents shall be dispatched within 14 days of receiving the properly filled in claim form.

3. The defendant shall submit his response within 30 days of service of the claim form and answer form, by filling in Part II of standard answer Form C, accompanied, where appropriate, by any relevant supporting documents, and returning it to the court or tribunal, or in any other appropriate way not using the answer form.

4. Within 14 days of receipt of the response from the defendant, the court or tribunal shall dispatch a copy thereof, together with any relevant supporting documents to the claimant.

5. If, in his response, the defendant claims that the value of a non-monetary claim exceeds the limit set out in Article 2(1), the court or tribunal shall decide within 30 days of dispatching the response to the claimant, whether the claim is within the scope of this Regulation. Such decision may not be contested separately.

6. Any counterclaim, to be submitted using standard Form A, and any relevant supporting documents shall be served on the claimant in accordance with Article 13. Those documents shall be dispatched within 14 days of receipt.

The claimant shall have 30 days from service to respond to any counterclaim.

7. If the counterclaim exceeds the limit set out in Article 2(1), the claim and counterclaim shall not proceed in the European Small Claims Procedure but shall be dealt with in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.

Articles 2 and 4 as well as paragraphs 3, 4 and 5 of this Article shall apply, mutatis mutandis, to counterclaims.

Article 6

Languages

1. The claim form, the response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents shall be submitted in the language or one of the languages of the court or tribunal.

2. If any other document received by the court or tribunal is not in the language in which the proceedings are conducted, the court or tribunal may require a translation of that document only if the translation appears to be necessary for giving the judgment.

3. Where a party has refused to accept a document because it is not in either of the following languages:

(a) the official language of the Member State addressed, or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched; or

(b) a language which the addressee understands,

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the court or tribunal shall so inform the other party with a view to that party providing a translation of the document.

**Article 7**

**Conclusion of the Procedure**

1. Within 30 days of receipt of the response from the defendant or the claimant within the time limits laid down in Article 5(3) or (6), the court or tribunal shall give a judgment, or:

(a) demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days;

(b) take evidence in accordance with Article 9; or

(c) summon the parties to an oral hearing to be held within 30 days of the summons.

2. The court or tribunal shall give the judgment either within 30 days of any oral hearing or after having received all information necessary for giving the judgment. The judgment shall be served on the parties in accordance with Article 13.

3. If the court or tribunal has not received an answer from the relevant party within the time limits laid down in Article 5(3) or (6), it shall give a judgment on the claim or counterclaim.

**Article 8**

**Oral hearing**

The court or tribunal may hold an oral hearing through video conference or other communication technology if the technical means are available.

**Article 9**

**Taking of evidence**

1. The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties. It may also admit the taking of evidence through video conference or other communication technology if the technical means are available.

2. The court or tribunal may take expert evidence or oral testimony only if it is necessary for giving the judgment. In making its decision, the court or tribunal shall take costs into account.

3. The court or tribunal shall use the simplest and least burdensome method of taking evidence.

**Article 10**

**Representation of parties**

Representation by a lawyer or another legal professional shall not be mandatory.

**Article 11**
**Case Study – European Small Claims Procedure**

**Assistance for the parties**
The Member States shall ensure that the parties can receive practical assistance in filling in the forms.

*Article 12*

**Remit of the court or tribunal**
1. The court or tribunal shall not require the parties to make any legal assessment of the claim.
2. If necessary, the court or tribunal shall inform the parties about procedural questions.
3. Whenever appropriate, the court or tribunal shall seek to reach a settlement between the parties.

*Article 13*

**Service of documents**
1. Documents shall be served by postal service attested by an acknowledgement of receipt including the date of receipt.
2. If service in accordance with paragraph 1 is not possible, service may be effected by any of the methods provided for in Articles 13 or 14 of Regulation (EC) No 805/2004.

*Article 14*

**Time limits**
1. Where the court or tribunal sets a time limit, the party concerned shall be informed of the consequences of not complying with it.
2. The court or tribunal may extend the time limits provided for in Article 4(4), Article 5(3) and (6) and Article 7(1), in exceptional circumstances, if necessary in order to safeguard the rights of the parties.
3. If, in exceptional circumstances, it is not possible for the court or tribunal to respect the time limits provided for in Article 5(2) to (6) and Article 7, it shall take the steps required by those provisions as soon as possible.

*Article 15*

**Enforceability of the judgment**
1. The judgment shall be enforceable notwithstanding any possible appeal. The provision of a security shall not be required.
2. Article 23 shall also apply in the event that the judgment is to be enforced in the Member State where the judgment was given.

*Article 16*

**Costs**
The unsuccessful party shall bear the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

Article 17

Appeal

1. Member States shall inform the Commission whether an appeal is available under their procedural law against a judgment given in the European Small Claims Procedure and within what time limit such appeal shall be lodged. The Commission shall make that information publicly available.

2. Article 16 shall apply to any appeal.

Article 18

Minimum standards for review of the judgment

1. The defendant shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the court or tribunal with jurisdiction of the Member State where the judgment was given where:

(a)

(i) the claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally, as provided for in Article 14 of Regulation (EC) No 805/2004; and

(ii) service was not effected in sufficient time to enable him to arrange for his defence without any fault on his part,

or

(b) the defendant was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly.

2. If the court or tribunal rejects the review on the basis that none of the grounds referred to in paragraph 1 apply, the judgment shall remain in force.

If the court or tribunal decides that the review is justified for one of the reasons laid down in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void.

Article 19

Applicable procedural law

Subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted.
CHAPTER III
RECOGNITION AND ENFORCEMENT IN ANOTHER MEMBER STATE

Article 20
Recognition and enforcement
1. A judgment given in a Member State in the European Small Claims Procedure shall be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

2. At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost.

Article 21
Enforcement procedure
1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement.

Any judgment given in the European Small Claims Procedure shall be enforced under the same conditions as a judgment given in the Member State of enforcement.

2. The party seeking enforcement shall produce:

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

(b) a copy of the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European Small Claims Procedure. The content of Form D shall be translated by a person qualified to make translations in one of the Member States.

3. The party seeking the enforcement of a judgment given in the European Small Claims Procedure in another Member State shall not be required to have:

(a) an authorised representative; or

(b) a postal address

in the Member State of enforcement, other than with agents having competence for the enforcement procedure.

4. No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in the European Small Claims Procedure in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

Article 22
Refusal of enforcement

1. Enforcement shall, upon application by the person against whom enforcement is sought, be refused by the court or tribunal with jurisdiction in the Member State of enforcement if the judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

(a) the earlier judgment involved the same cause of action and was between the same parties;

(b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and

(c) the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given.

2. Under no circumstances may a judgment given in the European Small Claims Procedure be reviewed as to its substance in the Member State of enforcement.

Article 23

Stay or limitation of enforcement

Where a party has challenged a judgment given in the European Small Claims Procedure or where such a challenge is still possible, or where a party has made an application for review within the meaning of Article 18, the court or tribunal with jurisdiction or the competent authority in the Member State of enforcement may, upon application by the party against whom enforcement is sought:

(a) limit the enforcement proceedings to protective measures;

(b) make enforcement conditional on the provision of such security as it shall determine; or

(c) under exceptional circumstances, stay the enforcement proceedings.

CHAPTER IV

FINAL PROVISIONS

Article 24

Information

The Member States shall cooperate to provide the general public and professional circles with information on the European Small Claims Procedure, including costs, in particular by way of the European Judicial Network in Civil and Commercial Matters established in accordance with Decision 2001/470/EC.

Article 25

Information relating to jurisdiction, means of communication and appeals

1. By 1 January 2008 the Member States shall communicate to the Commission:

(a) which courts or tribunals have jurisdiction to give a judgment in the European Small Claims Procedure;
(b) which means of communication are accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1);

(c) whether an appeal is available under their procedural law in accordance with Article 17 and with which court or tribunal this may be lodged;

(d) which languages are accepted pursuant to Article 21(2)(b); and

(e) which authorities have competence with respect to enforcement and which authorities have competence for the purposes of the application of Article 23.

Member States shall apprise the Commission of any subsequent changes to this information.

2. The Commission shall make the information notified in accordance with paragraph 1 publicly available through publication in the Official Journal of the European Union and through any other appropriate means.

**Article 26**

Implementing measures

The measures designed to amend non-essential elements of this Regulation, including by supplementing it, relating to updates or technical amendments to the forms in the Annexes shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2).

**Article 27**

Committee

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

**Article 28**

Review

By 1 January 2014, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European Small Claims Procedure, including the limit of the value of the claim referred to in Article 2(1). That report shall contain an assessment of the procedure as it has operated and an extended impact assessment for each Member State.

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

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

**Article 29**
Entry into force

This Regulation shall enter into force on the day following its publication in the Official Journal of the European Union.

It shall apply from 1 January 2009, with the exception of Article 25, which shall apply from 1 January 2008.

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

FORM A - ANNEX I
EUROPEAN SMALL CLAIMS PROCEDURE
FORM A
CLAIM FORM


Case number (*):
Received by the court/tribunal on: ____/____/______ (*)
(*) To be filled in by the court/tribunal.

IMPORTANT INFORMATION

PLEASE READ THE GUIDELINES AT THE BEGINNING OF EACH SECTION – THEY WILL HELP YOU TO FILL IN THIS FORM

Language
Fill in this form in the language of the court/tribunal to which you are sending your application. Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm. This may help you in filling in the form in the required language.

Supporting documents
Please note that the claim form should be accompanied, where appropriate, by any relevant supporting documents. However, this does not prevent you from submitting, where appropriate, further evidence during the procedure.

A copy of the claim form and, where appropriate, of the supporting documents, will be served on the defendant. The defendant will have an opportunity to submit a response.

1. Court/tribunal
In this field you should identify the court/tribunal before which you are making your claim. When deciding which court/tribunal to choose, you need to consider the grounds for the court’s/tribunal’s jurisdiction. A non-exhaustive list of possible grounds of jurisdiction is included in section 4.

1. Before which court/tribunal are you making your claim?

1.1. Name:

1.2. Street and number/PO box:

1.3. City and postal code:

1.4. Country:

2. Claimant
This field must identify you as the claimant and your representative, if any. Please note that it is not mandatory to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a PO Box as the address and you should therefore include the street name and number with a postcode. Failure to do so may result in the document not being served.

‘Other details’ may contain information that helps to identify you, for example, your date of birth, occupation, position in the company, personal ID code and the company registry code in certain Member States.

Where there is more than one claimant, please use additional sheets.
2. **The claimant's details**
   
2.1. Surname, first name/name of company or organisation:

2.2. Street and number/PO box:

2.3. City and postal code:

2.4. Country:

2.5. Telephone (*):

2.6. E-mail (*):

2.7. Claimant's representative, if any, and contact details (*):

2.8. Other details (*):

---

3. **Defendant**

In this field you should identify the defendant and, if known, his representative. Please note that it is not mandatory for the defendant to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a P.O. Box as the address and therefore you should include the street name and number with a postcode. Failure to do so may result in the document not being served.

‘Other details’ may contain information that helps to identify the person, for example the date of birth, occupation, position in the company, personal ID code and company registry code in certain Member States. If there is more than one defendant, please use additional sheets.

---

3. **The defendant's details**

3.1. Surname, first name/name of company or organisation:

3.2. Street and number/PO box:

3.3. City and postal code:

3.4. Country:

3.5. Telephone (*):

3.6. E-mail (*):

3.7. Defendant's representative, if known, and contact details (*):

3.8. Other details (*):

---

4. **Jurisdiction**

Your application must be lodged with the court/tribunal that has jurisdiction to deal with it. The court/tribunal must have jurisdiction in accordance with the rules of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

This section includes a non-exhaustive list of possible grounds for jurisdiction.

4. On what ground do you consider the court/tribunal to have jurisdiction?

4.1. Domicile of the defendant

4.2. Domicile of the consumer

4.3. Domicile of the policyholder, the insured or the beneficiary in insurance matters

4.4. Place of performance of the obligation in question

4.5. Place of the harmful event

4.6. Place where the immovable property is situated

4.7. Choice of court/tribunal agreed by the parties

4.8. Other (please specify):

5. Cross-border nature of the case

In order to make use of the European Small Claims Procedure, your case must be of a cross-border nature. A case is of a cross-border nature if at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court/tribunal.

5.1. Country of domicile or habitual residence of claimant:

5.2. Country of domicile or habitual residence of defendant:

5.3. Member State of the court/tribunal:

6. Bank details (optional)

In field 6.1. you may inform the court/tribunal by which means you intend to pay the application fee. Please note that not all methods are necessarily available at the court/tribunal to which you are sending your application. You should verify which methods of payment will be accepted by the court/tribunal. You can do this by contacting the court/tribunal concerned or by consulting the website of the European Judicial Network in Civil and Commercial Matters at http://ec.europa.eu/civiljustice.

If you choose to pay by credit card or to allow the court/tribunal to collect the fee from your bank account, you should give the necessary credit card or bank account details in the Appendix to this form. The Appendix will be for the information of the court/tribunal only and will not be forwarded to the defendant.

In field 6.2. you are given the possibility of indicating by which means you wish to receive payment from the defendant, for example if the defendant wishes to pay immediately even before the judgment is given. If you wish to be paid by bank transfer, please give the necessary bank details.

6. Bank details (*)

6.1. How will you pay the application fee?

6.1.1. By bank transfer

6.1.2. By credit card (please fill in the Appendix)

6.1.3. Direct debit from your bank account (please fill in the Appendix)

6.1.4. Other (please specify):
► (i) C1
7. Claim

Scope: Please note that the European Small Claims Procedure has a limited scope. No claims of a value higher than EUR 2000 or which are listed in Article 2 of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure can be dealt with under this procedure. If your claim does not relate to an action within the scope of that Regulation in accordance with Article 2, proceedings will continue before the courts/tribunals with jurisdiction in accordance with the rules of ordinary civil procedure. If you do not wish to continue proceedings in that event, you should withdraw your application.

Monetary or other claim: You should indicate whether you are claiming money and/or something else (non-monetary claim), for example, delivery of goods, and then fill in respectively either 7.1. and/or 7.2. If your claim is not for money, please indicate the estimated value of your claim. In the case of a non-monetary claim, you should indicate whether you have a secondary claim for compensation if it is not possible to satisfy the original claim.

If you wish to claim the costs of the proceedings (e.g. translation costs, lawyers’ fees, costs relating to the service of documents etc.), then you should indicate this in 7.3. Please note that rules regarding the costs which courts/tribunals can award vary between different Member States. Details of categories of costs in the Member States can be found on the website of the European Judicial Network in Civil and Commercial Matters at http://ec.europa.eu/civiljustice.

If you wish to claim any contractual interest, for example on a loan, you should indicate the rate and from what date it runs. The court/tribunal may award statutory interest on your claim, if you are successful. If you wish to claim interest, please indicate this and the date from which the interest should run.

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<th>7. About your claim</th>
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<tr>
<td>□ 7.1. Claim for money</td>
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<tr>
<td>7.1.1. Amount of principal (excluding interest and costs):</td>
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<tr>
<td>□ Euro (EUR) □ Bulgarian lev (BGN) □ Cypriot pound (CYP)</td>
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<td>□ Czech koruna (CZK) □ Estonian kroon (EEK) □ Pound Sterling (GBP)</td>
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<td>□ Croatian kuna (HRK) □ Hungarian forint (HUF) □ Latvian lats (LVL)</td>
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<td>□ Romanian leu (RON) □ Swedish kronor (SEK) □ Slovak koruna (SKK)</td>
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<td>□ Other (please specify):</td>
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<td>□ 7.2. Other claim:</td>
</tr>
<tr>
<td>7.2.1. Please specify what you are claiming:</td>
</tr>
<tr>
<td>7.2.2. Estimated value of the claim:</td>
</tr>
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</table>

Currency:

□ Euro (EUR) □ Bulgarian lev (BGN) □ Cypriot pound (CYP)
□ Czech koruna (CZK) □ Estonian kroon (EEK) □ Pound Sterling (GBP)
□ Croatian kuna (HRK) □ Hungarian forint (HUF) □ Latvian lats (LVL)
□ Lithuanian litas (LTL) □ Maltese lira (MTL) □ Polish zloty (PLN)
□ Romanian leu (RON) □ Swedish kronor (SEK) □ Slovak koruna (SKK)
□ Other (please specify): |
7.4. Are you claiming interest?
   Yes ☐
   No ☐
   If yes, is the interest:
   Contractual? ☐ If so, go to 7.4.1
   Statutory? ☐ If so, go to 7.4.2

7.4.1. If contractual
   (1) the rate is:
      ☐ ____ %
      ☐ ____ % above the base rate of the ECB
      ☐ other: ________________________________
   (2) the interest should run from: ____/___/____ (date)

7.4.2. If statutory
   the interest should run from: ____/___/____ (date)

8. Details of claim

8.1. Please give reasons for your claim, for example what happened, where and when.

8.2. Please describe the evidence you wish to put forward to support your claim and state which points of the claim it supports. Where appropriate, you should add relevant supporting documents.

8.2.1. Written evidence ☐ please specify below
8.2.2. Witnesses ☐ please specify below
8.2.3. Other ☐ please specify below

Oral hearing: Please note that the European Small Claims Procedure is a written procedure. However, you can request, in this form or at a later stage, that an oral hearing be held. The court/tribunal may decide to hold an oral hearing if it considers it necessary for the fair conduct of the proceedings or it may refuse it, having regard to all the circumstances of the case.

8.3. Do you want an oral hearing to be held?
   Yes ☐
   No ☐
9. **Certificate**
A judgment given in a Member State in the European Small Claims Procedure can be recognised and enforced in another Member State. If you intend to ask for recognition and enforcement in a Member State other than that of the court/tribunal, you can request in this form that the court/tribunal, after having made a decision in your favour, issue a certificate concerning that judgment.

9. **Certificate**
   I ask the court/tribunal to issue a certificate concerning the judgment
   
   Yes [ ]
   No [ ]

10. **Date and signature**
Please make sure that you write your name clearly and sign and date your application at the end.

10. **Date and signature**
   I hereby request that the court/tribunal give a judgment against the defendant on the basis of my claim.
   I declare that the information provided is true to the best of my knowledge and is given in good faith.
   Done at: ______________________
   Date: ___/___/_____  
   Name and signature:
Appendix to the claim form (Form A)

Bank details (*) for the purposes of payment of the application fee

Account holder/credit card holder:

Bank name, BIC or other relevant bank code/credit card company:

Account number or IBAN/credit card number, expiry date and security number of the credit card:
FORM B - ANNEX II
EUROPEAN SMALL CLAIMS PROCEDURE

FORM B

REQUEST BY THE COURT OR TRIBUNAL TO COMPLETE AND/OR RECTIFY THE CLAIM FORM


To be filled in by the court/tribunal

Case number:

Received by the court/tribunal on: ____/____/____.

1. Court/tribunal
   1.1. Name:
   1.2. Street and number/PO box:
   1.3. City and postal code:
   1.4. Country:

2. Claimant
   2.1. Surname, first name/name of company or organisation:
   2.2. Street and number/PO box:
   2.3. City and postal code:
   2.4. Country:
   2.5. Telephone (*):
   2.6. E-mail (*):
   2.7. Claimant’s representative, if any, and contact details (*):
   2.8. Other details (*):

3. Defendant
   3.1. Surname, first name/name of company or organisation:
   3.2. Street and number/PO box:
   3.3. City and postal code:
   3.4. Country:
   3.5. Telephone (*):
   3.6. E-mail (*):
   3.7. Defendant’s representative, if any, and contact details (*):
   3.8. Other details (*):

(*) Optional.
The court/tribunal has examined your claim form and considers it to be inadequate or insufficiently clear or not properly filled in: please complete and/or rectify your form in the language of the court/tribunal as indicated below as soon as possible and at the latest by ____________________________.

The court/tribunal shall dismiss your application under the conditions provided for in Regulation (EC) No 861(*)/2007 if you fail to complete and/or rectify it within the time limit set out above.

Your claim form has not been filled in the correct language. Please fill it in one of the following languages.

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<td>English</td>
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</table>

Other: (please specify) ____________________________

The following sections of the claim form must be completed and/or rectified as stated below:

- 
- 
- 
- 

Done at:
Date: ___/___/_____
Signature and/or stamp:

►(*) M1
Case Study – European Small Claims Procedure
EUROPEAN SMALL CLAIMS PROCEDURE
FORM C
ANSWER FORM

(Article 5(2) and 5(3) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

IMPORTANT INFORMATION AND GUIDELINES FOR THE DEFENDANT

A claim as set out in the attached claim form has been submitted against you using the European Small Claims Procedure.

You can answer by filling in Part II of this form and returning it to the court/tribunal, or in any other appropriate way, within 30 days after the claim form has been served on you together with the answer form.

Please note that if you do not answer within 30 days, the court/tribunal shall give a judgment.

Please make sure that you write your name clearly and sign and date the answer form at the end.

You should also read the guidelines included in the claim form; these may help you to prepare your response.

Language: You should reply to the claim in the language of the court/tribunal which has sent you this form.

Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm. This may help you in filling in the form in the required language.

Oral hearing: Please note that the European Small Claims Procedure is a written procedure. However, you can ask for an oral hearing to be held. Please be aware that having regard to the circumstances of the case, the court/tribunal can refuse this request.

Supporting documents: You can indicate possible means of evidence, and add, where appropriate, supporting documents.

Counterclaim: If you want to make a claim against the claimant (counterclaim), you should fill in and attach a separate Form A which you can find on the Internet at http://ec.europa.eu/justice_home/judicialatlascivil/html/fillinginformation_en.htm or obtain from the court/tribunal which sent you this form. Please note that for the purposes of the counterclaim you are considered to be the claimant.

Correcting your details: You can also correct or supplement information about yourself (e.g. contact details, representative etc.) in section 6 ‘Other information’.

Extra space: If space is insufficient, you can add additional sheets.

<table>
<thead>
<tr>
<th>Part I (to be filled in by the court/tribunal)</th>
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<tbody>
<tr>
<td>Name of claimant:</td>
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<tr>
<td>Name of defendant:</td>
</tr>
<tr>
<td>Court/tribunal:</td>
</tr>
<tr>
<td>Claim:</td>
</tr>
<tr>
<td>Case number:</td>
</tr>
</tbody>
</table>
Part II (to be filled in by the defendant)

1. Do you accept the claim?
   Yes □
   No □
   Partially □
   If you have answered 'no' or 'partially', please indicate reasons:
   The claim is outside the scope of the European Small Claims Procedure □
   please specify below
   Other □
   please specify below

2. If you do not accept the claim please describe the evidence you wish to put forward to contest it. Please state which points of your answer the evidence supports. Where appropriate, you should add relevant supporting documents.
   2.1. Written evidence □
   please specify below
   2.2. Witnesses □
   please specify below
   2.3. Other □
   please specify below

3. Do you want an oral hearing to be held?
   Yes □
   No □
   If yes, please indicate reasons (*):

4. Are you claiming the costs of proceedings?
   4.1. Yes □
   4.2. No □
   4.3. If yes, please specify which costs and if possible, indicate the amount claimed or incurred so far:

5. Do you want to make a counterclaim?
   5.1. Yes □
   5.2. No □
   5.3. If yes, please fill in and attach a separate Form A

6. Other information (*)

7. Date and signature
   I declare that the information provided is true to the best of my knowledge and is given in good faith.
   Done at: __________
   Date: __/__/___
FORM D - ANNEX IV
EUROPEAN SMALL CLAIMS PROCEDURE
FORM D
CERTIFICATE CONCERNING A JUDGMENT IN THE EUROPEAN SMALL CLAIMS PROCEDURE

To be filled in by the court/tribunal

1. Court/tribunal
   1.1. Name:
   1.2. Street and number/PO box:
   1.3. City and postal code:
   1.4. Country:

2. Claimant
   2.1. Surname, first name/name of company or organisation:
   2.2. Street and number/PO box:
   2.3. City and postal code:
   2.4. Country:
   2.5. Telephone (*):
   2.6. E-mail (*):
   2.7. Claimant’s representative, if any, and contact details (*):

2.8. Other details (*):

3. Defendant
   3.1. Surname, first name/name of company or organisation:
   3.2. Street and number/PO box:
   3.3. City and postal code:
   3.4. Country:
   3.5. Telephone (*):
   3.6. E-mail (*):
   3.7. Defendant’s representative, if any, and contact details (*):

3.8. Other details (*):

(*) Optional.
4. **Judgment**

4.1. Date:

4.2. Case number:

4.3. The substance of the judgment:

4.3.1. The court/tribunal has ordered __________ to pay to __________

   (1) Principal:

   (2) Interest:

   (3) Costs:

4.3.2. The court/tribunal has made an order against __________ to __________

(If the judgment was given by an appeal court in the case of a review of a judgment.)

This judgment supersedes the judgment given on __/__/____, case number __________, and any certificate relative thereto.

THE JUDGMENT WILL BE RECOGNISED AND ENFORCED IN ANOTHER MEMBER STATE WITHOUT THE NEED FOR A DECLARATION OF ENFORCEABILITY AND WITHOUT ANY POSSIBILITY OF OPPOSING ITS RECOGNITION.

Done at: __________

Date: __/__/____

Signature and/or stamp

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (1),

Acting in accordance with the ordinary legislative procedure (2),

Whereas:

(1) Regulation (EC) No 861/2007 of the European Parliament and of the Council (3) established the European Small Claims Procedure. That Regulation applies to both contested and uncontested cross-border civil and commercial claims of a value not exceeding EUR 2 000. It also ensures that the judgments given within this procedure are enforceable without any intermediate procedure, in particular without the need for a declaration of enforceability in the Member State of enforcement (abolition of exequatur). The general aim of Regulation (EC) No 861/2007 has been to improve access to justice for both consumers and businesses by reducing costs and accelerating civil procedures with regard to claims within its scope.

(2) The Commission's report of 19 November 2013 on the application of Regulation (EC) No 861/2007 states that, in general, the European Small Claims Procedure is considered to have facilitated cross-border litigation for small claims in the Union. However, that report also identifies obstacles to realising the full potential of the European Small Claims Procedure to benefit consumers and businesses, in particular small and medium-sized enterprises (SMEs). That report finds, among other things, that the low ceiling set out in Regulation (EC) No 861/2007 as regards the value of the claim deprives many potential claimants in cross-border disputes of the use of a simplified procedure. Furthermore, it states that several elements of the procedure could be further simplified in order to reduce the costs and the duration of litigation. The Commission's report concludes that those obstacles could be removed most effectively by amending Regulation (EC) No 861/2007.

(3) Consumers should be able to use the opportunities afforded by the internal market to the fullest extent, and their confidence should not be limited by the lack of effective legal remedies for disputes in which there is a cross-border element. The improvements to the European Small Claims Procedure proposed in this Regulation aim to provide consumers with a means of effective redress, and thus contribute to the practical enforcement of their rights.
Increasing the ceiling as regards the value of a claim to EUR 5 000 would improve access to an effective and cost-efficient judicial remedy for cross-border disputes, in particular for SMEs. Increased access to justice would enhance trust in cross-border transactions and would contribute to the fullest use of the opportunities afforded by the internal market.

This Regulation should apply to cross-border cases only. A cross-border case should be considered to exist when at least one of the parties is domiciled or habitually resident in a Member State bound by this Regulation other than the Member State of the court or tribunal seised.

The European Small Claims Procedure should be further improved by taking advantage of the technological developments in the field of justice and of new tools available to the courts and tribunals, which can help to overcome geographical distance and its consequences in terms of high costs and length of proceedings.

To further reduce the costs of litigation and the length of proceedings, the use of modern communication technology by the parties and the courts and tribunals should be further encouraged.

For documents which need to be served on the parties in the European Small Claims Procedure, electronic service should be on an equal footing with postal service. To that end, this Regulation should set a general framework that allows the use of electronic service whenever the necessary technical means are available and where the use of electronic service is compatible with the national procedural rules of the Member States involved. As regards all other written communications between the parties or other persons involved in the proceedings and the courts or tribunals, electronic means should be used as the preferred means to the extent possible, where such means are available and admissible.

Unless the parties or other addressees are obliged under national law to accept electronic means, they should have the choice as to whether electronic means, where such means are available and admissible, or more traditional means are to be used for the service of documents or for other written communications with the court or tribunal. The acceptance by a party of service by electronic means is without prejudice to his right to refuse to accept a document that is not written in, or accompanied by a translation into, the official language of the Member State in which he is domiciled or habitually resident or, if there are several official languages in that Member State, the official language or one of the official languages of the place where that party is domiciled or habitually resident, or in a language which he understands.

Where electronic means are used for the service of documents or for other written communications, existing best practices should be applied by the Member States to ensure that the content of the documents and other written communications received is true and faithful to that of the documents and other written communications sent, and that the method used for the acknowledgement of receipt provides confirmation of the receipt by the addressee and of the date of receipt.

The European Small Claims Procedure is essentially a written procedure. Oral hearings should only be held exceptionally where it is not possible to give the judgment on the basis of the written evidence or where a court or tribunal agrees to hold an oral hearing upon a party's request.

In order to enable persons to be heard without requiring them to travel to the court or
tribunal, oral hearings as well as the taking of evidence by hearing witnesses, experts or parties should be carried out using any appropriate means of distance communication available to the court or tribunal, unless, on account of the particular circumstances of the case, the use of such technology would not be appropriate for the fair conduct of the proceedings. As regards persons domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised, oral hearings should be organised by making use of the procedures provided for in Council Regulation (EC) No 1206/2001 (4).

(13) Member States should promote the use of distance communication technology. For the purpose of carrying out oral hearings, arrangements should be made so that the courts or tribunals that are competent in relation to the European Small Claims Procedure have access to appropriate distance communication technology with a view to ensuring the fairness of proceedings with regard to the particular circumstances of the case. In relation to videoconferencing, the Council Recommendations on cross-border videoconferencing adopted by the Council on 15 and 16 June 2015 and the work undertaken in the framework of European e-Justice should be taken into account.

(14) The potential costs of litigation can play a role in the claimant's decision on whether to commence a court action. Among other costs, court fees may discourage claimants from taking court action. In order to ensure access to justice for cross-border small claims, the court fees charged in a Member State for the European Small Claims Procedure should not be disproportionate to the claim and should not be higher than the court fees charged for national simplified court procedures in that Member State. This should, however, not prevent the levying of reasonable minimum court fees and should be without prejudice to the possibility of levying, under the same conditions, a separate fee for any appeal procedure against a judgment given in the European Small Claims Procedure.

(15) For the purposes of this Regulation, court fees should comprise fees and charges to be paid to the court or tribunal, the amount of which is determined in accordance with national law. They should not include, for example, sums which are transferred to third parties in the course of proceedings, such as lawyers' fees, translation costs, costs of service of documents by entities other than a court or tribunal, or costs paid to experts or witnesses.

(16) Effective access to justice across the Union is a major objective. To ensure such effective access in the context of the European Small Claims Procedure, legal aid should be provided in accordance with Council Directive 2003/8/EC (5).

(17) The payment of court fees should not require the claimant to travel to the Member State of the court or tribunal seised or to hire a lawyer for that purpose. In order to ensure that effective access to the proceedings is also given to claimants who are situated in a Member State other than the Member State in which the court or tribunal seised is situated, the Member States should, as a minimum, offer at least one of the distance payment methods provided for in this Regulation.

(18) It should be clarified that a court settlement approved by or concluded before a court or tribunal in the course of the European Small Claims Procedure is enforceable in the same way as a judgment given in that procedure.

(19) In order to minimise the need for translation and associated costs, the court or tribunal should, when issuing a certificate for the enforcement of a judgment given in the European Small Claims Procedure, or of a court settlement approved by or concluded...
before a court or tribunal in the course of that procedure, in a language other than its
own, use the relevant language version of the standard form for the certificate available
in a dynamic online format on the European e-Justice Portal. In this regard, it should
be entitled to rely on the accuracy of the translation available on that Portal. Any costs
for necessary translation of the text entered into the free text fields of the certificate are
to be allocated as provided for under the law of the Member State of the court or
tribunal.

(20) Member States should provide practical assistance to parties in filling in the standard
forms provided for in the European Small Claims Procedure. Moreover, they should
provide general information on the scope of application of the European Small Claims
Procedure and on which courts or tribunals are competent in relation to it. However,
that obligation should not entail the provision of legal aid or of legal assistance in the
form of a legal assessment of a specific case. Member States should be free to decide
on the most appropriate ways and means of providing such practical assistance and
general information, and it should be left to the Member States to decide upon which
bodies those obligations are imposed. Such general information on the scope of
application of the European Small Claims Procedure and on the competent courts or
tribunals may also be provided by way of reference to information given in brochures
or handbooks, on national websites or on the European e-Justice Portal, or by
appropriate support organisations, such as the European Consumer Centres Network.

(21) Information about court fees and methods of payment, as well as about the authorities
or organisations competent to give practical assistance in the Member States should be
made more transparent and easily available on the internet. To that end, the Member
States should provide that information to the Commission, which in turn should ensure
that it is made publicly available and widely disseminated by any appropriate means,
in particular through the European e-Justice Portal.

(22) It should be clarified in Regulation (EC) No 1896/2006 of the European Parliament
and of the Council that, where a dispute falls within the scope of the European
Small Claims Procedure, that procedure should also be available to a claimant in a
European order for payment procedure in the event that the defendant has lodged a
statement of opposition against the European order for payment.

(23) In order to further facilitate access to the European Small Claims Procedure, the
standard claim form should not only be made available at the courts and tribunals that
are competent in relation to the European Small Claims Procedure, but it should also
be made accessible through appropriate national websites. That obligation could be
met by providing a link to the European e-Justice Portal on the relevant national
websites.

To improve the protection of the defendant, the standard forms provided for in
Regulation (EC) No 861/2007 should contain information about the consequences for
the defendant if he does not contest the claim or does not attend an oral hearing when
summoned, in particular as regards the possibility that a judgment may be given or
enforced against him and that liability may be incurred for the costs of the
proceedings. The standard forms should also contain information about the fact that
the successful party may not be able to recover the costs of the proceedings to the
extent that they are unnecessarily incurred or are disproportionate to the value of the
claim.

(24) In order for the standard forms of the European Small Claims Procedure and of the
European order for payment procedure to be kept up-to-date, the power to adopt acts in
accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of changes to Annexes I to IV to Regulation (EC) No 861/2007 and in respect of changes to Annexes I to VII to Regulation (EC) No 1896/2006. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(25) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and to the TFEU, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.

(26) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(27) Regulations (EC) No 861/2007 and (EC) No 1896/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 861/2007 is amended as follows:

(1) Article 2 is replaced by the following:

‘Article 2

Scope

1. This Regulation shall apply, in cross-border cases as defined in Article 3, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 5 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (acta jure imperii).

2. This Regulation shall not apply to matters concerning:

(a) the status or legal capacity of natural persons;
(b) rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
(c) maintenance obligations arising from a family relationship, parentage, marriage or affinity;
(d) wills and succession, including maintenance obligations arising by reason of death;
(e) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
(f) social security;

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(g) arbitration;
(h) employment law;
(i) tenancies of immovable property, with the exception of actions on monetary claims; or
(j) violations of privacy and of rights relating to personality, including defamation.

(2) In Article 3, paragraphs 2 and 3 are replaced by the following:

‘2. Domicile shall be determined in accordance with Articles 62 and 63 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council (7).

3. The relevant moment for determining whether a case is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction.


(3) Article 4 is amended as follows:

(a) In the second subparagraph of paragraph 4, the following sentence is added:

‘The court or tribunal shall inform the claimant of such dismissal and whether an appeal is available against such dismissal.’;

(b) Paragraph 5 is replaced by the following:

‘5. Member States shall ensure that the standard claim Form A is available at all courts and tribunals before which the European Small Claims Procedure can be commenced, and that it is accessible through relevant national websites.’.

(4) In Article 5, paragraph 1 is replaced by the following:

‘1. The European Small Claims Procedure shall be a written procedure.

1a. The court or tribunal shall hold an oral hearing only if it considers that it is not possible to give the judgment on the basis of the written evidence or if a party so requests. The court or tribunal may refuse such a request if it considers that, with regard to the circumstances of the case, an oral hearing is not necessary for the fair conduct of the proceedings. The reasons for refusal shall be given in writing. The refusal may not be contested separately from a challenge to the judgment itself.’.

(5) Article 8 is replaced by the following:

‘Article 8

Oral hearing

1. Where an oral hearing is considered necessary in accordance with Article 5(1a), it shall be held by making use of any appropriate distance communication technology, such as videoconference or teleconference, available to the court or tribunal, unless the use of such technology, on account of the particular circumstances of the case, is not appropriate for the fair conduct of the proceedings.

Where the person to be heard is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised, that person’s attendance at an oral hearing by way of videoconference, teleconference or other appropriate distance communication technology shall be arranged by making use of the procedures provided...

2. A party summoned to be physically present at an oral hearing may request the use of distance communication technology, provided that such technology is available to the court or tribunal, on the grounds that the arrangements for being physically present, in particular as regards the possible costs incurred by that party, would be disproportionate to the claim.

3. A party summoned to attend an oral hearing through distance communication technology may request to be physically present at that hearing. The standard claim Form A and the standard answer Form C, established in accordance with the procedure referred to in Article 27(2), shall provide information to the parties that the recovery of any costs incurred by a party as a result of being physically present at the oral hearing, upon request of that party, is subject to the conditions laid down in Article 16.

4. The decision of the court or tribunal on a request provided for in paragraphs 2 and 3 may not be contested separately from a challenge to the judgment itself.


(6) Article 9 is replaced by the following:

'Article 9

Taking of evidence

1. The court or tribunal shall determine the means of taking evidence, and the extent of the evidence necessary for its judgment, under the rules applicable to the admissibility of evidence. It shall use the simplest and least burdensome method of taking evidence.

2. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties.

3. Where the taking of evidence involves a person being heard, that hearing shall be carried out in accordance with the conditions set out in Article 8.

4. The court or tribunal may take expert evidence or oral testimony only if it is not possible to give the judgment on the basis of other evidence.'.

(7) Article 11 is replaced by the following:

'Article 11

Assistance for the parties

1. The Member States shall ensure that it is possible for the parties to receive both practical assistance in filling in the forms and general information on the scope of application of the European Small Claims Procedure, as well as general information as to which courts or tribunals in the Member State concerned are competent to give a judgment in the European Small Claims Procedure. That assistance shall be provided free of charge. Nothing in this paragraph requires the Member States to provide for legal aid or for legal assistance in the form of a legal assessment of a specific case.

2. The Member States shall ensure that information on the authorities or organisations competent to give assistance in accordance with paragraph 1 is available at all courts and tribunals before which the European Small Claims Procedure can be commenced, and is accessible through relevant national websites.'.
(8) Article 13 is replaced by the following:

‘Article 13

Service of documents and other written communications

1. The documents referred to in Article 5(2) and (6) and judgments given in accordance with Article 7 shall be served:
(a) by postal service, or
(b) by electronic means:
   (i) where such means are technically available and admissible in accordance with the procedural rules of the Member State in which the European Small Claims Procedure is conducted and, if the party to be served is domiciled or habitually resident in another Member State, in accordance with the procedural rules of that Member State; and
   (ii) where the party to be served has expressly accepted in advance that documents may be served on him by electronic means or is, in accordance with the procedural rules of the Member State in which that party is domiciled or habitually resident, under a legal obligation to accept that specific method of service.

The service shall be attested by an acknowledgment of receipt including the date of receipt.

2. All written communications not referred to in paragraph 1 between the court or tribunal and the parties or other persons involved in the proceedings shall be carried out by electronic means attested by an acknowledgment of receipt, where such means are technically available and admissible in accordance with the procedural rules of the Member State in which the European Small Claims Procedure is conducted, provided that the party or person has accepted in advance such means of communication or is, in accordance with the procedural rules of the Member State in which that party or person is domiciled or habitually resident, under a legal obligation to accept such means of communication.

3. In addition to any other means available in accordance with the procedural rules of the Member States for expressing acceptance in advance, as required under paragraphs 1 and 2, of the use of electronic means, it shall be possible to express such acceptance by means of the standard claim Form A and the standard answer Form C.

4. If service in accordance with paragraph 1 is not possible, service may be effected by any of the methods provided for in Article 13 or 14 of Regulation (EC) No 1896/2006. If communication in accordance with paragraph 2 is not possible, or, on account of the particular circumstances of the case, not appropriate, any other method of communication admissible under the law of the Member State in which the European Small Claims Procedure is conducted may be used.’.

(9) The following Article is inserted:

‘Article 15a

Court fees and methods of payment

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1. The court fees charged in a Member State for the European Small Claims Procedure shall not be disproportionate and shall not be higher than the court fees charged for national simplified court procedures in that Member State.

2. The Member States shall ensure that the parties can pay the court fees by means of distance payment methods which allow the parties to make the payment also from a Member State other than the Member State in which the court or tribunal is situated, by offering at least one of the following methods of payment:

   (a) bank transfer;
   (b) credit or debit card payment; or
   (c) direct debit from the claimant's bank account.'.

(10) In Article 17, paragraph 2 is replaced by the following:

   ‘2. Articles 15a and 16 shall apply to any appeal.’.

(11) Article 18 is replaced by the following:

   ‘Article 18

   Review of the judgment in exceptional cases

   1. A defendant who did not enter an appearance shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the competent court or tribunal of the Member State in which the judgment was given, where:

      (a) the defendant was not served with the claim form, or, in the event of an oral hearing, was not summoned to that hearing, in sufficient time and in such a way as to enable him to arrange for his defence; or

      (b) the defendant was prevented from contesting the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part, unless the defendant failed to challenge the judgment when it was possible for him to do so.

   2. The time limit for applying for a review shall be 30 days. It shall run from the day the defendant was effectively acquainted with the contents of the judgment and was able to react, at the latest from the date of the first enforcement measure having the effect of making the property of the defendant non-disposable in whole or in part. No extension of the time limit may be granted.

   3. If the court rejects the application for a review referred to in paragraph 1 on the basis that none of the grounds for a review set out in that paragraph apply, the judgment shall remain in force.

   If the court decides that a review is justified on any of the grounds set out in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void. However, the claimant shall not lose the benefit of any interruption of prescription or limitation periods where such an interruption applies under national law.’.

(12) In Article 20, paragraph 2 is replaced by the following:

   ‘2. At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment given in the European Small Claims Procedure using the standard Form D, as set out in Annex IV, at no extra cost. Upon request, the court or tribunal shall provide that party with the certificate in any other official language of the
institutions of the Union by making use of the multilingual dynamic standard form available on the European e-Justice Portal. Nothing in this Regulation shall oblige the court or tribunal to provide a translation and/or transliteration of the text entered in the free-text fields of that certificate.’.

(13) In Article 21(2), point (b) is replaced by the following:

‘(b) the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept.’.

(14) The following Article is inserted:

’Article 21a

Language of the certificate

1. Each Member State may indicate the official language or languages of the institutions of the Union, other than its own, which it can accept for the certificate referred to in Article 20(2).

2. Any translation of the information on the substance of a judgment provided in a certificate as referred to in Article 20(2) shall be done by a person qualified to carry out translations in one of the Member States.’.

(15) The following Article is inserted:

’Article 23a

Court settlements

A court settlement approved by or concluded before a court or tribunal in the course of the European Small Claims Procedure and that is enforceable in the Member State in which the procedure was conducted shall be recognised and enforced in another Member State under the same conditions as a judgment given in the European Small Claims Procedure.

The provisions of Chapter III shall apply, mutatis mutandis, to court settlements.’.

(16) Article 25 is replaced by the following:

’Article 25

Information to be provided by Member States

1. By 13 January 2017, the Member States shall communicate to the Commission:

(a) the courts or tribunals competent to give a judgment in the European Small Claims Procedure;

(b) the means of communication accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1);
(c) the authorities or organisations competent to provide practical assistance in accordance with Article 11;

(d) the means of electronic service and communication technically available and admissible under their procedural rules in accordance with Article 13(1), (2) and (3), and the means, if any, for expressing acceptance in advance of the use of electronic means as required by Article 13(1) and (2) available under their national law;

(e) the persons or types of professions, if any, under a legal obligation to accept service of documents or other written communications by electronic means in accordance with Article 13(1) and (2);

(f) the court fees of the European Small Claims Procedure or how they are calculated, as well as the methods of payment accepted for the payment of court fees in accordance with Article 15a;

(g) any appeal available under their procedural law in accordance with Article 17, the time period within which such an appeal is to be lodged, and the court or tribunal with which such an appeal may be lodged;

(h) the procedures for applying for a review as provided for in Article 18 and the competent courts or tribunals for such a review;

(i) the languages they accept pursuant to Article 21a(1); and

(j) the authorities competent with respect to enforcement and the authorities competent for the purposes of the application of Article 23.

Member States shall inform the Commission of any subsequent changes to that information.

2. The Commission shall make the information communicated in accordance with paragraph 1 publicly available by any appropriate means, such as the European e-Justice Portal.’

(17) Article 26 is replaced by the following:

‘Article 26

Amendment of the Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 27 concerning the amendment of Annexes I to IV.’.

(18) Article 27 is replaced by the following:

‘Article 27

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 26 shall be conferred on the Commission for an indeterminate period of time from 13 January 2016.

3. The delegation of power referred to in Article 26 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to
the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 26 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’.

(19) Article 28 shall be replaced by the following:

‘Article 28

Review

1. By 15 July 2022, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the operation of this Regulation, including an evaluation as to whether:

(a) a further increase of the limit referred to in Article 2(1) is appropriate in order to attain the objective of this Regulation of facilitating access to justice for citizens and small and medium-sized enterprises in cross-border cases; and

(b) an extension of the scope of the European Small Claims Procedure, in particular to claims for remuneration, is appropriate to facilitate access to justice for employees in cross-border employment disputes with their employer, after considering the full impact of such an extension.

That report shall be accompanied, if appropriate, by legislative proposals.

To that end and by 15 July 2021, Member States shall provide the Commission with information relating to the number of applications under the European Small Claims Procedure as well as the number of requests for enforcement of judgments given in the European Small Claims Procedure.

2. By 15 July 2019, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the dissemination of information about the European Small Claims Procedure in the Member States, and may produce recommendations as to how to make that procedure better known.’.

Article 2

Regulation (EC) No 1896/2006 is amended as follows:

(1) In Article 7, paragraph 4 is replaced by the following:

‘4. In an Appendix to the application, the claimant may indicate to the court which, if any, of the procedures listed in points (a) and (b) of Article 17(1) he requests to be applied to his claim in the subsequent civil proceedings in the event that the defendant
lodges a statement of opposition against the European order for payment.

In the Appendix provided for in the first subparagraph, the claimant may also indicate to the court that he opposes a transfer to civil proceedings within the meaning of point (a) or point (b) of Article 17(1) in the event of opposition by the defendant. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued.’.

(2)Article 17 is replaced by the following:

‘Article 17

Effect of the lodging of a statement of opposition

1. If a statement of opposition is lodged within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin unless the claimant has explicitly requested that the proceedings be terminated in that event. The proceedings shall continue in accordance with the rules of:

(a) the European Small Claims Procedure laid down in Regulation (EC) No 861/2007, if applicable; or

(b) any appropriate national civil procedure.

2. Where the claimant has not indicated which of the procedures listed in points (a) and (b) of paragraph 1 he requests to be applied to his claim in the proceedings that ensue in the event of a statement of opposition or where the claimant has requested that the European Small Claims Procedure as laid down in Regulation (EC) No 861/2007 be applied to a claim that does not fall within the scope of that Regulation, the proceedings shall be transferred to the appropriate national civil procedure, unless the claimant has explicitly requested that such transfer not be made.

3. Where the claimant has pursued his claim through the European order for payment procedure, nothing under national law shall prejudice his position in subsequent civil proceedings.

4. The transfer to civil proceedings within the meaning of points (a) and (b) of paragraph 1 shall be governed by the law of the Member State of origin.

5. The claimant shall be informed of whether the defendant has lodged a statement of opposition and of any transfer to civil proceedings within the meaning of paragraph 1.’.

(3)In Article 25, paragraph 1 is replaced by the following:

‘1. Where, in a Member State, the court fees for civil proceedings within the meaning of point (a) or point (b) of Article 17(1), as applicable, are equivalent to or higher than those of the European order for payment procedure, the total of the court fees for a European order for payment procedure and for the civil proceedings that ensue in the event of a statement of opposition in accordance with Article 17(1) shall not exceed the fees for those proceedings without a preceding European order for payment procedure in that Member State.

No additional court fees may be charged in a Member State for the civil proceedings that ensue in the event of a statement of opposition in accordance with point (a) or point (b) of Article 17(1), as applicable, if the court fees for such proceedings in that Member State are lower than those for the European order for payment procedure.’.

(4)Article 30 is replaced by the following:
’Article 30
Amendment of the Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 31 concerning the amendment of Annexes I to VII.‘.

(5) Article 31 is replaced by the following:

’Article 31
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 30 shall be conferred on the Commission for an indeterminate period of time from 13 January 2016.

3. The delegation of power referred to in Article 30 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 30 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 14 July 2017 with the exception of point (16) of Article 1, amending Article 25 of Regulation (EC) No 861/2007, which shall apply from 14 January 2017.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 16 December 2015.

For the European Parliament
The President
M. SCHULZ
For the Council
The President
N. SCHMIT
Case Study – European Small Claims Procedure


(recast)

CHAPTER I
SCOPE AND DEFINITIONS

Article 1

1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii).

2. This Regulation shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;

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

(c) social security;

(d) arbitration;

(e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;

(f) wills and succession, including maintenance obligations arising by reason of death.

Article 2

For the purposes of this Regulation:

(a) ‘judgment’ means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.

For the purposes of Chapter III, ‘judgment’ includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement;

(b) ‘court settlement’ means a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings;

(c) ‘authentic instrument’ means a document which has been formally drawn up or
registered as an authentic instrument in the Member State of origin and the authenticity of which:

(i) relates to the signature and the content of the instrument; and
(ii) has been established by a public authority or other authority empowered for that purpose;

(d) ‘Member State of origin’ means the Member State in which, as the case may be, the judgment has been given, the court settlement has been approved or concluded, or the authentic instrument has been formally drawn up or registered;

(e) ‘Member State addressed’ means the Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought;

(f) ‘court of origin’ means the court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

Article 3

For the purposes of this Regulation, ‘court’ includes the following authorities to the extent that they have jurisdiction in matters falling within the scope of this Regulation:

(a) in Hungary, in summary proceedings concerning orders to pay (fizetési meghagyásos eljárás), the notary (közjegyző);

(b) in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande) and assistance (handräckning), the Enforcement Authority (Kronofogdemyndigheten).

CHAPTER II
JURISDICTION

SECTION 1
General provisions

Article 4

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State.

Article 5

1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

2. In particular, the rules of national jurisdiction of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1) shall not be applicable as against the persons referred to in paragraph 1.

Article 6
1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.

2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1), in the same way as nationals of that Member State.

**SECTION 2**

**Special jurisdiction**

**Article 7**

A person domiciled in a Member State may be sued in another Member State:

(1)(a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if point (b) does not apply then point (a) applies;

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

(3) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

(4) as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised;

(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

(6) as regards a dispute brought against a settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;

(7) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

(a) has been arrested to secure such payment; or

(b) could have been so arrested, but bail or other security has been given;
provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 8
A person domiciled in a Member State may also be sued:

(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(2) as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

(3) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

(4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Member State in which the property is situated.

Article 9
Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

SECTION 3
Jurisdiction in matters relating to insurance

Article 10
In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7.

Article 11
1. An insurer domiciled in a Member State may be sued:
   (a) in the courts of the Member State in which he is domiciled;
   (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; or
   (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.
**Article 12**

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

**Article 13**

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.
2. Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.
3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

**Article 14**

1. Without prejudice to Article 13(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

**Article 15**

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen;
2. which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section;
3. which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State;
4. which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.

**Article 16**

The following are the risks referred to in point 5 of Article 15:

1. any loss of or damage to:
   a. seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
(b) goods in transit other than passengers’ baggage where the transit consists of or includes carriage by such ships or aircraft;

(2) any liability, other than for bodily injury to passengers or loss of or damage to their baggage:
   (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
   (b) for loss or damage caused by goods in transit as described in point 1(b);

(3) any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;

(4) any risk or interest connected with any of those referred to in points 1 to 3;

(5) notwithstanding points 1 to 4, all ‘large risks’ as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (**).

SECTION 4

Jurisdiction over consumer contracts

Article 17

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:
   (a) it is a contract for the sale of goods on instalment credit terms;
   (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
   (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer’s domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 18

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.
2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

**Article 19**

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen;

2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or

3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

**SECTION 5**

*Jurisdiction over individual contracts of employment*

**Article 20**

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.

2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

**Article 21**

1. An employer domiciled in a Member State may be sued:

   (a) in the courts of the Member State in which he is domiciled; or

   (b)in another Member State:

      (i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or

      (ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.

**Article 22**

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 23

The provisions of this Section may be departed from only by an agreement:
(1) which is entered into after the dispute has arisen; or
(2) which allows the employee to bring proceedings in courts other than those indicated in this Section.

SECTION 6

Exclusive jurisdiction

Article 24

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

(2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

(3) in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;

(4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place.

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that Member State;

(5) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.
SECTION 7
Prorogation of jurisdiction

Article 25

1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:
   (a) in writing or evidenced in writing;
   (b) in a form which accords with practices which the parties have established between themselves; or
   (c) in international trade or commerce, in a form which accords with a usage which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to ‘writing’.

3. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between those persons or their rights or obligations under the trust are involved.

4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 24.

5. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.

Article 26

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 24.

2. In matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.

SECTION 8
Examination as to jurisdiction and admissibility
Article 27
Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24, it shall declare of its own motion that it has no jurisdiction.

Article 28
1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.
2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.
3. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) shall apply instead of paragraph 2 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.
4. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

SECTION 9
Lis pendens — related actions

Article 29
1. Without prejudice to Article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. In cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised in accordance with Article 32.
3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30
1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where the action in the court first seised is pending at first instance, any other court may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 31
1. Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

2. Without prejudice to Article 26, where a court of a Member State on which an agreement as referred to in Article 25 confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement.

3. Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State shall decline jurisdiction in favour of that court.

4. Paragraphs 2 and 3 shall not apply to matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the claimant and the agreement is not valid under a provision contained within those Sections.

Article 32
1. For the purposes of this Section, a court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served.

2. The court, or the authority responsible for service, referred to in paragraph 1, shall note, respectively, the date of the lodging of the document instituting the proceedings or the equivalent document, or the date of receipt of the documents to be served.

Article 33
1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and proceedings are pending before a court of a third State at the time when a court in a Member State is seised of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings if:
(a) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and

(b) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

2. The court of the Member State may continue the proceedings at any time if:

(a) the proceedings in the court of the third State are themselves stayed or discontinued;

(b) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or

(c) the continuation of the proceedings is required for the proper administration of justice.

3. The court of the Member State shall dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.

4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

Article 34

1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and an action is pending before a court of a third State at the time when a court in a Member State is seised of an action which is related to the action in the court of the third State, the court of the Member State may stay the proceedings if:

(a) it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(b) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and

(c) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

2. The court of the Member State may continue the proceedings at any time if:

(a) it appears to the court of the Member State that there is no longer a risk of irreconcilable judgments;

(b) the proceedings in the court of the third State are themselves stayed or discontinued;

(c) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or

(d) the continuation of the proceedings is required for the proper administration of justice.

3. The court of the Member State may dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.

4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

SECTION 10

Provisional, including protective, measures
Article 35
Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.

(…)

CHAPTER V
GENERAL PROVISIONS

Article 61
No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.

Article 62
1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.
2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

Article 63
1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:
   (a) statutory seat;
   (b) central administration; or
   (c) principal place of business.
2. For the purposes of Ireland, Cyprus and the United Kingdom, ‘statutory seat’ means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.
3. In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

(…)