



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 25 November 2013
(OR. en)**

**Interinstitutional File:
2013/0403 (COD)**

**16749/13
ADD 1**

**JUSTCIV 278
CODEC 2695**

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	20 November 2013
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2013) 459 final
Subject:	COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure

Delegations will find attached document SWD(2013) 459 final.

Encl.: SWD(2013) 459 final



Brussels, 19.11.2013
SWD(2013) 459 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council amending

**Regulation (EC) No 861/2007 of the European Parliament and of the Council
establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of
the European Parliament and of the Council of 12 December 2006 creating a European
order for payment procedure**

{COM(2013) 794 final}
{SWD(2013) 460 final}

TABLE OF CONTENTS

1.	Background and policy context.....	7
2.	Procedural issues and consultation of interested parties	8
2.1.	Impact assessment study and expertise	8
2.2.	Consultation of the IAB	8
2.3.	Stakeholder consultation	9
3.	Problem definition.....	10
3.1.	Introduction	10
3.2.	Evaluation of the ESCP regulation	12
3.3.	Problem 1: Limited scope of the Regulation.....	15
3.4.	Problem 2: Inefficiencies of the ESCP due to high costs and length of the current procedure in cross-border cases below €2,000 as well as lack of transparency of litigation costs and availability of practical assistance	18
3.5.	Problem 3: Limited awareness of the existence and operation of the procedure.....	23
3.6.	EU right to act	24
4.	Policy objectives for the revision of the Regulation	26
5.	Policy options.....	26
5.1.	Four main options	26
6.	Analysis of impacts of the policy options	30
6.1.	Policy Option 1: Status quo (Baseline scenario).....	30
6.2.	Policy Option 3: Revision of the Regulation	30
7.	Comparison of the options and summary of the preferred option	43
8.	Monitoring and evaluation	48
9.	Annexes.....	49

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council amending

**Regulation (EC) No 861/2007 of the European Parliament and of the Council
establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of
the European Parliament and of the Council of 12 December 2006 creating a European
order for payment procedure**

Executive Summary Sheet

Impact assessment on the Proposal for a Regulation amending Regulation (EC) No 861/2007 on a European Small Claims Procedure

A. Need for action

Why? What is the problem being addressed?

The objective of the current Regulation 861/2007 on European Small Claims Procedure (ESCP) - to improve access to justice in low value cross-border disputes for consumers and SMEs - has not been fully achieved. The following four main problems have been identified:

Problem 1: As the current threshold for small claims is set at €2,000, low value cross-border disputes above €2,000, involving businesses in particular, are excluded. For these claims, the costs and length of litigating is high and disproportionate to the value of the claim. For example, the average cost of litigating a claim of €10,000 (in MS without simplified national procedures for small claims) is estimated to be €3,000 or 30% of the value of the claim.

Problem 2: The narrow definition of "cross-border cases" leaves many SMEs and consumers deprived of the benefits they could derive from the ESCP in disputes with a cross-border dimension.

Problem 3: The costs and length of the current procedure remain too high and are not transparent. For example, the fact that oral hearings often require the physical presence of the parties imposes travel costs of between €400 and €800. Unnecessary costs are also incurred where there is no on-line facility for payment of court fees. The lack of transparency on court fees in the Member States also leads to costs and delays for the claimant.

Problem 4: There is a lack of awareness of the existence and operation of the procedure among interested stakeholders.

What is this initiative expected to achieve?

The main objectives of this initiative are to provide better access to justice for a wider range of cross-border small value claims and reduce the current economic detriment to SMEs and consumers resulting from expensive litigation. More specifically, the initiative aims at reducing costs and length of litigating small claims disputes, extending the procedure to claims of a small value of SMEs and to all situations having a cross-border element including those which involve parties resident in third countries, simplifying the procedure itself and improving legal certainty and information for consumers and businesses on the procedure.

What is the value added of action at the EU level?

The need for EU action has already been established in 2007 when the Regulation 861/2007 was adopted. The main rationale for the current action consists in further reducing disproportionate costs of litigation of small claims in cross-border situations within the EU. This objective cannot be achieved by Member States because it concerns a procedure established in a EU Regulation. Action at EU level is necessary to further improve and simplify the European procedure and make it available for more cases, broadening its scope and raising the threshold, for the benefit of consumers and SMEs.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Four main policy options have been considered: status quo, repeal of the Regulation, revision of the Regulation and harmonisation of national small claims procedures through a directive. The option chosen is the revision of the Regulation. Several sub-options have been considered in this option for example:

- Several sub-options were considered for raising the threshold up to € 5,000, € 10,000 and to beyond € 10,000.

- Two sub-options have been considered for further supporting the up-take of electronic service, such as imposing an obligation on all Member States to accept such means of service or to allow those who have such systems in place to use them in respect of cross-border small claims.
- Two sub-options were analysed for addressing the problem of disproportionate court fees, imposing a limit of either 5% or 10%. Harmonising court fees was not a viable option.

The preferred option is the revision of the Regulation, consisting of the following elements: (a) Increase of threshold to € 10,000; (b) Extension of scope to cover all disputes having a cross-border element; (c) Simplify several procedural aspects relating to service of documents, oral hearings, court fees, translation requirements, information for citizens and businesses.

Who supports which option?

The results of a public 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. Organisations representing EU consumers and EU businesses including SMEs expressed support for raising threshold and bringing procedural improvements leading to more cost savings and reduced length of proceedings.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The combined time and cost savings of the individual elements of the preferred option account for a potential reduction of costs for the parties of about € 325 to 418 million. The reduction in costs related to raising the threshold from the current €2,000 to €10,000 alone is estimated to amount to approximately 233 million euro based on the assumption that 50% court cases concerning claims between € 2,000 and €10,000 in Member States where there is a simplified procedure would be filed under the ESCP.

By reducing the disproportionate costs and time of litigation concerning small claims in cases with a cross-border element, the proposed changes would improve access to justice for consumers and businesses.

The proposal will have a positive impact with regard to the procedural improvements especially for economically disadvantaged persons, since the existence of disproportionate costs particularly affects this social group: their claims are likely to be small, and the fear of incurring disproportionate costs will prevent them more than anyone else from lodging a claim.

The justice systems are also likely to benefit from the simpler, more efficient procedure.

What are the costs of the preferred option (if any, otherwise main ones)?

Implementation costs may include € 500 per competent court for the purchase of teleconferencing equipment or Skype-like Internet facility. The costs of introduction of bank transfer or on-line debit/credit card payment methods may differ depending on the administrative organisation of the court systems in each Member State. It is estimated that a fixed cost of € 14,400 is necessary.

The benefits related to the distance payment and electronic communications may have less impact on the elderly, since they have a lower absorption of Internet and electronic communication means. At the same time, they would benefit the most from such distance communication means as they have reduced mobility.

There are no significant direct negative impacts in the economic, social or environmental areas.

How will businesses, SMEs and micro-enterprises be affected?

Businesses, in particular SMEs and micro-enterprises will benefit from the fact that by raising the threshold more of their cross-border claims could be filed under the simplified European procedure. However, all stakeholders, business as well as consumers will benefit from the more cost-effective litigation of small claims.

Will there be significant impacts on national budgets and administrations?

Implementation costs depend on the number of courts competent for ESCP applications and on the existent level of implementation of distance means of communication and on-line payment of court fees may include € 500 per competent court for the purchase of teleconferencing equipment or Internet connection. The costs of introduction of bank transfer methods of payment are negligible. Cost of introducing on-line credit card payment methods may differ depending on the administrative organisation of the court systems in each Member State. It is estimated that a fixed cost of € 14,400 is necessary.

Will there be other significant impacts?

Procedural safeguards are proposed in order to take away any concerns on fundamental rights which might be raised following the increase of the threshold up to €10,000.

D. Follow up

When will the policy be reviewed?

A review is envisaged after 5 years from entry into application.

1. BACKGROUND AND POLICY CONTEXT

At a time where the European Union (EU) 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 activity¹. In most Member States, claims of a small value enjoy access to a simplified procedure intended to make the costs and length of proceedings more proportionate to the value of the claims pursued.

Regulation (EC) No 861/2007 establishing a European Small Claims Procedure (hereafter: the "ESCP" or 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, the need to provide for efficient redress mechanisms as a means of supporting the economic activity will become even more acute.

The Regulation is applied in the EU (except in Denmark) as of 1 January 2009 and is intended to improve access to justice by setting up a uniform European procedure which simplifies, speeds up, and reduces the costs of litigation concerning small claims not exceeding €2,000 in cross-border cases. 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 enforcement².

The procedure is available for example where consumers have a complaint against businesses located in another Member State. The procedure is also available when a business, for example an SME has a dispute with another business located in another Member State. In both cases, a uniform set of rules would apply and multilingual standard forms would be available irrespective of where the parties or the court with jurisdiction is located in the EU.

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 Resolution³ 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

¹ EU Justice Scoreboard, available at http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm.

² Other simplifying elements of the Regulation are the specific time limits for procedural acts for the parties and for the court and the loser-pays principle limited to reasonable costs.

³ European Parliament Resolution of 25 October 2011 on alternative dispute resolution in civil, commercial and family matters (2011/2117(INI)).

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.

As this impact assessment will show, the problems are arising mainly from the deficiencies in the current rules, such as the limited scope of application in terms of threshold as well as cross-border coverage, and still too cumbersome, costly and lengthy procedure 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.

The Commission identified the revision of the Regulation in the 2013 EU Citizenship Report⁴ 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 Agenda⁵ 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.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

2.1. Impact assessment study and expertise

To prepare the **assessment of the socio-economic impacts** of the policy options for the revision of the Regulation, DG Justice contracted an external impact assessment study by Deloitte⁶. The report draws on the results of the ex post evaluation carried out by Deloitte⁷.

An **IA Steering Group** was established in April 2012. One meeting was organised on 17 May 2013 and a second one on 18 June 2013. The following DGs and services were consulted: ELARG, SANCO, MARKT, ENTR, SJ and SG. The feedback received from the DGs has been taken into account throughout the report.

2.2. Consultation of the IAB

This impact assessment report was examined by the Commission's Impact Assessment Board on 17 July 2013. The Impact Assessment Board delivered a positive opinion and made a number of recommendations for strengthening the Impact Assessment. All of these recommendations have been taken on board in the current report. In particular, the problem definition now better reflects the views of stakeholders and presents more clearly the

⁴ Commission Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on a EU Citizenship Report, "EU Citizens: Your Rights, Your Future", COM(2013) 269 final, pp. 15-16.

⁵ COM(2012) 225 final.

⁶ Deloitte, "Assessment of the socio-economic impacts of the policy options for the future of the European Small Claims Regulation", 19 July 2013, Part II: Assessment of the socio-economic impacts of the policy options for the future of the European Small Claims Regulation (hereafter: Deloitte Study, Part II), available at http://ec.europa.eu/justice/civil/document/index_en.htm.

⁷ Deloitte, "Assessment of the socio-economic impacts of the policy options for the future of the European Small Claims Regulation", 19 July 2013, Part I: Evaluation of the European Small Claims Regulation (hereafter: Deloitte Study, Part I).

problems and their drivers; the various options and sub-options are more clearly assessed and the subsidiarity analysis has been reinforced; finally, the Report summarizes the expected costs for the Member States.

2.3. Stakeholder consultation

Several **consultations** to gather information about the current application of the Regulation as well as of the possible elements of its revision were carried out. 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 2012⁸. 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 results⁹ 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 was 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. In total, 20 Member States have sent their replies¹⁰.

The **European Judicial Network** has discussed the application of the European Small Claims Procedure, the measures to be taken to raise awareness of its existence and operation as well

⁸ Special Eurobarometer 395 on European Small Claims Procedure, available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_395_sum_en.pdf.

⁹ Several responses were received by the Commission as separate, stand-alone documents. The results presented here in percentages reflect only those responses encoded in the on-line consultation. However, all responses were considered in this Impact Assessment.

¹⁰ AT, BG, CY, CZ, DE, EE, EL, ES, FI, FR, IT, LT, MT, NL, PL, PT, SE, SI, SK and the UK.

as the possible elements of its revision on several occasions. 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 increasing the threshold, the use of the 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, the issue of ensuring transparency of court fees calculation and payment and the issue of legal representation.

3. PROBLEM DEFINITION

3.1. Introduction

3.1.1. The ESCP compared with national procedures

The ESCP is an alternative to national simplified procedures. However, national simplified procedures are extremely diverse in terms of both thresholds and procedural simplification achieved. Few have as many simplification elements as the ESCP (such as use of standard forms, the written character of the procedure, the exceptional nature of oral hearings, the removal of the need for legal representation by a lawyer). Many so-called simplified procedures only have some of these simplification elements, most commonly the only simplification element is that there is no need for legal representation in small value disputes which are in the competence of lower courts (BE). Sometimes these simplification elements are not a right of the party but rather left at the discretion of the judge (DE). Oral hearings where the party himself or his legal representative must be present are still routinely organised in national simplified procedures. In some Member States there is no national simplified procedure (AT, BG, CY, CZ and FI). National ordinary procedures do not have most of the simplification elements of the ESCP.

There is no data available on the number of applications of national simplified procedures. However, the fact that these are generally more expensive and lengthier than the ESCP gives good cause to think that where claimants are aware of the ESCP, they will use it more often than the alternative national procedure. For example, in the Netherlands there is a simplified procedure for claims up to €25,000, but it is both more complex and more costly than the ESCP. For this reason, where available, the ESCP is preferred to the national procedure.

An important advantage of the ESCP is that it lays down uniform procedures for cross-border disputes which apply regardless of where the court with jurisdiction is situated, which reduces the costs for the parties to investigate the procedure of the Member State where the court with jurisdiction in a particular dispute is located.

How does the ESCP work in a basic scenario¹¹?

An ESCP application is initiated by the submission of the Claim Form A to the court. If the

¹¹ In practice, other procedural acts may occur, such as the submission of a counterclaim by the defendant, appeals or requests for review.

court finds it correct and complete, it serves it upon the defendant together with the pre-filled Response Form C. If the form requires completion or rectification, the court notifies the claimant by means of Form "B" and takes further steps only after the response is received. The defendant may respond to the claim within 30 days and if he does so, the court sends the copy of the response to the claimant in 14 days from receipt thereof. If the court does not see the need to ask parties for additional information, to take further evidence or convene an oral hearing, it delivers the judgment within 30 days from receipt of the response. Otherwise, it notifies the parties and other participants (witnesses), carries out the act and within 30 days from the act being completed issues the judgment, which then has to be served upon the parties. Each party may request the certificate for enforcement to be delivered.

3.1.2. Relationship with other instruments

Regulation (EU) No 1215/2012 (Brussels I recast) aims at harmonising the private international law rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It provides, among others, that "a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required". Such special procedures, which will be abolished as of 10 January 2015 for all civil and commercial judgments, are known as "exequatur" procedures.

The ESCP Regulation is essentially an instrument simplifying the procedures for the resolution of disputes of a low value - lodging an application by means of a standard form, conduct of the procedure in principle by written means, the hearing of the parties and the taking of evidence, the representation of the parties, costs and time limits.

The ESCP Regulation also contains rules abolishing the exequatur procedure for the recognition of judgments given by this simplified procedure (Article 20) and in this respect it overlaps with the Brussels I recast. However, when it comes to the Certificate of enforcement, the ESCP Regulation represents a simplification when compared to the Brussels I recast – Form D of the ESCP is a simplified version of Annex I of the Brussels I recast.

As of 10 January 2015 (date of entry into force of the Brussels I recast), the overwhelming majority of the provisions of the ESCP Regulation which deal with the procedural simplification, as well as those on enforcement in as much as they represent a simplification by comparison with Brussels I recast will continue to be a value added of the ESCP.

Directive 2013/11 on consumer alternative dispute resolution has as its purpose to ensure that consumers can, on a voluntary basis, submit complaints against businesses to ADR entities and that such schemes are fair and effective. It applies to both domestic and cross-border disputes concerning contractual obligations stemming from sales and service contracts between a trader and a consumer.

Although the use of ADR is likely to increase as a result of the implementation of this Directive, it does not mean that there is less scope for the ESCP. The ESCP will continue to be relevant for resolving cross-border disputes for the following reasons:

- the Directive is limited to disputes involving certain consumer contracts, while the ESCP is available for any cross-border claim, regardless of its legal nature (contractual or tortious) and regardless of whether it is B2C or B2B.

- ADR is not compulsory. Consumers in particular cannot be forced to agree to the use of ADR and any such agreement made with a trader before the dispute arises is null and void.

The ESCP offers protection to weaker parties who do not feel sufficiently protected by ADR mechanisms alone.

- ADR is effective only as an alternative to court action and not as a replacement of court action. This means that unless there is a cost-effective possibility for consumers to take court action, businesses will not have an incentive to go to ADR.

- in cases where the ADR procedure fails, or where the parties do not agree to subject their dispute to ADR, there must always be the possibility to have recourse to court proceedings.

Having access to cost effective and speedy court action is a fundamental right of every citizen which cannot be replaced by alternative means of resolving disputes. In cross-border cases of a small value, this can only be achieved EU-wide by the ESCP which ensures that such access exists for cross-border claims.

Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters has a similar function as Directive 2013/11, although its scope is larger and almost coincides with that of the ESCP. Similar considerations to those mentioned above for ADR apply also in respect of this Directive.

3.2. Evaluation of the ESCP regulation

In general, the procedure implemented by the Regulation is considered to have facilitated cross-border litigation for small claims in the EU: it has contributed to a reduction of the costs of litigating cross-border small claims of up to 40%¹² and of the duration of litigation from up to 2 years before the introduction of the Regulation to 3 to 8 month.¹³ Two-thirds of those who had used the procedure are overall satisfied with it.¹⁴

However, despite these achievements and the constant increase in the number of applications year-on-year¹⁵, the use of the ESCP in the Member States remains very limited. The following main problems have been identified:

The scope of the Regulation is too narrow. The EUR 2 000 **threshold** is set at a level where a significant number of business stakeholders – in particular SMEs - are severely limited in using the procedure. However, a simplified, less costly and speedier procedure would improve access to justice for SMEs involved in cross-border disputes. Furthermore, the limitation of the territorial scope to only cross-border cases where at least one of the parties is located in another Member State than the court or tribunal with jurisdiction deprives certain citizens having disputes with a cross-border element of the benefits which they could draw from the application of the ESCP.

The **procedure** is still more costly and time consuming than it could be the case. For example:

- although distance means of communication for conducting oral hearings are already available or can easily be installed in all courts, many courts are still lacking this equipment

¹² Deloitte Study, Part I, pp. iii and section 3.3.1.1.

¹³ Deloitte Study, Part I, p., iii.

¹⁴ Eurobarometer 395. Base: All respondents that have already used the European Small Claims Procedure (213)

¹⁵ See Deloitte Study, Part I, p. 72 .

and judges are still reluctant to make use of such means and require parties to travel to the court. This has a significant impact on costs and length of proceedings;

- in most Member States court fees are not an impediment to legal action, but in a number of Member States, in particular for claims up to EUR 2 000, court fees are disproportionate to the value of the claims;

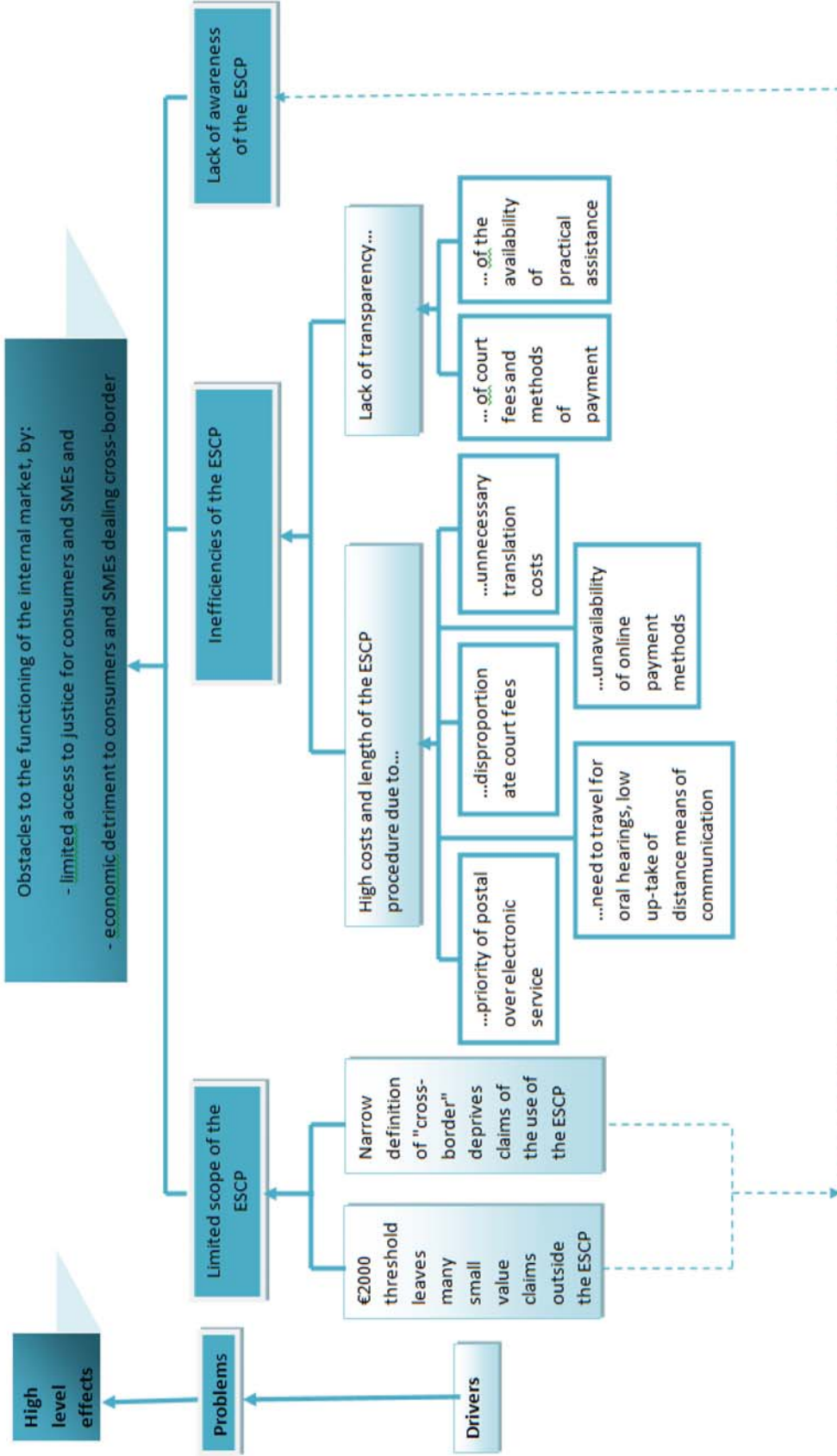
- the lack of any provision on the availability of distance means of payment of court fees also means that in some Member States the claimant would either have to travel to the court or hire a lawyer to pay these fees for him.

- as for translation costs, translations of the forms A, B and C are essential to enable the judge to assess the merits of a claim and to inform the defendant of the substance of the complaint. Absent such obligation, courts would probably not be able to give judgment on the basis of a written procedure – which is the aim of the Regulation. A reduction in translation costs can only be achieved, without jeopardising the efficiency of the procedure, at the stage of enforcement by limiting the requirement to translate the Certificate in Form D to only the section dealing with the substance of the judgment.

The **limited awareness** of the procedure among judges and lawyers and the general public can be explained partly by the fact that the low threshold puts the procedure outside the sphere of interest of many businesses, including SMEs. As judges are not required to raise of their own motion the possibility of using the ESCP for cases within the scope of the Regulation even where this procedure would be more convenient to the party than the national procedure, the burden of choosing the procedure rests entirely in the hands of the claimant. Therefore, his knowledge of its existence, its benefits compared to national procedures and its operation is crucial for the up-take of the procedure.

From the outset, it must be stated that most of the identified problems are due to deficiencies in the Regulation, as for example the limited scope, the lack of provisions in regard to certain issues (court fees, payment methods) and the lack of stronger rules on the use of electronic means of communication between the courts and the parties. Where problems arise mainly from poor implementation, it must be acknowledged that this poor implementation stems from the lack of clarity within the Regulation itself (for example, in respect of how the Member States' should make free assistance available and of what type of information relating to costs must be provided by the Member States). Therefore deficiencies in the Regulation and poor implementation go hand in hand.

A problem tree is presented below:



3.3. Problem 1: Limited scope of the Regulation

3.3.1. The €2,000 threshold leaves many small value disputes outside the scope of the Regulation, leading to high and disproportionate litigation costs for these claims

The threshold of €2,000 limits the scope of the Regulation. While this is less important for consumers, since most of their claims do not exceed €2,000, it severely limits the availability of the procedure for SMEs whose cross-border legal disputes with another business amount on average to €9,700¹⁶. Eurobarometer 347 shows that about 30 %¹⁷ of the claims of businesses have a value between €2,001 and €10,000, while 20% are claims with a value of below €2,000. Every year, about 360 000 businesses in the EU are faced with *problematic cross-border transactions with a value between €2,000 and €10,000*¹⁸. These businesses have to revert to national small claims procedures or – where there is no such national procedure in place for cross-border cases – to ordinary civil procedures. Particularly in Member States which do not have a national small claims procedure for these claims, **this leads to disproportionate litigation costs and lengthy proceedings**, which in turn may deter claimants from pursuing their claims.

The costs of litigating in the Member States and the duration of the proceedings can be summed up as follows:¹⁹

- **Cross-border cases concerning claims of between €2,000 and €5,000²⁰**: In the 5 Member States where these claims benefit from national simplified small claims procedures²¹ the average cost appears to be broadly similar to the costs they would face under the current procedural rules of the ESCP, if the threshold were to be raised to €5,000 (in some Member States the costs seem to be higher²² and in some Member States lower²³). The average costs of the ESCP procedure are of about €1,750²⁴. As for the other Member States, where these cases are treated under ordinary procedures, the average cost of litigation is estimated at €2,800 and the average duration of proceedings is estimated to be **1 year**. These costs represent more than half of the value of the claim, and are therefore clearly likely to be regarded as disproportionate by most potential litigants.

¹⁶ Flash Eurobarometer 347, Business-to-Business Alternative Dispute resolution in the EU, http://ec.europa.eu/public_opinion/flash/fl_347_en.pdf, p. 40-42

¹⁷ Flash Eurobarometer 347; see also Deloitte Study, Part II, p. 9.

¹⁹ In order to estimate the costs of litigation in accordance with national procedural law, the costs of litigating cross-border claims of €5000 and €10 000 euro in five Member States (UK, LU, ES, PL, BE) have been analysed as illustrative examples. The estimates of the costs and time for proceedings in these five Member States were used to extrapolate the costs of litigating cross-border small claims of €5000 and €10 000 euro at the EU level, see Deloitte Study, Part II, pp. 31-33.

²⁰ Claims of €5000 and €10 000 have been used as examples because in most Member States the threshold of the national simplified procedures for small claims is either around €2000, around €5000 or around €10 000.

²¹ ES, IT, NL, LU, UK

²² For example in ES, with minimum costs of around €640 for a procedure without lawyer (See: Deloitte Study, Part I, p. 28).

²³ For example in UK when looking at a procedure without lawyer (See: Deloitte Study, Part II, pp. 23-24).

²⁴ Deloitte Study, Part II, p. 103.

- **Cross-border cases concerning claims of between €2,000 and €10,000:** In 3 Member States these claims benefit from a national simplified small claims procedure²⁵, with average costs similar to those of the ESCP.²⁶ As for the other 24 Member States, where these cases do not benefit from a national small claims procedure, the average cost of litigation is estimated at €3,000 and the average duration of proceedings is estimated at **1 year**. As the costs represent 30% of the value of the claim, they can be assumed to be perceived as disproportionate by a potential claimant.
- **Cross-border cases concerning claims of more than €10,000:** Only one Member State²⁷ has a national small claims procedure for claims of a value above €10,000 in place. It is estimated that the average costs of litigation are no longer disproportionate when the claim has a value of €13,500 or more. In the other Member States where an ordinary procedure is applied, the average costs of litigation are estimated to no longer be disproportionate when the claim has a value of €15,000 or more. Eurobarometer 347 shows that about 50% of the cross-border disputes companies experienced with other companies have a value below €10,000²⁸. A significant part of the disproportionate costs could potentially be avoided if those claims could benefit from the ESCP.

45% of companies which experience a cross-border dispute do not go to court because the costs of court procedures are disproportionate to the value of the claim, while 27% do not go to court because the court procedure would take too long.²⁹

In regard to the fact that the costs for litigating will (partly) be reimbursed by the losing party, a possible claimant may nevertheless decide to go to court, but he would have to take the risk that when losing his case the costs he would have to bear would significantly increase the losses he had already incurred due to his unresolved claim.

It can thus be concluded, that disproportionate costs for litigating cross-border small claims of a value between €2,000 and €5,000 and between €2,000 and €10,000 discourage businesses (especially SMEs) from enforcing their rights in cross-border cases concerning small claims. This leads to financial losses and decreased confidence in engaging in cross-border trade.

This analysis is supported by the position papers of European business and consumer organisations, such as BusinessEurope³⁰ and BEUC³¹, both of which support the increase of

²⁵ LU, NL and UK.

²⁶ Again it can be noted that this is a very conservative assumption since – when taking into account a procedure without lawyer - the costs in the UK seem to be lower while the costs in LU seem to be higher than those of the current ESCP (See: Deloitte Study, Part II, pp. 23-27)

²⁷ NL has a simplified procedure for claims of a value up to €25.000

²⁸ Flash Eurobarometer 347, Business-to-Business Alternative Dispute Resolution in the EU, (hereinafter Eurobarometer 347).

²⁹ Eurobarometer 347.

³⁰ Available at <http://www.buinesseuropa.eu/Content/Default.asp?PageID=666>.

³¹ BEUC is in favour of raising the threshold up to €10,000, which will make the procedure more used and will therefore implicitly lead to more wide-spread awareness of the existence and operation of the procedure. BEUC's Position Paper is available at <http://www.beuc.org/BEUCNoFrame/Docs/1/CBMADHHDIJOFOKOONLEGCFJFPDW69DBKQY9DW3571KM/BEUC/docs/DLS/2013-00412-01-E.pdf>.

the threshold up to €10,000. Several Member States are also of the opinion that a higher threshold would be appropriate in order to make the procedure more appealing to SMEs (for example UK, NL, EL, IE, BE and RO³²).

Many Member States have increased the threshold of national simplified procedures since the Regulation was adopted (EE, FR, HU, IE, IT, LT, SI, ES, NL and the UK). In some of these Member States the increase is significant (in the UK, from £5,000 to £10,000, in the Netherland from €5,000 to €25,000). On the backdrop of these developments in national laws, the current threshold of €2,000 for the ESCP risks to make the procedure obsolete, at the expense of consumers and businesses - in particular SMEs – dealing cross-border.

3.3.2. The narrow definition of "cross-border" leaves many citizens deprived of the benefits they could derive from the ESCP

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 limitation bars applications under the European Small Claims Procedure lodged before courts of EU Member States by or against nationals of third countries, for example where the consumer is in the EU, and the business is located in a third country³³.

In cases not coming in the scope of the Regulation, citizens have to revert to national small claims or to ordinary civil proceedings. In Member States which do not have a simplified

³² Data collected from the Member States responses to the Commission's Questionnaire and the EJM discussions of 30-31 May 2013.

³³ Such a problem was reported by a Member State in the EJM discussions on 29-30 May 2013.

procedure for claims of a small value³⁴, this may lead to even higher litigation costs and lengthier proceedings than would otherwise be the case under the ESCP. Faced with the additional costs and length of proceedings under the national small claims procedures or, in the absence of these, the ordinary civil proceedings, or with an uncertainty about whether the ESCP applies to their case, citizens are discouraged from pursuing their claims.

Furthermore, the limitation of the cross-border reach of the ESCP creates legal uncertainty. Citizens may have the expectation that more of their cross-border cases would be covered by the ESCP³⁵, and this unfounded expectation may lead to invalid applications made under this Regulation. Citizens may also artificially create a cross-border scenario as envisaged in the Regulation in order to benefit from its advantages, for example by assigning their claim to a foreign company³⁶.

Since courts have according to Article 4(3) of the Regulation the power to check if the conditions set out in the Regulation are fulfilled, there is no risk of abuse on the part of claimants.

3.4. Problem 2: Inefficiencies of the ESCP due to high costs and length of the current procedure in cross-border cases below €2,000 as well as lack of transparency of litigation costs and availability of practical assistance

The current procedure is still more costly and cumbersome than it could be. According to the position paper of the European SME organisation UEAPME, the disproportionality of the costs of litigation for claims under €2,000 restricts the access to courts of SMEs in particular³⁷. BEUC, the European consumer association, also considers that the current procedure is too burdensome, especially for the claimant.

3.4.1. Inefficiency deriving from the priority given to postal service over other, less expensive and faster means of communication

The ESCP is in principle a written procedure that consists of a number of communication interactions between the courts and the parties or other participants to the proceedings (e.g. experts, witnesses). The claim form can be submitted, according to the Regulation, by electronic means. The evaluation of the Regulation has shown that 10 Member States/jurisdictions³⁸ and 5 Länder in Germany³⁹ may allow for the electronic submission of applications in cross-border cases (online or via e-mail)⁴⁰. This development is likely to increase in the future with the use of electronic communication methods becoming more and

³⁴ These are: AT, BG, CY, CZ and FI.

³⁵ The rules on jurisdiction for example contained in the Brussels I Regulation do not contain such a limitation and apply to all cross-border cases.

³⁶ Such a problem was reported by a number of Member States in the EJM discussions on 29-30 May 2013, in respect of the application of the European Order for Payment which contains a similar limitation.

³⁷ Available at http://www.ueapme.com/IMG/pdf/UEAPME_Position_Paper_on_the_Public_Consultation_on_a_European_Small_Claims_Procedure_-_201206.pdf.

³⁸ EE, FR AT, NL, CY, CZ, FI, PT, SI and the UK.(England and Wales).

³⁹ Berlin, Brandenburg, Bremen, Sachsen, Hessen

⁴⁰ On the basis of available data, it cannot be established whether in practice all these systems are open to ESCP applications.

more common⁴¹. The pilot project e-Codex on European e-justice⁴² assessing the feasibility of a centralised European e-application system for Small Claims Procedure may lead in the future to the implementation of a EU-wide on-line application system.

Once an application has been filed with the court, it must then be "served" on the defendant. Other important court documents also need to be "served". Service of court documents implies that the addressee actually receives these documents and in many judicial systems the receipt of the document by the addressee is required. As a minimum, there are three court documents which are affected by the obligation of service in the ESCP Regulation: the service of the application on the defendant, the service of the judgment on the claimant and the service of the judgment on the defendant. It is not clear from the current text of the Regulation whether the summons to oral hearings also need to be "served".

Service is done in the Member States by various means, most commonly by registered post. In some Member States bailiffs are still used. Electronic service which is much cheaper for the parties and faster than postal service is increasingly gaining acceptance.

Whenever service of documents is required in the ESCP Regulation, Article 13 sets postal service with acknowledgement of receipt as the primary method of service. Other service methods - including electronic service which is faster and less costly - could be applied only if service by post is not possible. At the time of the adoption of the Regulation, this provision was very progressive since it removed the need for intermediaries such as bailiffs. However, technological developments in some Member States which have put in place electronic communication means for domestic procedures⁴³ cannot equally benefit ESCP parties because of the rule establishing the priority of postal service over all other means of communication.

There is no provision in the Regulation of other, less important communications between the parties and the court. In practice, in many Member States all communications between the parties and the court are effected by postal service.

Even though postal service is already cheaper than other methods of service used in ordinary proceedings in the Member States, such as bailiffs, it still generates sometimes unnecessary costs and delays in comparison with the use of electronic service. If postal costs are estimated at between €2.78 and €7, which amounts to costs of between €8 to €21 per case. In terms of delay in the procedure, each service/communication by post takes between 1 and 3 days, or for the whole procedure, between 3 to 9 days. As the average length of the proceedings is between 3 and 6 months, this constitutes a non-negligible part of the process.

The ESCP encourages use of electronic communication to a very limited extent. It allows for the electronic submission of the application form, however it leaves it completely to the discretion of each Member State. As for the service of court documents, while more Member States are expected to adopt and implement ICT solutions in the coming years, due to the current provision of the Regulation which stipulates a preference for postal service, the implementation of electronic service solutions is likely to remain deficient in ESCP cases.

⁴¹ In Germany, for example, the possibility of an electronic submission of a claim in all courts is envisaged for 2018.

⁴² <http://www.e-codex.eu/index.php/legal-community-benefits>

⁴³ EE, MT, AT and PT seem to allow for full electronic communication between the courts and the parties, but all Member States seem to have the technology in place at least in some courts. In respect of small claims, CZ, EE, LV, LT, MT, AT, PT, SI, FI, UK (England and Wales) seem to allow for the full electronic processing of small claims, see Deloitte Study, Part II, pp. 75-76.

This insufficient use of ICT is a deterrent to the attractiveness of the Regulation: a fifth of the respondents to the Special Eurobarometer 395 on the European Small Claims Procedure indicated that they would be more inclined to use the procedure if all the proceedings could be carried out online.

On average, if electronic communication with acknowledgment of receipt at a cost of €1 would be used instead of post, and only for the documents which need to be served according to the Regulation and not for all communications between the parties and the courts, a party is expected to save between €5 to €18 and 3 to 9 days. In practice however, because many more communications are effected by post, the costs to the parties are higher.

3.5.2. Need to travel because of low up-take of distance means of communication for oral hearings and taking of evidence

Although the ESCP is a written procedure, the court of tribunal may hold an oral hearing if it considers this to be necessary or if a party so requests. According to Article 8 of the Regulation, the court or tribunal *may* hold an oral hearing through video conference or other communication technology⁴⁴ *if the technical means are available*. A similar provision is contained in Article 9(1) on taking of evidence (for example statements of witnesses, experts or parties). If the court does not have ICT technologies in place or if it does not use them, persons summoned are required to travel to the court which may be situated in another Member State.

This may entail significant additional costs and delays for the parties, which can act as a strong deterrent to filing cross-border small claims applications. Indeed, the fact that the use of ICT technologies can be a viable solution to the lack of proximity and geographical access to courts was confirmed in the Special Eurobarometer 395 on the ESCP⁴⁵. One in three respondents indicated that they would be more inclined to file a claim if the procedures could be completed at a distance, implying that there was no need to physically go to court.

According to available data, there are 7 Member States⁴⁶ which offer limited (less than 10% of courts) or no possibilities for the use of videoconferencing or other communication technology in courts, and 7 others which offer such means in less than 50% of courts⁴⁷. 10 Member States have the technology in all the courts⁴⁸. There are no available data on the actual use of these distance means where the technology is available, although it appears that the courts still refrain from using it in many cases.

As to the method of using distance means for oral hearings while ensuring the protection of the procedural rights of the parties, the EU has already put in place uniform rules on the taking of evidence and oral hearings, including by distance means of communication, in Council Regulation (EC) No 1206/2001.

⁴⁴ Oral hearings or taking of evidence will be done in accordance with Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174/1, 27.6.2001.

⁴⁵ http://ec.europa.eu/public_opinion/archives/ebs/ebs_395_sum_en.pdf

⁴⁶ These are: BE, BG, EL, HU, LV, SK and UK-Northern Ireland, see Deloitte Study, Part II, p. 48.

⁴⁷ CZ, FR, DE, IE, IT, PL and ES.

⁴⁸ AT, CY, EE, FI, LU, MT, NL, PT, SE and UK (Scotland).

On average, a party is expected to save between €300 and €700 and at least 9 h of traveling time every time a hearing is carried out through distance means of communication instead of travelling to court. An oral hearing is estimated to take place on average in 40% of cases, since in many Member States courts still attach a lot of importance to oral hearings.

3.5.3. Court fees which are disproportionate to the value of the claims

The majority of the Member States levies the court fees upon the claimant on submission of the application. In a large number of cases the fee or part of it has to be paid upfront before the courts can process the case. The court fee constitutes an element of litigation costs which fall under the "loser pays" principle, therefore the claimant may usually hope on the reimbursement of costs. However, the outcome of the case cannot be certain and the claimant would have to "freeze" his own money till effective enforcement.

Therefore, court fees which are higher than 10% of the value of the claim are considered to be disproportionate and may be a factor in the citizens' decision not to pursue legal action⁴⁹. BEUC's position paper mentions disproportionate court fees as a factor which discourages consumers from using the procedure. Some Member States support measures of approximation of court fees (BG, ES, PT, SI and SK), while some others are opposed to such measures.

The court fees of Member States currently vary considerably depending on the calculation method (fixed, or as a proportion of the value of the claim, or a combination of these two). In some Member States (CY, LU, ES) there are no court fees for ESCP applications. In some other Member States, court fees of up to 57% are charged for some small claims.

In some Member States, court fees are disproportionate to the value of the claim, in particular for lower value claims, and the lower the value of the claim, the more disproportionate the court fees. For example⁵⁰, court fees for litigating a €500 claim are disproportionate in EE (20% of the value of the claim), FI (23%), DE (21%), LV (15%), NL (15%), PT (20%), SE (11%) and the UK (13%). For litigating a €1,000 claim, court fees are still disproportionate to the value of the claim in EE (18%), FI (11%), DE (17%), LV (15%) and NL (21%). For €2,000 value claims, court fees remain slightly disproportionate only in EE, DE, LV and the NL. The disproportionality of court fees disappears above the €2,000 mark.

Court fees in some countries are a source of income to the public budget. However, the disproportionality of court fees affects more the position of the claimant in a cross-border dispute than in a domestic one because of 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. Thus, claimants may be more reluctant to take court action in cross-border disputes in Member States where court fees are disproportionate. This may create distortions of competition in the internal market. Furthermore, in respect of simplified procedures which drastically reduce the workload of the court per case, charging the same amount as for ordinary procedures seems unjustifiable.

⁴⁹ Deloitte Study, Part II, p. 62.

⁵⁰ Deloitte Study, Part II, table on p. 60.

In many Member States, a minimum court fee is set in order to prevent abusive or frivolous litigation, i.e. lodging cases that are not adequately evidenced or justified, or which are of a derisory value, e.g. €10.

The average minimum court fee for small claims in the EU for claims of €200 is €34, while for claims of €500 is about €14.

3.5.4. Unavailability of on-line payment methods for court fees

A citizen complaint to the Commission about obstacles in regard to the payment of court fees from a distance in one Member State has led to the examination of methods of payment of court fees in place in the Member States.

Payment methods differ greatly across Member States, but in a few Member States they require the actual physical payment at the court premises or payment through a lawyer or cheques which are not in general use in many Member States (for example EL, BG, NL, UK). In these Member States, parties would need to incur travel costs or hire a lawyer in the Member State of the court, which may make their claims unworth pursuing.

Many Member States (for example AT, FI, DE, FR, LV, LT and PL) allow for the possibility of at least one form of electronic payments (debit/credit card on-line payment or bank transfer). Wire transfer is allowed in some other Member States (HU, SK and SI).

Each method of payment entails specific costs for the claimant with an average of €6 if no travel is required, and between €400 and €800 if travel is required.

3.5.5. Unnecessary translation costs

According to Article 21(2)(b) of the Regulation, at the stage of the enforcement of the judgment, the party seeking enforcement must produce an original copy of the judgment and of Form D (Certificate concerning a judgment in the ESCP)⁵¹. Since most Member States accept enforcement documents only in their official national language(s), this form must be translated by a certified translator into the language(s) of the Member State of enforcement. Only a few Member States accept Form D in English and a few other languages⁵².

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 average translation costs of Form D are €60, but could be reduced by €20 to €40 if only Section 4.3 was translated.

⁵¹ See Annex 2.

⁵² Estonia (English), Cyprus (English), Malta (English), Finland (Swedish and English), Sweden (English), France (English, German, Italian, Spanish) – Source: X.E. Kramer, *Small claim, simple recovery? The European small claims procedure and its implementation in the member states*, ERA Forum (2011) 12: 130.

3.5.6. Lack of transparency concerning costs of litigation and methods of payment of court fees in ESCP cases

According to Article 24 of the ESCP, Member States have the obligation to cooperate in order to provide the general public and professional circles with information about the ESCP. Article 25 stipulates that Member States must submit to the Commission information about several aspects of the ESCP (competent courts, accepted means of communication, availability of appeal, accepted languages for enforcement, enforcement authorities).

However, information on two aspects which vary greatly among Member States is currently not available:

- **Litigation costs** for cross-border small claims under the ESCP in each Member State; and
- **Accepted methods of payment** of court fees for ESCP cases.

The uncertainty with regard to the costs that may be incurred and to the methods of payment accepted by courts in different Member States may act as a deterrent for consumers and businesses, in particular SMEs, which consider taking their case to court. Indeed, although the ESCP is meant to be an inexpensive way to initiate cross-border proceedings, various costs may still be incurred such as stamp-duty, expert fees, and translation costs.

The European e-Justice Portal⁵³ and the national websites of the European Consumer Centers (ECC)⁵⁴ contain some information on the costs of litigating **domestic** small claims and methods of payment in the Member States, but the quality and detail of this information vary. Furthermore, there is either no information on costs for the **cross-border** applications under the ESCP or that information is not clear. Furthermore, information on costs of litigating **cross-border** small claims and methods of payment is not directly accessible for consumers on the European e-Justice Portal.

Due to this lack of transparency, consumers and businesses cannot make a fully informed decision concerning whether to litigate a small claim in a cross-border context or not. The lack of transparency implies time for consumers and companies to search for information on costs, which represents an opportunity cost to the parties. In some cases, claimants must even seek lawyers' advice, leading to even higher costs.

Looking for information on costs of litigating cross-border small claims represents an opportunity cost for the potential claimant. If it takes on average 4 hours to look for the information at an opportunity cost of €15, searching costs are €60 for each claimant.

3.5.7. Lack of transparency on the availability of practical assistance to citizens

Among the most important simplification elements of the ESCP is the use of written forms provided for different phases of the procedure and the removal of the obligation to consult a

⁵³ https://e-justice.europa.eu/content_costs_of_proceedings-37-be-en.do?member=1

⁵⁴ http://ec.europa.eu/consumers/ecc/contact_en.htm

lawyer. Despite this simplification and the fact that the forms are available in all languages on the EU e-Justice Portal⁵⁵ and can be completed online, citizens still report having difficulties filling in the forms. Around 1 out of 5 respondents to the Special Eurobarometer 395 experienced difficulties in filling in the forms, while one in ten respondents in the ECC-Net survey asked for assistance but did not receive it. Calculating the interest rate, selecting the right attachment, questions about the international jurisdiction in the claim form are issues that can pose problems to ordinary citizens.

According to Article 11 of the Regulation, Member States have an obligation to ensure that the parties can receive practical assistance in filling out the forms. Nevertheless, according to the ECC-Net survey, 41% of the Member States have reported that such assistance is not available to citizens⁵⁶.

Thus, while the Member States are obliged to ensure that assistance in filling in the ESCP forms is provided to claimants, there seems to be little transparency with regard to the actors or organisations that are responsible for providing such support. The result is likely to be a reduced use of the ESCP, as claimants who are uncertain about how to complete the form may abstain from going to court. Alternatively, they may have to engage lawyers, meaning that they incur additional costs. Extra time is also likely to be spent on trying to obtain support or search for assistance.

Looking for information on where to obtain assistance in filling in the forms represent an opportunity cost for the potential claimant. If it takes on average 4 hours to look for the information at an opportunity cost of €15, searching costs are €60 for each claimant.

3.5. Problem 3: Limited awareness of the existence and operation of the procedure

For a successful application of the ESCP, it is necessary that the relevant actors - the citizens, the courts and other organisations providing support and advice - are aware of its existence and of its operation. Evidence shows however that neither citizens, nor courts are yet well-informed about the existence and the procedures of the ESCP. The limitation in the scope of the procedure, in particular in regard to the threshold, explains to a certain extent why businesses and business organisations in particular are not aware of the procedure.

Eurobarometer 395 shows that 86% of **citizens** have never heard about the ESCP. As a result, potential claimants, in particular consumers, either do not pursue their cross-border claims or pursue them using national procedures.

As for the **courts and judges**, a survey carried out by the European Consumer Centres Network (ECC-Net)⁵⁷ in all Member States showed that almost half of the courts have never heard about the ESCP, while the other half was not fully informed of the details and principles of the procedure itself. The data indicates that, despite the Member States' attempts to increase the knowledge of courts via training, articles, seminars, conferences, guidelines and the use of the Judicial Atlas in Civil and Commercial Matters, the dissemination of information has not been effective.

⁵⁵ https://e-justice.europa.eu/content_small_claims_forms-177-en.do

⁵⁶ ECC-Net Survey on the European Small Claims Procedure, available at http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf, p.20.

⁵⁷ http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf

The **lack of knowledge** is a general problem. The European Judicial Atlas contains useful information on competent courts and accepted languages in each Member State, but it does not contain other essential practical information such as contact details of bailiffs, the level of court fees, translation costs, bailiff costs and the costs which may have to be covered by the losing party. Furthermore, problems arise when there is a need to contact the court to verify, for example which methods of payment are accepted, or where the court asks for a complement or a rectification of the application.

Finally, due to the lack of information on the ESCP, a high number of courts and judges are not in a position to ensure **efficient assistance** to consumers and businesses as requested in Article 11 of the Regulation.

The Commission has tried to address this problem by a range of actions undertaken to raise awareness and develop training. For example, information on the ESCP together with interactive forms to be directly filled-in by citizens is published and updated on several EU websites since 2008 (EJN website, European Judicial Atlas, and e-Justice Portal); a Practice Guide for legal practitioners and a User Guide for citizens will be published in 2013; the Commission will finance the European Consumers Centres (ECC) giving assistance to consumers involved in ESCP cases. However, without complementary awareness raising campaigns at national level by the Member States, these actions are likely to have a limited impact.

It is likely that these measures will yield positive results and that an increasing number of applications under the ESCP will follow. It is estimated that the number of small claims which could benefit from the procedure could amount to 414,060 cases⁵⁸.

3.6. EU right to act

3.7.1. Legal basis

The original ESCP 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 the ESCP will be based on Articles 81(2) (a), (c) and (f) TFEU. Article 81(1) TFEU provides that ‘The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States’, and related Article 81(2) TFEU under points (a), (c) and (f) empowers the EU to adopt measures aimed at

- ensuring the mutual recognition and enforcement of judgments between Member States;
- the compatibility of the rules applicable in Member States concerning conflict of laws and of jurisdiction; and
- the elimination of obstacles for the proper functioning of civil proceedings.

⁵⁸ Deloitte Study, Part II, p. 159, footnote 684.

3.7.2. Principle of subsidiarity

The need for EU action has already been established in 2007 when the Regulation 861/2007 was adopted. The issue being addressed has transnational aspects, which cannot satisfactorily be dealt by the Member States' individual action. The objective of enhancing the confidence of consumers and businesses, particularly SMEs, in cross-border trade and the access to justice cannot be achieved without an amendment of the existing Regulation to better reflect developments since 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 the 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 in the EU, 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 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 procedure will also simplify further the enforcement procedure, especially for claims above the current threshold, and create more trust among the courts and enforcement authorities who would become familiar with the European procedure.

4. POLICY OBJECTIVES FOR THE REVISION OF THE REGULATION

The general, specific and operational policy objectives are presented in the table below:

General objectives	<ul style="list-style-type: none"> • To improve the functioning of the internal market by adopting measures in the field of judicial cooperation in civil matters and by improving the confidence of consumers and businesses in cross-border trade • To ensure a high level of consumer protection
Specific objectives	<ul style="list-style-type: none"> • To provide better access to justice for the parties, in particular for consumers and SMEs • To further simplify the court procedure for cross-border small claims • To reduce costs and length of litigation for cross-border small claims • To reduce economic detriment to consumers and SMEs, while ensuring a system where procedural rights are safeguarded in conformity with the Charter of Fundamental Rights of the EU
Operational objectives	<ul style="list-style-type: none"> • To reduce costs and length of litigating cross-border small claims disputes above €2,000 • To remove the limitation in the cross-border scope of the procedure • To further reduce the costs and length of the procedure and improve the transparency of litigation costs and availability of practical assistance • To improve awareness of the existence and operation of the ESCP

5. POLICY OPTIONS

5.1. Four main options

The following policy options were considered:

Policy Option 1 – Status quo (baseline scenario): the Regulation remains unchanged.

The *status quo* described in the problem definition is likely to evolve as a result of certain legislative and non-legislative developments which took place recently, as well as due to certain market developments.

From the outset, it must be acknowledged that, as more and more cross-border purchases will take place in the EU, in particular via e-commerce, the number of cross-border claims of a relatively small value which could benefit from the ESCP will also increase constantly. For example, 4% more cross-border purchases were reported for 2012 than was the case 2 years ago. Currently, for on-line and off-line purchases of goods and services taken together, 1 in 3 has a cross-border element⁵⁹.

Some other legislative measures in the EU recently adopted will on their own ease cross-border redress and enforcement. First, some disputes are likely to benefit from out-of-court

⁵⁹ See Eurobarometer 395.

mechanisms as a result of the adoption of the Directive on consumer ADR although their number is difficult to estimate. It must be stressed that this measure will have no impact on business claims, or on some consumer claims which are outside the scope of that Directive. Second, all judgments falling within the scope of the Brussels I Regulation (recast) regardless of their value will benefit, as of 10 January 2015, from the abolition of intermediary procedures for recognising and enforcing a judgment. Nevertheless, the impact of Brussels I (recast) is limited to reducing the costs and time taken at the stage of enforcing a judgment in another Member State. The procedural benefits of the ESCP will continue to have an impact for the parties during court procedures leading up to a judgment, but also at the stage of enforcement since the certificate annexed to the ESCP Regulation is simpler than the equivalent certificate annexed to the Brussels I (recast).

Litigation costs in national procedures are also likely to decrease over the years as a result of an expected increase in the use of electronic means of communication by the courts. However, the inherent diversity of national rules and procedures are not likely to allow cross-border litigants to benefit equally from those positive developments. Access to justice for such cross-border claims will continue to be unduly restricted.

On the non-legislative side, the measures undertaken to raise awareness of the procedure are expected to have a positive impact on the knowledge of the uniform procedure and its use in practice. However, the limited scope of the current Regulation and its deficiencies in terms of the simplification which could be achieved will not enable many more claimants to benefit from the procedure.

In conclusion, in the absence of EU action, the costs and length of litigating claims of a small value above the current threshold of €2,000 will continue to be disproportionate to the value of the claim, in particular in those Member States which do not have a national simplified procedure in place for claims above this threshold. Cross-border claims currently outside the scope of the cross-border definition in the Regulation will also be deprived of a simplified, uniform procedure across the EU. Finally, the current procedural elements of the ESCP will continue to impose higher costs and length of litigating than could be the case, and therefore a significant percentage of claimants with low value claims will continue to be discouraged from pursuing their remedies in court.

Policy Option 2 – Repealing the Regulation

The entry into application of Regulation (EC) No 1215/2012 on jurisdiction, recognition and enforcement in civil and commercial matters (the Brussels I recast) on 10 January 2015 will lead to the abolition of intermediary proceeding for the recognition and enforcement of all judgments in the EU. Thus, the simplification and cost reduction of the ESCP in the enforcement stage will become less important.

Nevertheless, the Brussels I (recast) does not remove the added value of the Small Claims Regulation insofar as the latter offers a predictable, uniform, speedy and simple procedure for the recovery of claims. The ESCP will remain the only uniform, cost-effective alternative to the national procedures for contested claims, including national simplified procedures.

For these reasons, this option was **discarded** from an early stage.

Policy Option 3 - Revision of the Regulation

The following table presents synoptically the sub-options of this policy option as they address the problems.

Problem		Policy Option 3 – Sub-Options per problem and issue
Limited scope of the ESCP	Disproportionate costs for cross-border claims above €2,000	<ul style="list-style-type: none"> • Sub-option 0: Keep the threshold at €2,000 (status quo) • Sub-option 1: Raising the threshold from €2,000 to €5,000 • Sub-option 2: Raising the threshold from €2,000 to €10,000 • Sub-option 3: Raising the threshold from €2,000 to beyond €10,000
	The narrow definition of "cross-border" cases	<ul style="list-style-type: none"> • Sub-option 0: keep the current definition of "cross-border" • Sub-option 1: Extension of the definition to cover all cases having a cross-border element
Inefficiencies of the current ESCP	Inefficiency derived from the priority given to postal service over electronic service	<ul style="list-style-type: none"> • Sub-option 0: status quo (priority of postal service) • Sub-option 1: No priority in terms of means of service of documents; post and electronic means on an equal footing • Sub-option 2: Member States <i>must</i> ensure the possibility to serve documents via electronic means and allow the parties to choose the method
	Low up-take of distance means of communication for oral hearings and taking of evidence	<ul style="list-style-type: none"> • Sub-option 0: status quo (courts discretion as to the means of organising oral evidence) • Sub-option 1: Oral hearing <i>must</i> be organised by distance means of communication, whenever the necessary equipment exists already at the court, with the exception of the party who requests to be present in court • Sub-option 2: Oral hearing <i>must</i> be organised by distance means of communication, with the exception of the party who requests to be present in court
	Disproportionate court fees	<ul style="list-style-type: none"> • Sub-option 0: status quo (no provision) • Sub-option 1: Limitation of level of court fees to maximum 5% of the value of the claim, with a

		<p>possible minimum limit of no more than €45</p> <ul style="list-style-type: none"> • Sub-option 2: Limitation of level of court fees to maximum 10% of the value of the claim, with a possible minimum limit of no more than €35
	Practical obstacles to the payment of court fees	<ul style="list-style-type: none"> • Sub-option 0: status quo (no provision) • Sub-option 1: Ensure mandatory acceptance of at least bank transfers • Sub-option 2: Ensure mandatory acceptance of at least bank transfers and credit/debit cards
	Unnecessary translation costs in the enforcement stage	<ul style="list-style-type: none"> • Sub-option 0: status quo (obligation to translate Form D) • Sub-option 1: Remove the obligation of translation of form D, except Section 4.3 of Form D (the substance of the judgment)
	Lack of transparency regarding the costs of litigation and the method of payment of court fees	<ul style="list-style-type: none"> • Sub-option 0: status quo (no provision) • Sub-option 1: Introduce an obligation on Member States to notify this information to the Commission
	Lack of transparency of the availability of assistance in filling in the forms	<ul style="list-style-type: none"> • Sub-option 0: status quo (no provision) • Sub-option 1: Introduce an obligation on Member States to notify this information to the Commission

In the light of the replies received from the Member States, other options for making the procedure speedier or less costly were abandoned at an early stage. For example, the imposition of uniform sanctions for not respecting the time limits set out in the Regulation was not considered to be appropriate for this revision. Other measures were thought to be more appropriate to reduce the length of litigation under the ESCP (use of electronic communication and distance means of communication for oral hearings, on-line payment of court fees). The limitation of the discretion of the judges to organise oral hearings as a measure of reducing travel costs was also abandoned in the face of almost universal opposition from the Member States. this could also be achieved by other less intrusive means (e.g. the mandatory use of distance means of communication where parties agree).

Policy Option 4 – Harmonisation of national small claims procedures through a directive

The current ESCP applies only in cross-border cases and is designed so that it combines common Union level procedure with the national civil procedures. This option would consist of creating a unique procedure for small claims under a certain threshold that would harmonise the national procedural rules applicable for cross-border and domestic cases without distinction. This policy option would ensure that one and the same simplified procedure could be used in all cases even in those Member States where there is currently no

small claims procedure in place , and that the different national procedures applicable to small claims in all Member States are harmonised.

However, the harmonisation of the substantive procedural law of the Member States which is likely to be highly contentious. In addition, the harmonisation would most probably not be able at this stage to cover all elements of the procedure, still leaving several issues to be regulated by national law. As a result, despite the harmonisation, the procedure would not be uniform in all Member States. This would reduce legal certainty and the objective of offering one single uniform legal procedure for creditors in Europe.

For these reasons, this option was **discarded** from an early stage.

6. ANALYSIS OF IMPACTS OF THE POLICY OPTIONS

The following tables compare the impacts of retaining the *status quo* and the impact of the **policy sub-options** (-3: very negative impact, -2: negative impact, -1: small negative impact, 0: no significant change, 1: small positive impact, 2: positive impact, 3: very positive impact).

6.1. Policy Option 1: Status quo (Baseline scenario)

The situation under the Status Quo is presented in Section 3 Problem Definition.

6.2. Policy Option 3: Revision of the Regulation

The revision of the Regulation should respond to the problems identified in Section 3. For each element of the revision, the sub-options have been considered and are analysed below. Sub-option 0 – the status quo – is always rated 0.

6.2.1. Assessment of the impacts of the sub-options concerning an extension of the threshold

UK and NL support the raising of the threshold⁶⁰, but also ES, PT, EL and RO⁶¹ see the advantage of making the procedure available for businesses. BE and IE – both having national simplified procedures not going beyond €2,000 – have also been supportive.

	Sub-option 1	Sub-option 2	Sub-option 3
Description	Raising the threshold from €2,000 to €5000	Raising the threshold from €2,000 to €10 000	Raising the threshold beyond €10 000
Impacts on the costs of the procedure	Simplified procedure In the <u>five</u> Member States in which claims with a value of €5,000 benefit from a simplified	Simplified procedure In the <u>three</u> Member States (UK, LU, NL) in which claims with a value of €10,000 benefit from a	Simplified procedure This concerns only NL, where a simplified procedure exists for cases up to €25,000. Even here, the

⁶⁰ LU has not replied to the questionnaire send to the Member States.

⁶¹ EJM meeting of 29/30 May 2013.

	<p>procedure for small claims, it is assumed that raising the threshold to €5,000 will not result in a reduction of costs even though the costs might be reduced in some of those countries in regard to the current ESCP and cost reductions can be assumed to be made under the revised ESCP (see problem definition 3.3).</p> <p>Ordinary procedure</p> <p>In the <u>22 Member States</u> in which claims with a value of € 5,000 do not benefit from a simplified procedure for small claims, raising the threshold to € 5,000 will result in a significant reduction of about €1,050 of the costs of litigation in cross-border cases concerning claims with a value between € 2,000 and €5,000⁶²</p>	<p>simplified procedure for small claims, raising the threshold to €10,000 in ESCP cases will have some, albeit limited impact.</p> <p>Ordinary procedure</p> <p>In the <u>24 Member States</u> in which claims with a value up to € 10,000 do not benefit from a simplified procedure for small claims, raising the threshold to € 10,000 will result in a significant reduction of about €1,250 of the costs of litigation in cross-border cases concerning claims with a value between € 2,000 and €10,000 euro.⁶³</p>	<p>extension of the scope of the ESCP to claims above €10,000 is likely to have some impact.</p> <p>Ordinary procedure</p> <p>In all other Member States, savings per case can be expected to be at least as large as in sub-option 2</p>
Impact on the length of the procedure	The average duration of litigation is expected to be reduced both in the Member States where claims with a value higher than €2,000 euro benefit from a simplified procedure for small claims (reduction by on average 1 months) and in the Member States where such claims do not benefit from a simplified procedure for small claims (reduction with on average 7 months).		
Implementation costs for public authorities	-	-	-
Administrative burden	-	-	-
Impact on the efficiency of the courts in dealing with cross-border small claims	Raising the threshold to €5,000 will indirectly result in efficiency gains for the judicial systems of the Member States, in particular the 22 member States which do not have simplified national procedures for claims up to €5,000. Litigation in certain cases which	Raising the threshold to €10,000 will result in even more efficiency gains for the judicial systems of the Member States, as more cases could potentially use the simplified procedure in 24 Member States.	Although raising the threshold to above €10,000 will result in even more efficiency gains for the judicial systems of the Member States, a simplified procedure is suitable only for claims up to a value where the positive impacts of speeding up the litigation and reducing the costs still

⁶² Deloitte, Assessment of the socio-economic impacts of the policy options for the future of the European Small Claims Regulation, section 4.2.1 (conclusion)

⁶³ Deloitte, Assessment of the socio-economic impacts of the policy options for the future of the European Small Claims Regulation, section 4.2.1 (conclusion)

	currently takes place under the national procedures of the Member States can as a result of the increase of the threshold benefit from litigation under the ESCP.		outweigh the possible risks due to the simplification of procedure in high value cases.
	<p>For all three scenarios, raising the threshold will bring about additional applications to the courts under the ESCP. However, it is likely that a significant number of these cases would have been brought before the courts under national procedural law in the absence of the ESCP, so that the ESCP would to a large extent result in a shift of cases from the national (ordinary or simplified) procedures to the ESCP, rather than a pure increase in the number of cases.</p> <p>Moreover, increased caseload under the ESCP does not necessarily mean increased workload. First, it is reasonable to assume that courts who regularly deal with ESCP cases will gain more knowledge of the procedure and consequently be able to deal with such cases in a more efficient way. Second, the simplification of the procedure, in particular its written character and the use of standard forms, also results in a decrease of the courts' workload per case. Thus, the workload per case is likely to decrease.</p> <p>Finally, even if the introduction of the ESCP results overall in additional caseload for the courts, this cost should be off-set against the benefits from the reduction of consumer and SME detriment stemming from claims which would no longer be abandoned because court action is thought to be cumbersome, disproportionately expensive or lengthy.</p>		
Impacts on fundamental rights affected and measures taken to mitigate negative impacts	<p><i>Right to a fair trial</i>(Article 47(2)) is guaranteed, since the amendment will result in increased access to justice in more cross-border cases involving claims of a small value..</p> <p>The potential risk of increasing the threshold is that it may draw within its scope disputes for which the entirely written procedure of the ESCP poses risks for the guarantee of the fundamental right to a fair trial. There is a widely held view that with the increased value of the transaction, the parties also need increased procedural guarantees, such as the possibility to request an oral hearing and the possibility to appeal the decision. For this reason, any increase in the threshold should be accompanied by some additional procedural guarantees to protect the rights of the parties where disputes are of a higher value. For example:</p> <ul style="list-style-type: none"> - an oral hearing should always be held, at the request of at least one of the parties, when the claim has a value in excess of €2,000; - since risks are higher for the defendant, especially if he is a consumer, Form C annexed to the proposal could be amended to contain a warning to the defendant that a judgement can be given and liability for litigation costs incurred even if he does not respond or object to the claim. 		
Overall rating	2	3	1

Conclusion

Since increasing the threshold to €5,000 only addresses part of the problems, and a further raise to claims beyond €10,000 has to be discarded having regard to the fact that the positive impacts of speeding up the litigation and reducing the costs would no longer outweigh the possible risks due to the simplification of procedure, the preferred sub-option is to increase the threshold to €10,000 (Sub-option 2). The proposed threshold of €10 000 is proportionate in view of the average amount of disputes involving SMEs (which is €39 700) and of the percentage of cross-border disputes involving SMEs below that threshold (about 50% of all business cross-border disputes). As for consumer disputes, in view of the fact that the vast

majority of cross-border claims (71%) is under € 000 and of the procedural guarantees mentioned above, raising the threshold is not expected to pose particular difficulties.

6.2.2. Assessment of the impacts of the sub-options concerning the extension of the "cross-border" definition

	Sub-option 1
Description	Extending the scope to cover all small claims with a cross-border element
Impacts on the costs of the procedure	Reduction of costs for those citizens who have small claims currently falling outside the scope of the Regulation and who could benefit from the simplified procedure. This is particularly true for those citizens who do not have access to an alternative simplified procedure for small claims in national law and could save on average €1,050 .
Impact on the length of the procedure	The average duration of litigation is expected to be reduced both in the Member States where claims with a value higher than €2,000 euro benefit from a simplified procedure for small claims (reduction by on average 1 months) and in the Member States where such claims do not benefit from a simplified procedure for small claims (reduction with on average 7 months).
Implementation costs for public authorities	-
Administrative burden	-
Impact on the efficiency of the courts in dealing with cross-border small claims	More consumers and SMEs will be able to benefit from an extension of the scope to all cross-border cases. The cost and time reduction will be significant in particular for those litigating in Member States which do not currently have a simplified procedure for small claims.
Impacts on fundamental rights affected and measures taken to mitigate negative impacts	<i>Right to a fair trial</i> (Article 47(2)) will also be guaranteed, since the amendment will result in increased access to justice for claims of a small value in all cross-border cases.
Overall rating	1

6.2.3. Assessment of the impacts of the sub-options concerning the inefficiency derived from the priority given to postal service over electronic service

The sub-options below only concern the service of documents. It is expected that electronic application of ESCP cases will soon be possible in all Member States, either via national or European systems (such as e-Codex).

	Sub-option 1	Sub-option 2
Description	Postal service and electronic means of service would be on an equal footing, and given priority over other means of service. Parties should agree in advance with the use of electronic service.	The Member States <i>must</i> ensure the possibility to serve documents via electronic means and allow parties to choose the method of service of documents.
Impacts on the costs of the	Costs savings would be possible only	Through the implementation of

<p>procedure</p>	<p>for litigation in the Member States that decide to implement electronic service of documents. In these cases, the cost savings would be about €5 to €18 for a minimum of 3 documents which need to be served.</p> <p>Some Member States already have the necessary means for electronic service. Cost savings would first occur in these Member States. More countries may provide for this possibility in the next years due technological advancements.</p> <p>Parties should still be able to choose whether to use electronic or traditional service. In particular elderly citizens, who have a lower absorption rate of electronic communication means, may not be able or willing to use electronic communications instead of postal services.</p>	<p>electronic means of service, consumers and SMEs would benefit from cost savings relating to postal costs due to the possibility of electronic service.</p> <p>Parties should still be able to choose whether to use electronic or traditional service. In particular elderly citizens, who have a lower absorption rate of electronic communication means, may not be able or willing to use electronic communications instead of postal services.</p> <p>SMEs are generally more likely to be willing to communicate electronically. Hence, the potential cost savings are expected to be higher for SMEs than consumers.</p>
<p>Impact on the length of the procedure</p>	<p>With use of electronic service, the procedure could be speeded up at least by 3 to 9 days, depending on the postal services previously selected by the parties and courts. Again, this would only be possible in the Member States that make the decision to implement electronic servicing of documents in addition to postal services.</p>	<p>With electronic service, the procedure could be speeded up by 1 to 3 days per submission. 9 days per case could be saved as a consequence.</p>
<p>Implementation costs for public authorities</p>	<p>No additional costs are required. Member States make electronic service available to ESCP cases when they put in place this service method for domestic procedures.</p>	<p>A national online application system for small claims, as well as well as eSignature solutions would entail considerable costs for the Member States. furthermore, in those Member States which do not have such applications for domestic cases, imposing an obligation which would affect only cross-border cases may impose disproportionate implementation costs when compared to the overall benefits achieved.</p>
<p>Administrative burden</p>	<p>No additional administrative burden. On the contrary, extending electronic service to ESCP cases would result in a reduction of the administrative burden overall.</p>	<p>With this sub-option, the removal of administrative burden could impact on all courts, not only in those which accept already electronic service. The administrative burden would be relieved only if domestic cases (or a mass number of these) would also benefit from electronic service.</p>

Impact on the efficiency of the courts in dealing with cross-border small claims	<p>Efficiency gains could be realised through opening up the possibility for courts to use electronic service of documents instead of postal service. This type of service entails less costs and time in handling communications by the courts. In many Member States, the costs of postal service are born by the courts, and these costs alone could surpass the amount of court fees paid by the applicant.</p> <p>In the long run, this sub-option would create a favorable legal environment for the implementation of fully electronic procedure in all the Member States.</p>	<p>This suboption will impose an obligation on the Member States to enable all courts competent for ESCP cases to use electronic service of documents. For the efficiency of the judicial systems of the Member States, this method of service could prove to have a significant impact only if it would apply in domestic cases as well.</p>
Impacts on fundamental rights affected and measures taken to mitigate negative impacts	<p><i>Right to a fair trial</i>(Article 47(2)) is not negatively affected since electronic services with an acknowledgement of receipt will be used only when parties so agree in advance.</p>	
Overall rating	2	1

Conclusion

Sub-option 1 is the preferred option, since although it does not have the same cost and time reduction as Sub-option 2, it also does not create disproportionate implementations costs for the Member States which do not have electronic communication facilities in place.

6.2.4. Assessment of the impacts of the sub-options concerning the low up-take of distance communication technology for oral hearings and taking of evidence

Although many Member States think that the use of distance means of communication for oral hearings should be left to the discretion of the judge even where they are in place, no compelling arguments were advanced in support of this position.

	Sub-option 1	Sub-option 2
Description	<p>Oral hearings <i>must</i> be organised through means of distance communication in all ESCP cases where the courts have the necessary equipment in place, unless the party concerned requests to be present in court.</p>	<p>Oral hearings <i>must</i> be organised through video-conference or other means of distance communication in all ESCP cases, unless the party concerned requests to be present in court.</p>
Impacts on the costs of the procedure	<p>This option would have a limited impact, as only those consumers and businesses which have their claims in courts fitted with distance communication equipment would benefit from cost savings.</p> <p>The impact of this option is further reduced</p>	<p>Although it can be expected that the vast majority of courts could easily be fitted with at least one means of distance communication, in practice some Member States declare that their courts have a preference for the parties' presence in court.</p>

	<p>by the fact that even if the courts hearings the case have the necessary equipment, this could not be used unless the court at the domicile of the person which needs to be heard is not already fitted with such equipment..</p> <p>The aggregate cost savings are therefore reduced.</p>	<p>The potential travel costs related to the procedure would decrease for all consumers and SMEs by at least €300 and €700, assuming that only one party needs to travel from another Member State. In reality the cost savings could be higher, if both parties and even experts and witnesses need to travel for oral hearings or taking of evidence by such means.</p> <p>The aggregate cost savings are significant.</p>
Impact on the length of the procedure	<p>A party is expected to save at least 9 hours (75%) every time a videoconference or teleconference was organised, if it has access to a court with videoconferencing or telecommunication tools in his/her Member State and if the court in which the claim was filed has access to video or teleconferencing tools.</p> <p>The aggregate time savings are however limited since only disputes where both the court with jurisdiction and the court requested to take evidence are equipped with distance means of communication.</p>	<p>A party is expected to save at least 9 hours (75%) every time a videoconference or teleconference was organised, if it has access to a court with videoconferencing or telecommunication tools in his/her Member State and if the court in which the claim was filed has access to video or teleconferencing tools.</p> <p>The aggregate time savings are much higher if all courts were equipped with distance means of communications.</p>
Implementation costs for public authorities	<p>This option will not require any implementation costs.</p>	<p>Cost-effective means of distance communication exist (e.g. Skype-like facilities) or can easily be installed at no significant cost in all Member States' courts (telephone conference). There is no reason to suspect that Skype-like facilities prejudice the rights of the parties when compared to other video-conference equipment. It is estimated that Internet connection as well as teleconference equipment could be installed at an average cost of €500 per court.</p> <p>The purchase of a videoconference system is estimated to cost up to around €20,000.</p>
Administrative burden	<p>No additional administrative burden.</p>	<p>There may be a slight increase in the administrative burden of those courts of the domicile of the person which needs to be heard via distance means. This however will be off-set by the reduction in the administrative burden achieved by those courts when they have jurisdiction in ESCP cases and request oral hearings via distance means in other Member States.</p>
Impact on the efficiency of the courts in dealing with cross-border small claims	<p>Distance hearings could be easier to organize at a shorter notice, leading to additional efficiency in the organisation of the work of the courts. Furthermore, while presence to an oral hearing is not compulsory, it would nevertheless be encouraged because of the reduction of costs and time for the parties, leading to a better and faster resolution of disputes.</p>	
Impacts on fundamental rights affected and measures	<p><i>Right to a fair trial</i> (Article 47(2)) is guaranteed since an exception to compulsory videoconference or teleconference hearing will always be made for the party who wishes to appear in court.</p>	

taken to mitigate negative impacts		
Overall rating	2	1

Conclusions

The use of videoconferencing or other communication technologies enables consumers and SMEs to save both travel time and costs. As it can be expected that a vast majority of courts, if not all, already have a telephone service or internet connection and could easily and without significant costs implement telephone conferencing or Skype-like conferencing equipment, sub-option 2 is the preferred option.

Most affected by this option would be Member States in which many courts with competence to try ESCP cases do not have any distance means of communication installed already. For example, BG does not have distance communication equipment in its 113 regional courts competent for ESCP cases, while FR and UK have such equipment in about 50% of their courts. The investment in such equipment however would not only serve ESCP cases, but could be used also in domestic disputes where parties are located at great distances from the courts with jurisdiction or in cross-border disputes which are outside the scope of the ESCP. Taking the example of BG, the costs for installing distance communication equipment in their courts would be approximately €6,500⁶⁴; by comparison, the savings for the parties if travel would be needed for at least one of them and assuming that an oral hearing is carried out in 40% of cases would be between €0.7 and €1.7 million⁶⁵.

In France, where less than 50% of the 442 courts and tribunals competent to try ESCP cases are equipped with distance means of communication for carrying out oral hearings, installation costs could amount to €10,500, for corresponding savings to the parties of between €6.5 and €15 million.

6.2.5. Assessment of the impacts of the sub-options concerning disproportionate court fees

Many Member States are opposed to the harmonisation of court fees at EU level (although some – UK for example - , are also sensitive to arguments about the disproportionality of court fees). Some Member States are however in favour of such harmonisation (BG, ES, PT, SI and SK).

	Sub-option 1	Sub-option 2
Description	Introduction of a limitation of court fees to a maximum of 5% of the value of the claim. The Member States can decide to use the limitation or set lower court fees. The minimum fee, if charged in a Member State independently of the value of the claim, cannot exceed €45.	Introduction of a limitation of court fees to a maximum of 10% of the value of the claim. The Member States can decide to use the limitation or set lower court fees. The minimum fee, if charged in a Member State independently of the value of the claim, cannot exceed €35.

⁶⁴ 113 courts which need to be equipped x €500.

⁶⁵ (414,060 ESCP claims under €2,000 x 1.5% BG population out of the EU total population) x 40% number of oral hearings for which at least one party needs to travel x travel costs of between €300 – €700.

<p>Impacts on the costs of the procedure</p>	<p>With the introduction of the limitation of maximum 5% of the value of the claim, combined with a minimum court fee of no more than €45, the average court fees for claims below €10,000 would decrease in several Member States. However, the direction and the intensity of impacts on the Member States would vary depending on the current level of court fees.</p> <p>Cost reductions will be achieved by parties litigating in those Member States where currently court fees are disproportionate for claims of under €2,000. However, the magnitude of the impact differs among these Member States. For example, for claims of €1,000 EE, FI, DE, LV, NL, and PT would need to significantly lower their court fees (by over 50%), while for claims of €2,000 only court fees in EE, DE, LV and NL would be significantly affected.</p>	<p>With the introduction of the limitation of maximum 10% of the value of the claim, combined with a minimum court fee of no more than €35, the average court fees for claims below €10,000 would decrease in some Member States.</p> <p>For claims of €1,000, significant cost reduction will be achieved by parties litigating in EE, DE, LV and the NL (in the case of NL, by over 50%), while for claims of €2,000 only in LV the cost reduction is significant (by about 25%). There is almost no impact for claims above €2,000.</p>
<p>Impact on the length of the procedure</p>	<p>The limitation of court fees will not impact the length of the procedure.</p>	
<p>Implementation costs for public authorities</p>	<p>The limitation of court fees does not require specific implementation measures. Member States routinely amend their legislation pertaining to court fees.</p>	
<p>Administrative burden</p>	<p>There will be no new administrative burdens.</p>	
<p>Impact on the efficiency of the courts in dealing with cross-border small claims</p>	<p>In those Member States where court fees have the function of financing the judicial system, the true impact can only be measured taking into account on the one hand the simplification achieved by this procedure which is expected to reduce the average workload per case for the courts, and on the other hand the reduction in income for the courts as a result of lowering the court fees for ESCP cases of below €2,000. Since these are likely to cancel themselves out, it cannot be said that this option leads to a shift of these costs from citizens to courts and governments, but rather that a reduction in the workload per case is translated in a reduction of court fees.</p> <p>The example of the NL could be taken to illustrate the potential reduction in the income derived from court fees. In the long term there could be</p>	<p>The same considerations under Sub-option 1 apply <i>mutatis mutandis</i> to Sub-option 2.</p> <p>However, the reduction in the income of the courts would be somewhat smaller. For example, the potential reduction in income from court fees in the NL for instance would be about €65,227, calculated for an average court fee reduction of €47,75.</p>

	approximately 1,366 ESCP applications ⁶⁶ under € 2,000 in the NL. If the average court fee reduction is of €4 ⁶⁷ , the estimated total potential reduction in income from court fees is €14,744. However, the impact of this figure should be balanced against the increased access to justice for consumers and SMEs having cross-border claims..	
Impacts on fundamental rights affected and measures taken to mitigate negative impacts	<i>Right to a fair trial</i> (Article 47(2)) of the Charter is guaranteed, since the measure will reduce litigation costs in those Member States where these are disproportionate, and, thus improve access to justice for both consumers and SMEs and, in the long run, facilitate cross-border trade.	
Overall rating	1	2

Conclusion

Sub-option 2 is the preferred policy sub-option since it would achieve a reduction in the disproportionate costs for a large proportion of small claims, while at the same time have a slightly less impact on those Member States where court fees also have the function of financing the justice systems and on those Member States where court fees can be considered to be proportionate despite being above 5%.

The proposal is proportionate in that it does not intend to harmonise the court fees in the Member States – there will be still wide discretion for the Member States to decide on the method of calculation and the amount of court fees. Instead, the revision would set a maximum cap on court fees for ESCP applications, 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. Furthermore, the measure allows the Member States to maintain a fixed minimum court fee which however should not be prohibitive. Finally, 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, as well as the reduced workload per case under this simplified procedure.

6.2.6. Assessment of the impacts of the sub-options concerning the unavailability of on-line payment methods for court fees

The costs of installing distance means of payment will be affecting only those Member States where such means are not available already. However, more and more Member States have recently implemented such measures (France for example in 2012). In the EJM discussion of 29-30 May most Member States who took the floor agreed that such distance means of payment should be available throughout the EU for ESCP cases.

	Sub-option 1	Sub-option 2
--	---------------------	---------------------

⁶⁶ Assuming that the total of 414,060 cases under € 2 000 are distributed among the Member States in proportion to their population.

⁶⁷ Calculated as an average for a selection of claims of €200, €500, €1,000 and €2,000.

Description	Ensure mandatory acceptance of at least bank transfers as distance means of payment.	Ensure mandatory acceptance of at least bank transfers and credit/debit cards as distance means of payment.
Impacts on the costs of the procedure	<p>Consumers and SMEs will no longer face practical obstacles related to the inadequacy of local payment methods (e.g. non-availability of cheques) or travel costs.</p> <p>Citizens would most gain from the mandatory acceptance of bank transfers if they are domiciled in the Eurozone, and if the court in which they filed the claim is also in the Eurozone. Non-Eurozone transfers would entail small additional costs.</p> <p>Savings are estimated to amount from about 380€ to 780€ for Eurozone residents that have to travel for cash payment at the court under the current Regulation. Note that there might be a small difference for non-Eurozone residents.</p> <p>Savings would be of 12 € to 16 € for Eurozone consumers using bank transfer over checks. There would be no gains for non-Eurozone consumers.</p>	<p>Consumers and SMEs will no longer face practical obstacles related to the inadequacy of local payment methods (e.g. non-availability of cheques) or travel costs.</p> <p>Savings would amount from €12 to €81 per claim if credit card and bank transfers are used instead of cash.</p> <p>Savings would range between 12 € and 16 € if bank transfers were used instead of checks. There would be no benefit, in terms of cost, of using credit cards instead of checks.</p>
Impact on the length of the procedure	Time saved for consumers and SMEs previously not using distance payment methods could be up to 12 hours if travel is currently needed.	
Implementation costs for public authorities	<p>Costs of implementing the mandatory acceptance of bank transfers are expected to be minor.</p> <p>Cost of introducing on-line credit card payment methods may differ depending on the administrative organisation of the court systems in each Member State. It is estimated that at least a fixed cost of approximately € 14,400 per territorial authority is necessary. If court fees are collected by courts instead of by territorial authority, than a possible additional cost of 20% for each court could be incurred. Territorial authority could in some Member States be only one (for example where court fees are collected by a national authority), or several (where regional authorities are competent to collect such fees, as is the case in Germany).</p>	<p>Costs of implementing the mandatory acceptance of bank transfers and credit card are expected to equal to costs for sub-option 1.</p> <p>Both payment methods are expected to be implemented as part of the same work process at no additional cost.</p>
Administrative burden	-	-
Impact on the efficiency of the courts in dealing with cross-border	<p>The courts that currently do not provide for a possibility of distance payments by distance means would face costs relating to setting up and maintaining these systems.</p> <p>Payments currently may be processed at distance in some Member States, for example AT, FI, DE, LV, LT and PL. The change will ensure that all Member States will have</p>	

small claims	such distance means of payment in place. The overall efficiency of judicial system is likely to increase as internal processes are expected to gain speed with administrative costs decreasing.	
Impacts on fundamental rights affected and measures taken to mitigate negative impacts	<i>Right to a fair trial</i> (Article 47(2)) of the Charter is guaranteed, since the measure will reduce litigation costs and length of proceedings, thus improve access to justice for both consumers and SMEs and, in the long run, facilitate cross-border trade.	
Overall rating	1	2

Conclusion

The mandatory acceptance of both credit card and bank transfers would provide significant benefits to SMEs and consumers, for limited implementation cost. Sub-Policy option 2 should thus be selected because it offers more distance payment options for the citizens, at no additional costs for the courts.

6.2.7. Assessment of the impacts of the sub-options concerning the removal of the obligation to translate form D (Certificate of judgment for enforcement), except for Section 4.3

	Sub-option 1	
Description	The sub-option consists in removing the requirement for the party seeking enforcement to provide a translation of form D into the official language of the country of enforcement. An exception will be made for Section 4.3 (Substance of the judgment), which will still need to be translated in accordance with Art. 21(2).	
Impacts on the costs of the procedure	The expected cost savings for the claimant would be €20 to €40 (i.e. the cost of translating section 4.3 of form D).	
Impact on the length of the procedure	The change does not impact the overall length of the proceedings or the enforcement of the judgment.	
Implementation costs for public authorities	No implementation costs, since the translation of Section 4.3 is still the responsibility of the party seeking enforcement.	
Administrative burden	-	
Impact on the efficiency of the courts in dealing with cross-border small claims	There will be no delays as a result of this change.	
Impacts on fundamental rights affected and measures taken to mitigate negative	<i>Right to a fair trial</i> (Article 47(2)) of the Charter is guaranteed, since the measure will reduce litigation costs and length of proceedings, thus improve access to justice for both consumers and SMEs and, in the long run, facilitate cross-border trade.	

impacts	
Overall rating	1

Conclusion

Sub-option 1 is preferable to the Status quo since it would globally reduce the translation costs of the party seeking enforcement by about €20 to €40 without causing additional delays.

6.2.8. Assessment of the impacts of the sub-options concerning the introduction of a requirement on the Member State to ensure that information on litigation costs and method of payment of court fees for ESCP cases is transparent

	Sub-option 1
Description	Amendments to the Regulation would require Member States to ensure, in cooperation with the Commission, that the practical information on litigation costs and methods of payment of court fees is available to citizens. This includes the obligation to keep such information updated. A deadline will be introduced by the revision.
Impacts on the costs of the procedure	Decreased searching costs of €15-€30 per case.
Impact on the length of the procedure	Total searching time will be reduced by 2-3h per case.
Implementation costs for public authorities	No implementation costs.
Administrative burden	The administrative burden is not likely to be significant, since it would require maximum 2 working days.
Impact on the efficiency of the courts in dealing with cross-border small claims	This measure will increase transparency and legal certainty for the parties. This is relevant also for the information on methods of payment even after the implementation of the obligation to accept bank transfers and credit/debit cards, since courts may also accept other methods of payment.
Impacts on fundamental rights affected and measures taken to mitigate negative impacts	<i>Right to a fair trial</i> (Article 47(2)) of the Charter is guaranteed, since the measure will reduce litigation costs and length of proceedings, thus improve access to justice for both consumers and SMEs and, in the long run, facilitate cross-border trade.
Overall rating	1

Conclusions

Sub-option 1 is preferred for reasons of reduced costs and search time, and increased transparency and legal certainty for the parties.

6.2.9. Assessment of the impacts of the sub-options concerning the introduction of a obligation on the Member State to ensure that the information on the availability of assistance in completing the ESCP forms is transparent

	Sub-option 1
Description	Amendments to the Regulation would require Member States to ensure, in cooperation with the Commission, that the information on practical assistance in filling in the forms is available to citizens. This includes the obligation to keep such information updated. A deadline will be introduced by the revision.
Impacts on the costs of the procedure	Providing more information on where to obtain limited assistance in filling in the forms would result in cost savings for the claimant due to reduced searching time (opportunity cost) on where to get assistance of about €15 to €30 .
Impact on the length of the procedure	The proposed change could reduce searching time of claimants on how to get assistance from 4h to 3h or 2h depending on the level of awareness and the preferred source of information, as well the time to fill in forms due to the provision of assistance. Similar to the status quo, time savings might be significant from the point of view of the claimant but do not influence the overall length of the proceedings of up to 6 months.
Implementation costs for public authorities	No implementation costs.
Administrative burden	The administrative burden is not likely to be significant. Member States already have to provide certain information currently. This modification will only slightly increase this obligation. It is estimated that the provision of this additional information would not require more than 2 working days.
Impact on the efficiency of the courts in dealing with cross-border small claims	The proposed change to the Regulation would lead to more transparency on the assistance provided by Member States. The proposed change to the Regulation does not address the fact that limited assistance is provided in filling in the forms. However, non-legislative measures taken in the context of the status quo will improve the situation to some extent.
Impacts on fundamental rights affected and measures taken to mitigate negative impacts	<i>Right to a fair trial</i> (Article 47(2)) of the Charter is guaranteed, since the measure will reduce litigation costs and length of proceedings, thus improve access to justice for both consumers and SMEs and, in the long run, facilitate cross-border trade.
Overall rating	1

Conclusions

Sub-option 1 would improve transparency on roles and responsibilities in providing assistance to fill in the forms, thus improving access to justice in particular for consumers and SMEs.

7. COMPARISON OF THE OPTIONS AND SUMMARY OF THE PREFERRED OPTION

On the basis of the assessment above, the **preferred option** is Policy Option 3 with the following combination of sub-options:

- **Raise the threshold to €10,000:** by making the simplified procedure available also to claims valued between €2,000 and €10,000, the costs of litigation in such cross-border cases will be reduced significantly. While raising the threshold may be less important for consumers, since most of their claims do not exceed €2,000, it will be highly beneficial for SMEs, as the revised threshold would cover some 50% of their claims.
- **Extend the territorial scope of the Regulation to cover all cases** which are not purely domestic.
- Ensure that the **electronic service** will be on an equal footing with postal service; this will reduce overall costs and time needed for transmission of documents.
- **Introduce an obligation, in case oral hearings are necessary, to organise such hearings by distance means, such as video-conference, including via Skype-like equipment, or teleconference, unless a party requests to be present in court and that only for that party:** advantages include the reduction of travel time and costs for SMEs and consumers.
- **Limit court fees to 10% of the value of the claim combined with a maximum of possible fixed minimum fees set at national level of no more than €35:** Setting a maximum fee allowed for cross-border small claims procedures would reduce costs in those Member States where the fees are disproportionate to the value of such claims. This may increase the attractiveness of the procedure for claimants. The limit set to the minimum fee is aimed at ensuring sufficient access to justice while leaving Member States flexibility to set a minimum fee to discourage abusive litigation.
- **Ensure mandatory acceptance of at least bank transfers and credit/debit card as means of payment of fees:** the overall efficiency of the judicial system is likely to increase, since parties will experience reduced costs and time and public authorities are likely to incur only minor implementation costs.
- **Remove the obligation to translate Form D, except for Section 4.3 (substance of the judgment):** this solution will reduce enforcement costs.
- **Introduce a requirement on the Member States to make the information on litigation costs and the method of payment of court fees transparent.**
- **Introduce a requirement on the Member States to make the information on the availability of practical assistance in filling in the forms transparent.**

To address concerns about the possible adverse impact on fundamental rights, a number of **safeguards** will be proposed:

- courts will not be able to refuse an oral hearing carried out by ICT for claims between €2,000 and €5,000 if at least one party requests it;
- 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.

The impacts of the comprehensive policy options (Status Quo and Policy Option 3) were assessed in terms of their expected achievement of the specific objectives and towards meta-criteria such as social impacts, wider economic impacts, feasibility, etc.

Assessment criteria	Rating Status Quo	Rating Preferred option	Explanation
Effectiveness of the policy options in reaching the objectives	0	2	<p>Provide better access to justice: the revision is expected to result in a significant increase in the number of ESCP applications. First, by increasing the threshold to €10,000, up to 217 500 new cases are expected to benefit from this procedure. Second, the procedural improvements of the procedure for claims up to €2,000 is also likely to result in new ESCP applications, estimated in the long run to amount to 414 060 potential cases (from 3 500 in 2012).</p> <p>Simplify the court procedure: the ESCP procedure will be further simplified by the use of technology which makes geographical distance – a feature of cross-border disputes – almost irrelevant. Thus, such technology will be better used in terms of speeding up communication, including service of documents, between the parties and the courts, and organizing oral hearings and making payment of court fees without the need to travel.</p> <p>Reduce costs and length of litigation: the use of modern technology will also lead to a reduction of the costs and length of the procedure. Together with the reduction of search costs for improving transparency (see below), this option would lead to a reduction of average costs per case of approximately between EUR 231 and EUR 491⁶⁸.</p> <p>Improve transparency of the procedure: Member States will be required to provide the Commission with information on the court fees applicable to ESCP cases, accepted methods of payment of court fees and the authorities or institutions competent to provide practical assistance. The Commission will make such information publicly available on the Internet (on the e-Justice portal).</p>
Implementation costs	0	1	<p>Implementation costs amount to between €500 and €10,000 for distance means of holding oral hearings, depending on whether the courts which do not yet have such technologies in place invest in videoconference equipment, teleconference equipment or Internet connection. The costs of introduction of bank transfer methods of payment are negligible. Cost of introducing on-line credit card payment methods may differ depending on the administrative organisation of the court systems in each Member State. It is estimated that a fixed cost of €14,400 is necessary.</p>
Social impact	0	1	<p>The proposed changes to the Regulation are expected to have a positive impact especially for economically disadvantaged persons, since the existence of disproportionate costs particularly affects this social group: their claims are likely to be very small, and the fear of incurring disproportionate costs will prevent them from lodging a claim.</p> <p>The benefits related to the distance payment and electronic communications may benefit elderly less than younger groups of consumers, since they use Internet and electronic communication means less. At the same time, due to reduced mobility, this group is also potentially the most likely to benefit from these measures.</p>

⁶⁸ Deloitte Study, Part II, p. 66.

Wider economic impact	0	2	By reducing the disproportionate costs and time of litigation concerning small claims in cases with a cross-border element, the proposed changes to the Regulation will improve the functioning of the ESCP and consequently improve access to justice for citizens and businesses. The likely result is increased access to justice, leading to an increase in confidence in cross-border trade and consequently an improvement of the functioning of the Internal Market .
Feasibility	0	3	<p>As the ESCR is directly applicable in the Member States, most of them have not enacted supplementary national legislation in order to facilitate the application of the Regulation by their courts, and will therefore not have to adapt their national legislation as a result of the revision of the Regulation. However, some Member States, such as Germany, have integrated special provisions into their national procedural laws to adapt them to the requirements of the ESCR. Such provisions would need to be adapted if the Regulation is revised. However, this is not expected to cause specific problems.</p> <p>However, the following issues have been identified as potentially being sensitive or practically challenging to implement in practice in relation to the different elements:</p> <ul style="list-style-type: none"> • Increasing the threshold to €10,000: some may question whether the ESCP procedure is appropriate for such higher value claims. This concern will be address by the additional procedural guarantees for claims between €2,000 and €10,000. • The mandatory provision of a possibility to pay via distance means: not all courts have such means in place: implementation costs are however minimal. • The introduction of a maximum 5% court fee with a maximum minimum fee if Member States wish to have such minimum fee.
Fundamental rights	0	1	Procedural safeguards become more important as the value of the claim increases. This is why Policy Option 3 complements the introduction of a higher threshold with a limitation of the judges' discretion to refuse an oral hearing via ICT under the ESCP, and the use of distance means of communication with the possibility for citizens to use traditional means of communication.

To date, only limited use has been made of the ESCP, for the reasons set out in Section 3. However, the potential benefits from more widespread and systematic recourse to such simplified procedures is substantial. Every year, several hundred thousand consumers and businesses go to court to pursue the recovery of claims for amounts of up to €10,000. To illustrate the scale of the benefits that could be achieved by making full use of the potential of the ESCP that would result from implementation of the preferred option, it has been assumed that in those Member States that have a national simplified procedure in place, 50% of these claims would take place under the national procedure (taking into account the thresholds in the national procedures), while the other half would be pursued using the ESCP. In the other Member States, it is assumed that all claims would make use of the ESCP, given the sizeable difference in the costs of pursuing a claim under the ESCP and under a national ordinary procedure. The combined time and cost savings of the individual elements of the preferred

option account for a potential reduction of costs of about €325 – 418 million⁶⁹. The results of these calculations are shown in the table below:

Problems	Long-term costs savings for claims below €2,000, in €millions	Long-term costs savings for claims between €2,000 and €10,000, in €millions	Total long-term costs savings, in €millions
	414,060	217,500	631,560
Raising the threshold to €10,000	NA	233	233
Electronic service and postal service on the same footing	0.5 – 1.9	0.3 - 1	0.8 – 2.9
Oral hearings organized by distance means of communication	30.6 – 71.3	16 – 37.5	46.6 – 108.8
Distance means of payment of court fees	6.2 – 12.4	3.3 – 6.7	9.5 – 19.1
Limitation of level of court fees	3.6 ⁷⁰	-	3.6
Removal of translation obligation of parts of Form D	8.3	4.3	12.6
Increased transparency regarding the costs of litigation and methods of payment of court fees under the ESCP	6.2 – 12.4	3.3 – 6.5	9.5 – 18.9
Increased transparency of actors offering assistance with filling in the forms	6.2 – 12.4	3.3 – 6.5	9.5 – 18.9

A summary of the aggregate costs of implementing the revision by a sample of Member States for which the relevant data was available is given in the table below:

⁶⁹ Deloitte Study, Part II, pp. 167-169, with the exception of the reduction of court fees which has been calculated in the Deloitte Study on the basis of a policy option capping court fees at 5% with a minimum fee of no more than €45, while the preferred policy option retained is a cap of 10% with a minimum fee of no more than €35.

⁷⁰ Obtained by adding the reduction in court fees in AT (€3,520), CZ (€1,140), DE (€2,981,230), EE (€9,000), FI (€105,570), LV (€7,970), NL (€65,227), PT (€124,220), SE (€14,080), UK (136,640), calculated according to the following assumptions: the total of 414,600 potential cases under €2,000 are distributed among the Member States proportionately according to their population; claims are distributed uniformly according to their value between €1 and €2,000 (e.g. claims below €500 represent 25% of 414,060, while claims below €1,000 represent 50% of 414,060). Calculations are done for a selection of claims for which court fees are disproportionate (e.g. €200, €500, €1,000 and €2,000) for which an average court fee reduction is calculated..

	Competent courts for hearing ESCP cases ⁷¹	Population, in millions	Installing distance means of communication for oral hearings ⁷²	Installing distance means of payment methods ⁷³	Possible reduction in the revenue obtained from high court fees ⁷⁴
AT	134 courts	8.5	- (distance communication equipment for oral hearing in place)	- (distance mean of payment in place)	€3,520 ⁷⁵ (court fees slightly disproportionate for €200 and €500 claims)
BG	113 courts	7.3	€6,500 (for all courts)	€4,400	- (court fees are currently under the proposed cap)
FI	1 court	5	-	-	€105,570 (court fees disproportionate for claims of €200, €500 and €1,000)
FR	442	65	€10,500 (for at least 50% of courts)	-	-
IT	846	61	€11,500 (for at least 50% of courts)	€4,400	-
LT	49	3	€12,250 (about 50% of courts)	-	-

⁷¹ Data collected from the Responses of the Member States to the Commission Questionnaire.

⁷² Assuming the most cost-friendly solution is adopted, i.e. Skype-like equipment or teleconference.

⁷³ Assuming only one central authority collects the fees.

⁷⁴ Assuming that the total of 414,600 potential cases under €2,000 are distributed among the Member States proportionately according to their population. Calculations are done for a selection of claims for which court fees are disproportionate.

⁷⁵ $[(414,060 \text{ cases under } \text{€}2,000 \times 1,7\% \text{ population of AT}) / 25\% \text{ number of claims for which court fees are disproportionate}] \times [(\text{€}7 \text{ court fee for claims of } \text{€}200 - \text{€}5 \text{ maximum cap for the minimum fee} + \text{€}2 \text{ court fee for claims of } \text{€}500 - \text{€}0 \text{ representing } 10\% \text{ of a } \text{€}500 \text{ claim}) / 2]$

PL	287	39	€3,063 (for at least 50% of courts)	-	-
SK	54	5.4	€27,000 (for all courts)	€14,400	-
UK	181	63	€90,500 (about 50% of courts)	€14,400	€136,640 (court fees disproportionate for €200 and €500 claims)

It should be noted that the Member States decide exclusively on the number of courts competent for ESCP applications. This decision also influences the aggregate costs of implementation.

8. MONITORING AND EVALUATION

In order to monitor the effective application of the amended Regulation, regular evaluation and reporting by the Commission will take place. To fulfil these tasks, the Commission will prepare regular evaluation reports on the application of the Regulation, based on consultations with Member States, stakeholders and external experts. Regular expert meetings will also take place to discuss application problems and exchange best practices between Member States in the framework of the European Judicial Network in civil and commercial matters.

In most Member States, there is no systematic collection of statistical data on the application of the European Small Claims Procedure, which makes it very difficult to measure how the Regulation improves access to justice in respect of small claims in cross-border situations. The Commission will therefore include in the revision of the Regulation a requirement on Member States to provide information on how the Regulation is applied in practice, notably on the number of proceedings brought under the ESCP.

The indicators to screen efficiency and effectiveness are as follows:

- increase in the number of ESCP applications, both of claims under EUR 2 000 and between EUR 2 000 and EUR 10 000 – information from EJN, Eurobarometers, ECC-Net;
- reducing the overall costs and time of the procedure per case, including translation costs of Form D – Eurobarometers, ECC-Net;
- improve the transparency of the information on court fees and methods of payment as well as on practical assistance – Eurobarometers, ECC-Net;

- reduction of the workload of the courts per case by using the procedure as opposed to using national ordinary or simplified procedures – EJN, interviews with judges in several Member States.

9. ANNEXES

Annex 1

Table of abbreviations

ADR	Alternative Dispute Resolution	DG MARKT	Directorate General Internal Market (European Commission)
EB	Eurobarometer	DG SANCO	Directorate General Health and Consumer Protection (European Commission)
ECC-Net	European Consumer Centres Network	EU	European Union
EJN	European Judicial Network	IAB	Impact Assessment Board
ESCP	European Small Claims Procedure	SMEs	Small and medium enterprises
DG ENLARG	Directorate General Enlargement (European Commission)	TEC	Treaty on the European Community
DG ENTR	Directorate General Enterprise (European Commission)	TFEU	Treaty of the Functioning of the European Union
DG JUST	Directorate General Justice (European Commission)		
AT	Austria	IE	Ireland
BE	Belgium	IT	Italy
BG	Bulgaria	LT	Lithuania
CZ	Czech Republic	LU	Luxembourg
CY	Cyprus	LV	Latvia
DE	Germany	MT	Malta
DK	Denmark	NL	The Netherlands
EE	Estonia	PL	Poland
EL	Greece	PT	Portugal
ES	Spain	RO	Romania

FI	Finland	SE	Sweden
FR	France	SI	Slovenia
HR	Croatia	SK	Slovakia
HU	Hungary	UK	United Kingdom of Great Britain and Northern Ireland

Annex 2 Form D Certificate of enforcement

[ANNEX IV]

<p>EUROPEAN SMALL CLAIMS PROCEDURE</p> <p>FORM D</p> <p>CERTIFICATE CONCERNING A JUDGMENT IN THE EUROPEAN SMALL CLAIMS PROCEDURE</p> <p>(Article 20(2) of Regulation (EC) No. 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)</p> <p>To be filled in by the court/tribunal</p>
--

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 or 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

Annex 3 Deloitte Study