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**PROPOSAL**

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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.:	COM(2013) 794 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure

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Delegations will find attached document COM(2013) 794 final.

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Encl.: COM(2013) 794 final



Brussels, 19.11.2013  
COM(2013) 794 final

2013/0403 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

{SWD(2013) 459 final}

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## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. General context of the proposal

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

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

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

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

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

The Regulation was adopted in recognition of the fact that the problems of inefficient litigation of small claims are amplified when claims of low value are made across the borders of the EU Member States. Additional problems arise in such situations, such as the unfamiliarity of the parties with the foreign laws and procedures of the foreign courts, the increased need for translation and interpretation, and the need to travel abroad for oral hearings. With the increase in cross-border trade in the EU in the recent years and the further increase expected in the years to come, the need to provide for efficient redress mechanisms as a means of supporting the economic activity will become even more acute.

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<sup>1</sup> The Treaty on European Union provides that the European Union “shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured”. In order to establish such an area, the European Union is to develop judicial cooperation in civil matters having cross-border implications.

<sup>2</sup> EU Justice Scoreboard, available at [http://ec.europa.eu/justice/effective-justice/scoreboard/index\\_en.htm](http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm).

By providing for standard forms and free assistance for the parties in filling in the forms, the procedure enables courts to process applications entirely by means of a written procedure, removing the need to travel for oral hearings - except in exceptional circumstances where a judgment cannot be given on the basis of written evidence - as well as the need to be represented by a lawyer. The Regulation also encourages the courts and tribunals to use distance means of communication for accepting claim forms and for organising oral hearings. Finally, the resulting judgment circulates freely among Member States, without the need for any additional intermediate proceedings necessary to enable recognition and enforcement<sup>3</sup>.

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

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

The Commission identified the revision of the Regulation in the **2013 EU Citizenship Report**<sup>5</sup> as one of the actions to strengthen the rights of Union citizens, by facilitating the settling of disputes regarding purchases made in another Member State. The initiative is also included in the **European Consumer Agenda**<sup>6</sup> 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.

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<sup>3</sup> Other simplifying elements of the Regulation are the specific time limits for procedural acts for the parties and for the court and the fact that "the loser pays" principle is limited to reasonable costs.

<sup>4</sup> EP resolution of 25 October 2011 on alternative dispute resolution in civil, commercial and family matters, (2011/2117(INI)).

<sup>5</sup> 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.

<sup>6</sup> COM(2012) 225 final.

### 1.3. Need for revision of Article 17 of Regulation (EC) No 1896/2006

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

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

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

The Commission has carried out several **consultations** to gather information about the current application of the Regulation as well as of the possible elements of its revision. The results gave useful policy indication of the positions of the stakeholders and the Member States and were taken into account throughout the IA process.

A **Eurobarometer survey** to assess awareness, expectations and experiences of the European citizens with regard to the application of the Regulation was carried out in November-December 2012<sup>7</sup>. According to the survey, 71% of consumer claims are currently within the €2,000 threshold set up by the Regulation. The average minimum amount for which consumers are willing to litigate in another Member State is €786. 12% of the respondents were aware of the existence of the ESCP, with 1% of all respondents declaring that they already used the procedure. 69% of those who already used the ESCP were satisfied. 97% of all respondents who took businesses to court and won within last 2 years (both domestically and cross-border) had their judgements enforced successfully. The most important factors which would encourage citizens to go to court are: the possibility to carry out proceedings in writing without appearing in the court (33%), carrying out the proceedings without instructing a lawyer (26%), carrying out the proceedings on-line (20%) and using their own language (24%).

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

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<sup>7</sup> Special Eurobarometer 395 on European Small Claims Procedure, available at [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_395\\_sum\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_395_sum_en.pdf).

<sup>8</sup> 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 the Impact Assessment.

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

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

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Main elements of the proposed action**

The main elements of the proposed revision are:

- Extension of the scope of the Regulation to cross-border claims up to EUR 10,000;
- Extension of the definition of cross-border cases;
- Improving the use of electronic communication, including for service of certain documents;
- Imposing an obligation on courts to use videoconferencing, teleconferencing and other means of distance communication for the conduct of oral hearings and taking of evidence;
- Providing a maximum limitation on court fees charged for the procedure;
- Providing for an obligation on the Member States to put in place distance means of payment of court fees;
- Limiting the requirement to translate Form D, containing the Certificate of enforcement, to only the substance of the judgment;

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<sup>9</sup> Austria, Bulgaria, Cyprus, Czech Republic, Germany, Estonia, Greece, Spain, Finland, France, Italy, Lithuania, Malta, The Netherlands, Poland, Portugal, Sweden, Slovenia, Slovakia and the UK.

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

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

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

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

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

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

### *3.1.2. Extension of the definition of cross border cases*

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

- the **place of performance of the contract** is in another Member State, for example a lease contract for a holiday property situated in another Member State; or
- the **place of occurrence of the harmful event** is in another Member State, for example when parties are involved in a car accident in a border region situated in another Member State; or
- the **enforcement of the judgment** is to take place in another Member State, for example when a judgment must be executed on the defendants salary which he receives in another Member State.

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

Furthermore, the current limitation bars applications under the European Small Claims Procedure lodged before courts of EU Member States by or against third country residents, while no national procedure in Europe is reserved for nationals of the country concerned or for EU citizens.

The amendment would result in making the European Small Claims Procedure available in all cases with a cross-border element, including those involving third countries. This would lead to a simplification and reduction of the costs and length of litigating for those citizens who could benefit from the European simplified procedure, for example where experts need to be heard in the Member State where the contract was performed or the harmful event took place. Similarly, a judgment given under the European Small Claims Procedure would be easier to enforce in another Member State where the procedure which led to the particular judgment is also well-known and trusted.

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

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

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

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

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<sup>10</sup> There are three procedural steps which are affected by the obligation to use postal service: 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. Nevertheless, in practice in many Member States all communications between the parties and the court are effected by post.



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

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

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

The amendment would first emphasize more strongly the exceptional nature of oral hearings in the context of this simplified procedure. Second, it would impose an obligation on courts and tribunals to always make use of distance means of communication such as videoconference or teleconference where an oral hearing is held. In order to safeguard the rights of the parties, an exception will be made for the party who expressly requests to be present in court.

This amendment may require Member States to equip their courts with appropriate communication technology, where such technology is not yet in place. The technological possibilities at the Member States' disposal are varied, and include cost efficient Internet facilities.

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

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

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

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

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

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

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

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

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

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

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

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

Although Member States are currently required to notify the Commission, for the purposes of making the information publicly available, of competent courts, accepted means of communication, availability of appeal, accepted languages for enforcement and enforcement authorities (Article 25), information on court fees and methods of payment of court fees is currently missing. The obligation of cooperation between the Member States in making information on costs available to the public (Article 24) has not resulted in more transparency on these elements. Furthermore, the obligation of Member States to provide practical assistance in filling in the forms (Article 11) has in many cases not been implemented.

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

### **3.2. Other technical amendments**

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

First, Article 26 and 27 of the Regulation need to be brought in line with the new delegation procedure established by Article 290 of the Treaty on the Functioning of the European Union.

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

### **3.3. Legal basis**

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

### **3.4. Subsidiarity and proportionality**

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

National simplified procedures, where they exist, are extremely diverse both in terms of threshold and the procedural simplification achieved. In the absence of uniform EU-wide procedural standards, the additional inherent complexity and cost of pursuing a cross-border claim, resulting from the lack of familiarity of the parties with a foreign procedural law, the need for translation and interpretation and the need to travel for oral hearings, would amplify the disproportionate costs and length of litigation as compared to domestic disputes. Distortions of competition within the internal market due to imbalances with regard to the functioning of the procedural means afforded to claimants/creditors in different Member States entails the need for EU action that guarantees a level-playing field for creditors and debtors throughout the EU. For example, in the absence of a revision, the current threshold

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<sup>11</sup> See Case C-119/13 *Eco-cosmetics GmbH & Co. KG v Virginie Laetitia Barbara Dupuy*, Case C-120/13 *Raiffeisenbank St. Georgen reg. Gen. m.b.H. v Tetyana Bonchuk* and C-121/13 *Rechtsanwaltskanzlei CMS Hasche Sigle, Partnerschaftsgesellschaft v Xceed Holding Ltd.*

will continue to leave many SMEs having a cross-border dispute without access to a simplified and uniform court procedure in all the Member States. Similarly, in the absence of a EU-wide cap on disproportionate court fees and of a EU-wide possibility to pay court fees via distance means of payment, many creditors would not have access to courts.

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

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

### **3.5. Fundamental rights**

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

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

### **3.6. Budgetary implications**

The only implications for the budget of the European Union resulting from the proposed Regulation consist of the one-off costs for the preparation of a report 5 years after the date of application of the Regulation.

2013/0403 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>12</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 861/2007 of the European Parliament and the Council<sup>13</sup> established the European Small Claims Procedure. It applies to both to contested and uncontested cross-border civil and commercial claims of a value not exceeding EUR 2,000. It also ensured that the judgments rendered within this procedure are enforceable without any intermediate procedure, in particular without the need for a declaration of enforceability in the Member State of enforcement (abolition of exequatur). The general aim of the Regulation was to improve access to justice by reducing costs and accelerating civil procedure with regard to claims within its scope for both consumers and businesses.
- (2) Regulation (EC) No 861/2007 instructs the Commission to present by 1 January 2014 to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European Small Claims Procedure, including the limit of the value of the claim that may be pursued under that procedure.

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<sup>12</sup> OJ C , , p. .

<sup>13</sup> Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1).

- (3) The Commission's report<sup>14</sup> on the application of Regulation (EC) No 861/2007 identified the obstacles to the full potential of the European Small Claims Procedure to the benefit of consumers and businesses, in particular Small and Medium Enterprises. The report shows, among others, that the low threshold of the current regulation deprives many potential claimants having cross-border disputes of the use of a simplified procedure. Furthermore, several elements of the procedure could be further simplified in order to reduce costs and time of litigation. The report concludes that these obstacles could be removed most effectively through an amendment of the Regulation.
- (4) Consumers should be able to use the opportunities given by the single market to the fullest extent, and their confidence should not be limited by the lack of the effective legal remedies for disputes in which a cross-border element is present. The improvements of the European Small Claims Procedure proposed in this Regulation aim at providing the consumers with the means of effective redress, thus contribute to the practical enforcement of their rights.
- (5) Increasing the threshold up to EUR 10,000 would be particularly beneficial for small and medium enterprises, which are currently discouraged from considering court action because under national ordinary or simplified procedures the costs of litigation are disproportionate to the value of the claim and/or the judicial proceedings are too lengthy. Raising the threshold would improve access to an effective and cost efficient judicial remedy for cross-border disputes involving Small and Medium Enterprises. Increased access to justice would enhance the trust in cross-border transactions and contribute to the fullest use of the opportunities offered by the internal market.
- (6) The European Small Claims Procedure applies to all claims with a cross-border element. This includes cases where the parties are both domiciled in the same Member State and only the place of performance of the contract, the place where the harmful event takes place or the place of enforcement of the judgment is situated in another Member State. In particular, where the claimant may choose under Council Regulation (EC) No 44/2001<sup>15</sup>[Regulation (EU) No 1215/2012 of the European Parliament and of the Council<sup>16</sup>] between the jurisdiction of the courts of the Member State where both him and the defendant are domiciled and the jurisdiction of the courts of the Member State where 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 European Small Claims Procedure should also be available in cases lodged before courts of EU Member States by or against third country residents.
- (7) This Regulation should apply only in cross-border disputes, but nothing should prevent Member States from applying identical provisions also to purely internal proceedings concerning claims of a low value.

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<sup>14</sup> OJ C, , p.

<sup>15</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1).

<sup>16</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

- (8) The European Small Claims Procedure could be further improved by taking advantage of the technological developments in the field of justice which eliminate geographical distance and its consequences in terms of high costs and length of proceedings as factors discouraging access to justice.
- (9) To further reduce the length of the procedure, the use of modern communication technology by the parties and the courts should be further encouraged. Lodging an application under the European Small Claims Procedure via electronic means of communication should be possible whenever the technology is already in place in the Member States. For documents which need to be served on the parties, electronic service should be on an equal footing with postal service whenever the technology is in place in the Member States. For all other written communications between the parties and courts or tribunals, electronic means should be preferred to postal service. In all cases, the parties should have a choice between electronic means and more traditional means for application, service or communication.
- (10) The court or tribunal giving judgment should serve the judgment on both the claimant and the defendant in accordance with the methods provided for in this Regulation.
- (11) The European Small Claims Procedure is essentially a written procedure. However, oral hearings may be held exceptionally where it is not possible to render the judgment on the basis of the written evidence provided by the parties. Furthermore, in order to safeguard the procedural rights of the parties, an oral hearing should always be organised upon the request of at least one of the parties where the value of the claim exceeds EUR 2,000. Finally, courts should seek to reach a settlement between the parties and therefore, where the parties declare their willingness to reach a court settlement, the court should organise an oral hearing for this purpose.
- (12) Oral hearings as well as taking of evidence by means of hearings of witnesses, experts or parties, should be carried out by distance means of communication. This should not affect the right of a party to the proceedings to appear in court for the oral hearing. In the context of oral hearings and the taking of evidence, the Member States should use modern, distance means of communication enabling persons to be heard without the need to travel to the court or tribunal. Where the person heard is domiciled in a Member State other than the Member State where the court seised is located, oral hearings should be organised in accordance with the rules set out in Council Regulation (EC) No 1206/2001<sup>17</sup>. Where the party to be heard is domiciled in the Member State where the court or tribunal with jurisdiction is located or in a third country, an oral hearing may be held through videoconference, teleconference or other appropriate distance communication technology in accordance with national law. A party should always be entitled to appear in court at an oral hearing if that party so requests. The court or tribunal should use the simplest and least costly method of taking evidence.
- (13) The potential costs of litigation may play a role in the claimant's decision to consider court action. Among other costs, court fees may discourage claimants from taking court action, in particular in those Member States where court fees are disproportionate. The court fees should be proportionate to the value of the claim in order to ensure access to justice for cross-border

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<sup>17</sup> Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

small claims. This Regulation does not aim at harmonising court fees; instead, it puts in place a maximum limit on court fees which would make the procedure accessible to a significant proportion of claimants, while at the same time allowing Member States wide discretion in choosing the method of calculation and the amount of court fees.

- (14) The payment of court fees should not require the claimant to travel or hire a lawyer for this purpose. As a minimum, bank transfers and credit or debit card on-line payment systems should be accepted by all courts and tribunals with jurisdiction in European Small Claims Procedures.
- (15) Information about the court fees and the methods of payment, as well as about the authorities or organisations competent to give practical assistance in the Member States should be made more transparent and easily available on the Internet. The Member States should provide this information to the Commission, which in turn should ensure that it is made publicly available and widely disseminated.
- (16) It should be clarified in Regulation (EC) No 1896/2006 of the European Parliament and of the Council<sup>18</sup> that where a dispute falls within the scope of the European Small Claims Procedure, this procedure should also be available to a party in a European Order for Payment Procedure who has lodged a statement of opposition to a European order for payment.
- (17) To improve the protection of the defendant, the standard forms contained in Annexes I, II, III and IV to Regulation (EC) No 861/2007 should contain information about the consequences for the defendant if he or she does not object to the claim or does not appear in court, in particular the possibility that a judgment may be given or enforced against the defendant and that liability may be incurred for costs related to the court proceedings. The information in the Annexes should reflect the changes provided for by this regulation, for example those aimed at facilitating the use of distance means of communication between court and tribunals and the parties.
- (18) In respect of changes to Annexes I, II, III and IV to this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (19) In accordance with Article 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, [the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, the United Kingdom and Ireland will not participate in the adoption of this Regulation and will not be bound by it or be subject to its application].

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<sup>18</sup> Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ L 399, 30.12.2006, p. 1).



(20) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, is not participating in the adoption of this Regulation, and is therefore neither bound by it nor subject to its application.

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

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

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

(1) Article 2 is replaced by the following:

#### *"Article 2*

##### *Scope*

1. This Regulation shall apply to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 10,000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta jure imperii*).
2. This Regulation shall not apply where, at the time when the claim form is received by the court or tribunal with jurisdiction, all of the following elements, where relevant, are in a single Member State:
  - (a) the domicile or habitual residence of the parties;
  - (b) the place of performance of the contract;
  - (c) the place where the facts on which the claim is based arose;
  - (d) the place of enforcement of the judgment;
  - (e) the court or tribunal with jurisdiction.

Domicile shall be determined in accordance with [Articles 59 and 60 of Regulation (EC) No 44/2001]/[Article 62 and 63 of Regulation (EU) No 1215/2012].

3. This Regulation shall not apply to matters concerning:
  - (a) the status or legal capacity of natural persons;

- (b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession;
  - (c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
  - (d) social security;
  - (e) arbitration;
  - (f) employment law;
  - (g) tenancies of immovable property, with the exception of actions on monetary claims; or
  - (h) violations of privacy and of rights relating to personality, including defamation.
4. In this Regulation, the term "Member State" shall mean Member States with the exception of Denmark."
- (2) Article 3 is deleted.
  - (3) Article 4 is amended as follows:
    - (a) In paragraph 4 second subparagraph, the following sentence is added:  
"The court shall inform the claimant of such dismissal."
    - (b) Paragraph 5 is replaced by the following:

"5. Member States shall ensure that the standard claim Form A is available in paper form at all courts and tribunals at which the European Small Claims Procedure can be commenced, as well as in electronic form on the websites of those courts or of the relevant central authority."

- (4) In Article 5, paragraph 1 is replaced by the following:
  - 1. The European Small Claims Procedure shall be a written procedure. The court or tribunal shall hold an oral hearing if it considers that it is not possible to render the judgment on the basis of the written evidence submitted by the parties or if a party so requests. The court or tribunal may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is not necessary for the fair conduct of the proceedings. The reasons for refusal shall be given in writing. The refusal may not be contested separately from any challenge of the judgment itself.

The court or tribunal may not refuse a request for an oral hearing where:

- (a) the value of the claim exceeds EUR 2,000, or

- (b) both parties indicate their willingness to conclude a court settlement and request a court hearing for that purpose. "

(5) Article 8 is replaced by the following:

*"Article 8*

*Oral hearing*

1. An oral hearing shall be held through videoconference, teleconference or other appropriate distance communication technology in accordance with Council Regulation (EC) No 1206/2001 where the party to be heard is domiciled in a Member State other than the Member State of the court or tribunal with jurisdiction.
2. A party shall always be entitled to appear before the court or tribunal and be heard in person if that party so requests."

(6) Article 9 is replaced by the following:

*"Article 9*

*Taking of evidence*

1. The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties. Where taking of evidence implies that a person is heard, the hearing shall be carried out in accordance with the conditions set out in Article 8.
2. The court or tribunal may take expert evidence or oral testimony only if it is not possible to render the judgment on the basis of the evidence submitted by the parties.
3. The court or tribunal shall use the simplest and least burdensome method of taking evidence."

(7) Article 11 is replaced by the following:

*"Article 11*

*Assistance for the parties*

1. The Member States shall ensure that the parties can receive practical assistance in filling in the forms. Such assistance shall in particular be available for determining whether the procedure may be used to resolve the dispute concerned and for determining the court with jurisdiction, for calculating interest due and for identifying the documents which need to be attached.

2. The Member States shall ensure that information on the authorities or organisations competent to give assistance in accordance with paragraph 1 is available in paper form at all courts and tribunals at which the European Small Claims Procedure can be commenced, as well as in electronic form on the websites of those courts or of the relevant central authority."

- (8) Article 13 is replaced by the following:

*"Article 13*

*Service of documents and other communications between the parties and the court or tribunal*

1. The documents mentioned in Article 5(2) and 7(2) shall be served by postal or by electronic means attested by an acknowledgment of receipt including the date of receipt. Documents shall be served electronically only on a party who expressly accepted in advance that documents may be served electronically. Service by electronic means can be attested by an automatic confirmation of delivery.
2. All written communications not referred to in paragraph 1 between the court or tribunal and the parties shall be carried out by electronic means attested by an acknowledgment of receipt, where such means are acceptable in procedures under national law and only where the party accepts such means of communication.
3. If service in accordance with paragraph 1 is not possible, service may be effected by any of the methods provided for in Articles 13 or 14 of Regulation (EC) No 1896/2006. If communication in accordance with paragraph 2 is not possible, any other method of communication acceptable under national law may be used."

- (9) The following new article is inserted:

*"Article 15a*

*Court fees and methods of payment*

1. The court fee charged for a European Small Claims Procedure shall not exceed 10% of the value of the claim, excluding all interest, expenses and disbursements. If Member States charge a minimum court fee for a European Small Claims Procedure, that fee shall not exceed EUR 35 at the time when the claim form is received by the court or tribunal with jurisdiction.
  2. The Member States shall ensure that the parties can pay the court fees by means of distance payment methods, including bank transfer and credit or debit card on-line payment system."
- (10) In Article 17, paragraph 2 is replaced by the following:

"2. Article 15a and 16 shall apply to any appeal."

(11) Article 18 is replaced by the following:

*"Article 18*

*Minimum standards for review of the judgment*

1. A defendant who did not enter an appearance shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the court or tribunal with jurisdiction of the Member State where the judgment was given, if:
  - (a) the defendant was not served with the claim form in sufficient time and in such a way as to enable him to arrange for his defence; or
  - (b) the defendant was prevented from contesting the claim by reason of *force majeure* or due to extraordinary circumstances without any fault on his part;

unless the defendant failed to challenge the judgment when it was possible for him to do so.

2. The time limit for applying for a review shall be 30 days. It shall run from the day the defendant was effectively acquainted with the contents of the judgment and was able to react, at the latest from the date of the first enforcement measure having the effect of making property of the defendant non-disposable in whole or in part. No extension of the time limit may be granted on account of distance.
3. If the court rejects the application for a review referred to in paragraph 1 on the basis that none of the grounds for a review set out in that paragraph apply, the judgment shall remain in force.

If the court decides that a review is justified for one of the reasons laid down in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void. However, the creditor shall not lose the benefit of the interruption of prescription or limitation periods."

(12) Article 21 paragraph 2 letter (b) is replaced by the following:

"(b) a copy of the certificate referred to in Article 20(2) and, where necessary, the translation of the substance of the judgment indicated in point 4.3 of the certificate into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State shall indicate at least one official language or languages of the institutions of the European Union other than its own which it can accept for the European Small Claims Procedure. The translation of the substance of the judgment in point 4.3 of the

certificate shall be done by a person qualified to make translations in one of the Member States."

(13) Article 25 is replaced by the following:

*"Article 25*

*Information relating to jurisdiction, means of communication, appeals, court fees, methods of payment and review*

1. The Member States shall communicate to the Commission no later than [*6 months after the entry into force of the Regulation*]:

- (a) which courts or tribunals have jurisdiction to give a judgment in the European Small Claims Procedure;
- (b) which means of communication are accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1);
- (c) what are the court fees for the European Small Claims Procedure or how they are calculated, as well as the methods of payment accepted for the payment of court fees in accordance with Article 15a;
- (d) which authorities or organisations are competent for providing practical assistance in accordance with Article 11;
- (e) whether an appeal is available under their procedural law in accordance with Article 17, the time limit within which such an appeal must be lodged and with which court or tribunal the appeal may be lodged;
- (f) the procedures for applying for review as provided for in Article 18;
- (g) which languages are accepted pursuant to Article 21(2)(b); and
- (h) which authorities have competence with respect to enforcement and which authorities have competence for the purposes of the application of Article 23.

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

2. The Commission shall make the information notified in accordance with paragraph 1 publicly available by any appropriate means, such as through publication on the internet."

(14) Article 26 is replaced by the following:

*"Article 26  
Amendment of the Annexes*

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 concerning the amendment of Annexes I, II, III and IV."
- (15) Article 27 is replaced by the following:

*"Article 27  
Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
  2. The power to adopt delegated acts referred to in Article 26 shall be conferred on the Commission for an indeterminate period of time from [*date of entry into force*].
  3. The delegation of power referred to in Article 26 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
  4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
  5. A delegated act adopted pursuant to Article 26 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."
- (16) Article 28 shall be replaced by the following:

*"Article 28  
Review*

By [*5 years after the date of application*], the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the operation of this Regulation. The report shall be accompanied, if appropriate, by legislative proposals.

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

*Article 2*

Article 17 of Regulation (EC) No 1896/2006 is replaced by the following:

*"Article 17*

*Effect of the lodging of a statement of opposition*

1. If a statement of opposition is lodged within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin unless the claimant has explicitly requested that the proceedings be terminated in that event. The proceedings shall continue in accordance with the rules of:
  - (a) any applicable simplified procedure, in particular the procedure laid down in Regulation (EC) No 861/2007; or
  - (b) the ordinary civil procedure.

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

2. The transfer to civil proceedings within the meaning of paragraph 1(a) and (b) shall be governed by the law of the Member State of origin.
3. The claimant shall be informed whether the defendant has lodged a statement of opposition and of any transfer to civil proceedings within the meaning of paragraph 1."

*Article 3*

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

It shall apply from [6 months after the entry into force of the Regulation].

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*



## LEGISLATIVE FINANCIAL STATEMENT

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management method(s) envisaged

### **2. MANAGEMENT MEASURES**

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
  - 3.2.1. *Summary of estimated impact on expenditure*
  - 3.2.2. *Estimated impact on operational appropriations*
  - 3.2.3. *Estimated impact on appropriations of an administrative nature*
  - 3.2.4. *Compatibility with the current multiannual financial framework*
  - 3.2.5. *Third-party participation in financing*
- 3.3. Estimated impact on revenue

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council amending Council regulation (EC) N° 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 on a European order for Payment procedure

#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>19</sup>

Title 33 - Justice

#### 1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>20</sup>
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objectives

##### 1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

Development of an area of Justice, Justice for Growth

##### 1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objective No..

Judicial Cooperation in Civil and Commercial matters

ABM/ABB activity(ies) concerned

33 03

<sup>19</sup> ABM: Activity-Based Management – ABB: Activity-Based Budgeting.  
<sup>20</sup> As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

#### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Increased simplification, cost and time reduction of the European Small Claims Procedure, increased access to justice for claims of a small value

#### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

[...]

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.

### 1.5. **Grounds for the proposal/initiative**

#### 1.5.1. *Requirement(s) to be met in the short or long term*

Revision of Regulation 861/2007 on a European Small Claims Procedure

#### 1.5.2. *Added value of EU involvement*

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.

### 1.5.3. *Lessons learned from similar experiences in the past*

[...]

Despite the benefits it could bring in terms of reducing the costs and time of litigating cross-border claims, the procedure is still little known and remains under-used several years after the entry into application of the Regulation. The European Parliament affirmed in a 2011 Resolution<sup>21</sup> that more needs to be done in terms of legal certainty, language barriers and transparency of proceedings. It called on the Commission to take steps to ensure that consumers and businesses are made more aware and make use of existing legislative instruments, such as the ESCP. Consumer and business stakeholders have also raised the fact that the Regulation should be further improved to benefit consumers and businesses, in particular SMEs. Member States have also identified certain shortcomings in the current Regulation which should be addressed.

### 1.5.4. *Coherence and possible synergy with other relevant 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.

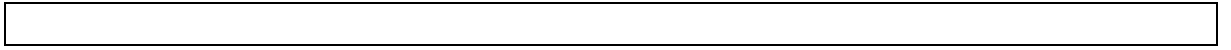
The ESCP Regulation is essentially an instrument simplifying the procedures for the resolution of disputes of a low value - lodging an application by means of a standard form, conduct of the procedure in principle by written means, the hearing of the parties and the taking of evidence, the representation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

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<sup>21</sup> European Parliament Resolution of 25 October 2011 on alternative dispute resolution in civil, commercial and family matters (2011/2117(INI)).



## 1.6. Duration and financial impact

- Proposal/initiative of **limited duration**
  - Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
  - Financial impact from YYYY to YYYY
- Proposal/initiative of **unlimited duration**
  - Implementation with a start-up period from adoption of regulation
  - followed by full-scale operation.

## 1.7. Management mode(s) envisaged<sup>22</sup>

- **Centralised direct management** by the Commission
- Centralised indirect management** with the delegation of implementation tasks to:
  - executive agencies
  - bodies set up by the Communities<sup>23</sup>
  - national public-sector bodies/bodies with public-service mission
  - persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation
- Shared management** with the Member States
- Decentralised management** with third countries
- Joint management** with international organisations (*to be specified*)

*If more than one management mode is indicated, please provide details in the "Comments" section.*

Comments

<sup>22</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

<sup>23</sup> As referred to in Article 185 of the Financial Regulation.

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

A review/report will follow after 5 years. Reports should be accompanied by proposals for amendments if necessary.

### **2.2. Management and control system**

#### *2.2.1. Risk(s) identified*

There are no identified risks.

#### *2.2.2. Control method(s) envisaged*

[...] N/A

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

[...]N/A

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	Diff./non-diff. ( <sup>24</sup> )	from EFTA <sup>25</sup> countries	from candidate <sup>26</sup> countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
[3]	[33.03.01 [Justice Programme]]	Diff/	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
[3]	[XX.YY.YY.YY]		YES/N O	YES/N O	YES/N O	YES/NO

<sup>24</sup> Diff. = Differentiated appropriations / Non-diff. = Non-Differentiated Appropriations

<sup>25</sup> EFTA: European Free Trade Association.

<sup>26</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.



### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:	Number	[Heading ...3.....]
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DG: JUST		Year 2014 <sup>27</sup>	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
• Operational appropriations									
Number of budget line 33.03 01	Commitments (1)	0	0	0	0	0,150	0	0	150.000
	Payments (2)	0	0	0	0	0,150	0	0	150.000
Number of budget line	Commitments (1a)								
	Payments (2a)								
Appropriations of an administrative nature from the envelope for specific programmes <sup>28</sup>	financed								
Number of budget line	(3)								
	Commitments =1+1a +3	0	0	0	0	0,150	0	0	150.000
	Payments =2+2a +3	0	0	0	0	0,150	0	0	150.000
<b>TOTAL appropriations for DG JUST</b>									

<sup>27</sup>

Year N is the year in which implementation of the proposal/initiative starts.

<sup>28</sup>

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)												
	Payments	(5)												
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)												
	Commitments	=4+6	0	0	0	0	0	0	0	0	0	0	0	150.000
<b>TOTAL appropriations under HEADING 3</b> of the multiannual financial framework	Commitments		0	0	0	0	0	0	0	0	0	0	0	150.000
	Payments	=5+6	0	0	0	0	0	0	0	0	0	0	0	150.000

**If more than one heading is affected by the proposal / initiative:**

• TOTAL operational appropriations	Commitments	(4)												
	Payments	(5)												
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)												
	Commitments	=4+6												
<b>TOTAL appropriations under HEADINGS 1 to 4</b> of the multiannual financial framework (Reference amount)	Commitments													
	Payments	=5+6												

<b>Heading of multiannual financial framework:</b>	<b>5</b>	" Administrative expenditure "						
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EUR million (to 3 decimal places)

		Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
DG: JUST									
• Human resources		0,026	0,026	0,026	0,026	0,026	0,026	0,026	<b>0,182</b>
• Other administrative expenditure		0,015	0,015	0,015	0,015	0,015	0,015	0,015	<b>0,105</b>
<b>TOTAL DG JUST</b>		0,041	0,041	0,041	0,041	0,041	0,041	0,041	<b>0,287</b>

<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b>		0,041	0,041	0,041	0,041	0,041	0,041	0,041	<b>0,287</b>
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EUR million (to 3 decimal places)

		Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>		0,041	0,041	0,041	0,041	0,191	0,041	0,041	0,437
		0,041	0,041	0,041	0,041	0,191	0,041	0,041	0,437

### 3.2.2. Estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to 3 decimal places)

Indicate objectives and outputs ↓	Type of output <sup>29</sup>	Average cost of the output	OUTPUTS												TOTAL			
			Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	Number of outputs	Cost	Number of outputs	Cost	Number of outputs		Cost	Total number of outputs	Total cost
<b>SPECIFIC OBJECTIVE No 1</b>																		
Monitoring of implementation ... <sup>30</sup>																		
- Output			0	0	0	0	0	1	0,150	0	0	0	0	0	1	0,150	1	0,150
- Output																		
- Output																		
Sub-total for specific objective N°1			0	0	0	0	0	1	0,150	0	0	0	0	0	1	0,150	1	0,150
<b>SPECIFIC OBJECTIVE No 2...</b>																		
- Output																		
Sub-total for specific objective N°2																		
<b>TOTAL COST</b>			0	0	0	0	0	1	0,150	0	0	0	0	0	1	0,150	1	0,150

<sup>29</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).  
<sup>30</sup> As described in Section 1.4.2. "Specific objective(s)..."

### 3.2.3. Estimated impact on appropriations of an administrative nature

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of administrative appropriations
- X the proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year 2014 <sup>31</sup>	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
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<b>HEADING 5 of the multiannual financial framework</b>								
Human resources	0,026	0,026	0,026	0,026	0,026	0,026	0,026	<b>0,182</b>
Other administrative expenditure	0,015	0,015	0,015	0,015	0,015	0,015	0,015	<b>0,105</b>
<b>Subtotal HEADING 5 of the multiannual financial framework</b>	<b>0,041</b>	<b>0,041</b>	<b>0,041</b>	<b>0,041</b>	<b>0,041</b>	<b>0,041</b>	<b>0,041</b>	<b>0,287</b>

<b>Outside HEADING 5<sup>32</sup> of the multiannual financial framework</b>								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>								

<b>TOTAL</b>	<b>0,041</b>	<b>0,041</b>	<b>0,041</b>	<b>0,041</b>	<b>0,041</b>	<b>0,041</b>	<b>0,041</b>	<b>0,287</b>
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<sup>31</sup> Year N is the year in which implementation of the proposal/initiative starts.

<sup>32</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

### 3.2.3.2. Estimated requirements of human resources

- ➤ The proposal/initiative does not require the use of human resources
- ☐ The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

	Year 2014	Year 2015	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020
<b>• Establishment plan posts (officials and temporary agents)</b>							
33 01 01 01 (Headquarters and Commission's Representation Offices)	0,026	0,026	0,026	0,026	0,026	0,026	0,026
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>• External personnel (in Full Time Equivalent unit: FTE)<sup>33</sup></b>							
XX 01 02 01 (CA, INT, SNE from the "global envelope")							
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)							
<b>XX</b> 01 04 <b>yy</b> 34	- at Headquarters <sup>35</sup>						
	- in delegations						
<b>XX</b> 01 05 02 (CA, INT, SNE - Indirect research)							
10 01 05 02 (CA, INT, SNE - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>	<b>0,026</b>	<b>0,026</b>	<b>0,026</b>	<b>0,026</b>	<b>0,026</b>	<b>0,026</b>	<b>0,026</b>

**XX** is the policy area or budget title concerned.

<sup>33</sup> CA= Contract Agent; INT= agency staff ("*Intérimaire*"); JED= "*Jeune Expert en Délégation*" (Young Experts in Delegations); LA= Local Agent; SNE= Secoded National Expert;

<sup>34</sup> Under the ceiling for external personnel from operational appropriations (former "BA" lines).

<sup>35</sup> Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary agents	The officials involved will monitor the application of the law in the Member States and prepare implementing measures as described in article 26, prepare the committee (article 27) and undertake the revision of the Regulation in year n+5 (article 28).
External personnel	n/a

### 3.2.4. Compatibility with the current multiannual financial framework

- ➤ Proposal/initiative is compatible the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>36</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

### 3.2.5. Third-party contributions

➤ The proposal/initiative does not provide for co-financing by third parties

- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Year 2018	Year 2019	Year 2020	Total
<i>Specify the co-financing body</i>								
TOTAL appropriations cofinanced								

<sup>36</sup> See points 19 and 24 of the Interinstitutional Agreement.



### 3.3. Estimated impact on revenue

- ➤ Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to 3 decimal places)

Budget revenue line:	Appropriations available for the ongoing budget year	Impact of the proposal/initiative <sup>37</sup>						
		Year N	Year N+1	Year N+2	Year N+3	Year 2018	Year 2019	Year 2020
Article .....								

For miscellaneous assigned revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

<sup>37</sup>

As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.