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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

**on the application of Regulation (EC) No 861/2007 of the European Parliament and of
the Council establishing a European Small Claims Procedure**

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

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1. INTRODUCTION

Regulation (EC) No 861/2007 establishing a European Small Claims Procedure (hereafter "the Regulation") has been applied since January 2009 in all Member States except Denmark. Its main features are its written character, strict time limits for the conduct of the proceedings, the absence of a requirement of legal representation, the use of electronic communication, the use of standardized forms for procedural acts, and the abolition of the intermediary procedure for declaration of enforceability of the judgment ("exequatur").

Article 28 requires the Commission to present by the 1 January 2014 a report reviewing the operation of the Regulation. This report is based on an external study,¹ an on-line public consultation, replies to a questionnaire addressed to Member States, discussions in the European Judicial Network in Civil and Commercial Matters ("EJN") in 2011 and 2013, and input from consumers² and the general public³.

2. THE APPLICATION OF THE REGULATION IN GENERAL

In general, the procedure is considered to have facilitated cross-border litigation for small claims in the EU. It has reduced the costs of litigating cross-border small claims up to 40% and the duration of litigation from up to 2 years and 5 months to an average duration of 5 months.

In comparison to national simplified procedures, the European Procedure has been found to be less costly as it is simpler than national procedures. Most national procedures only remove the need for legal representation in small value disputes before lower courts.

However, the use of the European Small Claims Procedure is still rather limited compared to the number of potential cases. In this respect, the number of applications differs greatly between the Member States, ranging between only 3 applications in Bulgaria and 1047

¹ Deloitte, Assessment of the socio-economic impacts of the policy options for the future of the European Small Claims Regulation, July 2013 (hereafter: Deloitte-Study); available at: http://ec.europa.eu/justice/civil/document/index_en.htm.

² Based on individual complaints and on the following reports: Centre européen de la Consommation/Europäischen Verbraucherschutz e.V., Procédure de règlement des petits litiges et injonction de payer européenne: des procédures simplifiées pas si simple dans la pratique, July 2011, available at: http://www.europe-consommateurs.eu/uploads/media/4.4.3_procedure_de_reglement_des_petits_litiges.pdf (hereafter: CEC, Procédure de règlement des petits litiges); ECC-Net, European Small Claims Procedure Report, September 2012, available at: http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf (hereafter: ECC-Net-Report). Moreover, the Study "Implementation of optional instruments within European civil law" made to the EP by Ms B. Fauvarque-Cosson and Ms M. Behar-Touchais in 2011 was taken into account. (available at: <http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=72928>).

³ Special Eurobarometer 395, European Small Claims Procedure, April 2013 (hereafter: Special EB 395), available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_395_en.pdf.

applications in Spain for 2012.⁴ Apart from factors like shopping habits of the population and the availability or costs of alternative national procedures, this difference in the up-take of the European Procedure seems to be linked in particular with the awareness of its existence and operation.⁵ This conclusion is supported by the fact that the number of applications under the Regulation has constantly increased since its entry into application in 2009.⁶

Eurobarometer 395 shows that two-thirds of those who used the procedure are overall satisfied with it. 13% of respondents was dissatisfied, 17 % reported that the court was not knowledgeable of the procedure, 16 % had difficulties in filling in the forms and 10 % sought assistance in filling in the application form but did not receive it.

In addition, certain shortcomings are reported as set out below.

3. SCOPE OF THE REGULATION

3.1. Threshold of €2,000

The Regulation applies in cases where the value of the claim does not exceed €2,000.

The majority of the Member States have now national simplified procedures in place.⁷ The thresholds of those procedures vary greatly, from €600 in Germany to €25,000 in the Netherlands. There has been a trend to increase the level of national thresholds for simplified court procedures since the introduction of the Regulation.⁸ In some Member States such increase has been significant.⁹

Eurobarometer 347¹⁰ shows that the threshold of €2,000 severely limits the availability of the procedure for SMEs in particular, whose cross-border legal disputes with another business amount on average to €39,700. For these claims businesses have to revert to national small claims procedures where they exist, or to ordinary civil proceedings. This may lead to disproportionate litigation costs and lengthy proceedings. Indeed, 45% of companies which experience a cross-border dispute do not go to court because the costs for procedure are disproportionate to the value of the claim, while 27% do not go to court because the court procedure would take too long.

3.2. The territorial scope

The Regulation currently applies 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 seised. This limit results in depriving the parties who exercise their right to choose the jurisdiction of their common domicile under Regulation (EC) No 44/2001 (the Brussels I

⁴ There is no data available in regard to the type and characteristics of the cases, but in regard to the threshold of €2,000, it can be assumed that the Regulation was predominantly used by consumers. Also Special EB 395 focused on its perception by EU-citizens.

⁵ According to the Spain answer of the questionnaire trainings have not only been addressed to courts and judges like in most of the other Member States – if at all – but also to bailiffs and enforcement agents. See also: Deloitte-Study, Part I, section 3.3.2.1, pp. 73-74.

⁶ See: Deloitte-Study, Part I, 3.3.2.1, pp. 66-67 (table 19) providing an overview over the responses of the Member States to the number of applications and judgments of the ESCP.

⁷ Only Austria, Bulgaria, Cyprus, Czech Republic and Finland do not have such a procedure. See: Deloitte-Study, Part I, section 3.3.1.1, p. 53.

⁸ For example, in Estonia, France, Hungary, Ireland, Italy, Lithuania, Slovenia, Spain, the Netherlands and UK.

⁹ In the UK, from £5,000 to £10,000, in the Netherlands from €5,000 to €25,000; see: Deloitte-Study, Part I, section 3.3.1.1, pp. 52-53.

¹⁰ Flash Eurobarometer 347, Businesses-to-Businesses, Alternative Dispute resolution in the EU (hereafter: Flash EB 347), pp. 40-42, available at: http://ec.europa.eu/public_opinion/flash/fl_347_en.pdf.

Regulation)¹¹ over another competent jurisdiction of the use of the European Procedure. For example:

- where the contract is performed in another Member State, for example where it concerns the lease of a holiday house in another Member State;
- where the event giving rise to a tort claim took place in another Member State, for example a car accident which took place in a border region;
- where the judgment needs to be enforced in another Member State, for example where the defendant has a bank account in another Member State.

Furthermore, the limitation excludes applications under the Regulation lodged before courts of EU Member States by or against nationals of third countries, for example complaints of EU consumers against businesses located in a third country.

In addition, this limitation engenders legal uncertainty. Citizens may have the expectation that more of their cross-border cases would be covered by the Regulation and may also artificially create a cross-border scenario as provided for in the Regulation in order to benefit from its advantages, for example by assigning their claim to a foreign company.¹²

4. THE PROCEDURE SET UP BY THE REGULATION

4.1. Jurisdiction

The jurisdiction of the courts in the European Small Claims Procedure is governed by the Brussels I Regulation.

Some Member States have established one or a few specialised courts to deal with the European Small Claims Procedure (e.g. Finland, Malta and the Land Hessen in Germany). Such concentration has certain advantages such as concentrating specialised knowledge of courts, language skills and the availability of equipment with distance means of communication which allows to save costs. Potential disadvantages for claimants who would wish to lodge a cross-border small claim at their local court may be offset by the increased use of electronic processing of cases and distance means of communication.

4.2. Written procedure and the use of distance means of communication

The European Procedure is in principle a written procedure. This avoids the need to travel for the parties and saves costs and time. However, the court or tribunal may hold an oral hearing if it considers this to be necessary or if a party so requests. Courts are encouraged to hold oral hearings through video conference or other communication technology if the technical means are available.

The study shows that seven Member States/jurisdictions¹³ offer limited (less than 10% of courts) or no possibilities for the use of ICT in court, while ten Member States/ jurisdictions¹⁴ offer the possibility to communicate through ICT in all courts. Even in those Member States where the relevant equipment is available it cannot be guaranteed that the facilities are actually used for oral hearings in the European Small Claims Procedure due to the fact that

¹¹ Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, OJ L 12, 16.1.2001, p.1.

¹² Such cases have been signalled during the discussions in the EJM.

¹³ Belgium, Bulgaria, Greece, Hungary, Latvia, Slovakia, UK – Northern Ireland.

¹⁴ Austria, Cyprus, Estonia, Finland, Luxembourg, Malta, the Netherlands, Portugal, Sweden and UK – Scotland.

their use is left to the discretion of the judge. Parties at present face unnecessarily high costs when they are requested to be physically present in court in another Member State for oral hearings.

In Special Eurobarometer 395 one third of the respondents indicated that they would be more inclined to file a claim if the procedures could be carried out only in writing, without need to physically go to court. Technology today permits the installation of distance means of communication at quite low costs (Skype-like equipment or teleconference).

4.3. Application, means of service and the use of electronic procedure

The claimant can lodge the claim with the court or tribunal directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State of the court seized.

10 Member States¹⁵ and 5 Länder in Germany¹⁶ may allow for the electronic submission of applications in cross-border cases (online or via e-mail). This development is likely to increase in the future¹⁷ and is reflected in the context of the pilot project e-Codex on European e-justice¹⁸ assessing the feasibility of a centralised European e-application system for the European Small Claims Procedure.

With respect to service, postal service with acknowledgment of receipt is the primary method of service. Service by electronic means can thus 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 formalities relating to service. Meanwhile, some Member States have put in place electronic communication means for domestic procedures. Parties to the European Small Claims Procedure cannot benefit from those modernisations due to the rule establishing the priority of postal service over all other means of communication. Also, it can be expected that in the coming years the use of ICT in judicial systems will increase.

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 Procedure indicated that they would be more inclined to use the procedure if all the proceedings could be carried out online.

4.4. The duration of litigation

The Regulation prescribes time limits in order to speed up the litigation for small claims. Even though no sanctions are foreseen in case of non-respect of those time limits, data show that the duration for litigating cross-border small claims has drastically reduced litigation since the time of adoption of the Regulation. The duration of the European Procedure in a sample of Member States¹⁹ show that litigation takes about 3 to 8 months with an average of approximately 5 months, compared to up to 2 years and 5 months before the adoption of the Regulation.

¹⁵ See: Deloitte-Study, Part I, section 3.3.2.2, pp. 76-77: Austria, Estonia, Cyprus, Czech Republic (although when submitted by e-mail or fax, original must be submitted subsequently), Finland, France, the Netherlands (though not used in practice), Portugal, Slovenia, UK (England and Wales).

¹⁶ Berlin, Brandenburg, Bremen, Sachsen, Hessen.

¹⁷ In Germany, for example, the possibility of an electronic submission of a claim in all courts is envisaged for 2018.

¹⁸ <http://www.e-codex.eu/index.php/legal-community-benefits>; see also for the European Small Claims Procedure: <http://www.e-codex.eu/pilots/small-claims.html>.

¹⁹ 10 Member States responded to this question; Bulgaria: 6 months; Estonia: 4 months; Finland: 3 months; France: 4,6 months; Malta: 6 months; Poland: 6,3 months; Slovakia: 3 months; Slovenia: 4,3 months; Spain: 8,2 months; Germany: 3,4 - 5,3 months.

4.5. The removal of the obligation to be represented by a lawyer

Eurobarometer 395 found that one third of respondents who had used the European Small Claims Procedure used a legal representative through the procedure, while slightly more respondents used the procedure without legal assistance. In some instances, it appears that citizens made recourse to a lawyer because they did not benefit from free assistance or because court fees can only be paid through a lawyer (see below sections 6 and 8.2). Even if, therefore, the right to legal representation is a fundamental right of all citizens, citizens should not be compelled to have recourse to a lawyer because the rules of the Regulation are not complied with or because of purely practical obstacles.

4.6. The multilingual standard forms

The Regulation provides for four multilingual standard forms. These forms have been available on the European Judicial Atlas together with a translation tool into all official languages since 2008 and in the European e-Justice portal as dynamic forms with a wizard helping to fill them in since 2011.²⁰

Citizens generally think that the application form is easy to fill in (62%), while some report difficulties (16%). Some consumers have found the standard forms to complex on some points such as jurisdiction, cross-border definition, calculation of interest and the documents which need to be attached.²¹

4.7. The minimum standards for review of the judgment

The exceptional remedy in Article 18 aims at redressing the situation where the defendant was not aware of the proceedings in the Member State of origin and was not able to properly defend himself. While the Regulation prescribes the conditions for opening the right for a review, the procedure itself is governed by national law.

Review procedures similar to the one of Article 18 of the Regulation also exist in other civil justice instruments, in particular the European Order for Payment²², European Enforcement Order²³ and Maintenance Regulation²⁴. Implementation of the review procedure under the European instruments has given rise to questions and uncertainties. In order to address such questions and uncertainties, it is appropriate to clarify the provision in Article 18 by taking inspiration from the more recent provision in the Maintenance Regulation.

5. RECOGNITION AND ENFORCEMENT IN ANOTHER MEMBER STATE

No problems have been reported concerning the abolition of exequatur in the Regulation. However, some problems on the actual enforcement have been reported to the European Consumer Centres, for example concerning the need for translation and the lack of information regarding enforcement procedures or contact details of enforcement agents in different countries.²⁵ Only a few Member States accept Form D of the Regulation in English

²⁰ See: https://e-justice.europa.eu/content_small_claims_forms-177-en.do.

²¹ See: CEC, Procédure de règlement des petits litiges; ECC-Net-Report.

²² Regulation 1896/2006/EC of the European Parliament and the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006, p. 1 *et seq.*

²³ Regulation 805/2004/EC of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143, 30.4.2004, p. 15 *et seq.*

²⁴ Council Regulation 4/2009/EC on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10.1.2009, p. 1 *et seq.*

²⁵ ECC-Net, European Small Claims Procedure Report, September 2012, p. 28 available at: http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf.

and a few other languages.²⁶ This implies additional costs for the party seeking enforcement. Translation costs are usually charged per page, despite the fact that most information is already available in all official languages and only Section 4.3 containing the substance of the judgment needs to be translated.

6. ASSISTANCE FOR PARTIES

Few specific arrangements have been put in place in the Member States to ensure that the parties can receive practical assistance in filling in the forms. According to ECC-Net Report, 41 % of the Member States have reported that such assistance is not available to citizens and Eurobarometer 395 show that 10% of respondents sought assistance but did not receive it.

In conclusion, it appears that Member States do not consistently provide free of charge assistance. This may play a role in the limited use of the European Procedure.

7. INFORMATION OBLIGATIONS FOR THE MEMBER STATES

Under Articles 24 and 25, Member States must provide certain information necessary for the operation of the procedure. However, information on several issues which vary greatly among Member States is currently not available: information on court fees and the methods of payment of the latter, on national procedures for review under Article 18 as well as on the availability of free assistance to citizens.

Due to this lack of transparency, consumers and businesses lose time by searching for information on costs and cannot make a fully informed decision whether to use the procedure or not.

8. OTHER OBSTACLES TO THE APPLICATION OF THE REGULATION

8.1. Disproportionate court fees to the value of the claim

The evaluation shows that disproportionate court fees is an important obstacle to the use of the procedure in some Member States. Court fees may have to be paid up-front and may have a deterrent effect on claimants considering court action.²⁷ Eurobarometer 347 shows that 45 % of businesses do not go to court because the cost of court proceedings would be disproportionate to the claim.²⁸ BEUC's position paper²⁹ confirms that disproportionate court fees are a factor which discourages consumers from using the Procedure.

Court fees vary among the Member States depending on the calculation methods in place (fixed or as a proportion of the value of the claim or a combination of these two). Court fees of more than 10 % of the value of the claim can be considered as disproportionate. This is particularly valid in cross-border cases where additional costs such as translation costs must

²⁶ 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, p. 130.

²⁷ The fact that court fees fall under the “loser pays” principle does not reassure the claimant as the outcome of the case is uncertain and the claimant would first have to “freeze” his own money until effective enforcement.

²⁸ Flash EB 347, p. 31. Even though this survey is general for all types of B-2-B claims, it highlights that the proportionality of costs - and therefore also of court fees - is the main criteria for businesses in regard to the decision whether to litigate a case.

²⁹ Ref.-Nr. X/2013/040; [available](http://www.beuc.org/Content/Default.asp?PageID=606) at: <http://www.beuc.org/Content/Default.asp?PageID=606>.

be expected. For claims above €2,000, court fees were found to be largely proportionate to the value of claims.

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.

8.2. Practical obstacles to the payment of court fees

Some practical difficulties have been reported to the Commission regarding the payment of court fees in other Member States.

Payment methods differ greatly across Member States. Most Member States allow for the possibility of at least one form of electronic payment (debit/credit card on-line payment or bank transfer). Wire transfer is allowed in some Member States. In a few Member States however payment of court fees requires 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. In those countries parties need to incur travel costs or hire a lawyer in the Member State concerned in order to be able to pay the court fees.

9. LACK OF AWARENESS OF THE EXISTENCE AND OPERATION OF THE PROCEDURE

For a successful application of the European Small Claims Procedure, 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:

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

As for the **courts and judges**, a survey carried out by the ECC-Net in all Member States showed that almost half of the courts have never heard about the procedure, while the other half was not fully informed of its details. As a consequence, a high number of courts or tribunals are not in a position to ensure **efficient assistance** to citizens as requested in Article 11 of the Regulation.

The data indicate that, despite the Member States' attempts to increase the knowledge of courts, the dissemination of information has not been effective. Where training was offered not only to courts but also to bailiffs and enforcement agents, the use of the procedure increases. Also, a specialisation of jurisdiction may in certain Member States be a means to address the problem of low awareness among legal professionals. In conclusion, the success of the procedure would benefit from Member States dedicating more resources and means to improve their awareness raising measures.

The Commission on its part has tried to address the problem of lack of awareness by a range of actions like the publication of information together with interactive forms on several EU websites (EJN website, European Judicial Atlas, and e-Justice Portal); specialised training modules for judges and legal practitioners and workshops for trainers under the Civil Justice Programme; a Practice Guide for legal practitioners and a User Guide for citizens have been prepared together with the EJN in civil and commercial matters and will be published in 2013.

The Commission has also promoted the application of the procedure through financial means under the Civil Justice Programme. Also the European Consumers Centres (ECC) provide some assistance to consumers using the European Small Claims Procedure.

Relevant actors also seem to have difficulties in **distinguishing between the various instruments** to pursue their claims and enforce them abroad. In particular, they are uncertain when to use the Small Claims or the European Order for Payment Procedures and in which cases the use of the European Enforcement Order could be beneficial. A horizontal practice guide on how to distinguish and when to use the one or the other instrument may be helpful for citizens and practitioners.

10. CONCLUSION

This report shows that the application of the Regulation has generally improved, simplified and accelerated the handling of small claims in cross-border disputes. Nevertheless, there are some shortcomings.

The Regulation suffers from a lack of awareness. This issue is addressed by a number of measures undertaken by the Commission as described above.

In some instances the Regulation was not properly implemented. This may be remedied by clarifying some of its provisions which have given rise to difficulties. This is the case, for example, with the lack of transparency on certain information regarding court fees, methods of payment and the availability of assistance in filling in the forms.

The remaining problems are mainly due to deficiencies of the current Regulation, for example the limited scope in terms of the threshold and the limited definition of cross-border cases; the procedural shortcomings relating to the priority given to postal service; the low use of video-distance means of communication; the disproportionality of court fees in some instances; the lack of on-line methods of payment in some Member States, and; the unnecessary translation costs at the stage of enforcement.

This Report is therefore accompanied by a proposal for revision of the current Regulation and an impact assessment addressing the problems identified above.