European small claims procedure and European order for payment procedure: improving access to justice and the efficiency of justice

2013/0403(COD) - 19/11/2013 - Legislative proposal

PURPOSE: to improve the European procedure for small claims.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Regulation 861/2007 established **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.

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. A Eurobarometer survey carried out in 2012, showed that 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 procedure were satisfied.

The survey also showed that **the most important factors which would encourage citizens** to go to court are: the possibility of carry out proceedings in writing without appearing in the court (33%), conducting proceedings without instructing a lawyer (26%), conducting proceedings on-line (20%) and using their own language (24%).

The **European Parliament** affirmed in a 2011 resolution 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 European Small Claims Procedure.

The Commission identified the revision of the Regulation in its 2013 EU Citizenship Report as one of the actions strengthening the rights of Union citizens, by facilitating the settlement of disputes regarding purchases made in another Member State. This initiative is included in the European Consumer Agenda.

IMPACT ASSESSMENT: having carried out several consultations of interested parties, the Commission also undertook an impact assessment in support of its proposal.

CONTENT : the Commission proposes to **revise Regulation (EC) nº 861/2007** as follows:

Extend the scope of the Regulation to cross-border claims up to EUR 10,000: raising the current threshold will allow parties to litigate a substantially bigger number of cases on the basis of the simplified European procedure. SMEs will be the main beneficiaries, but consumers will also benefit, since about one fifth of consumer claims exceed EUR 2,000.

Extend the definition of cross border cases: the amendment means that the European Small Claim Procedure may be used in disputes involving parties domiciled in the same Member State **which have a significant cross-border element** and includes third-country residents.

Improve the use of electronic means of communication, including for service of documents: the proposal will put postal service and electronic service on the same footing. 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.

Impose an obligation on courts to use videoconferencing, teleconferencing or other means of distance communication for the conduct of oral hearings and taking of evidence: oral hearings should be conducted through videoconferencing or other means of distance communication. 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.

Provide a maximum limitation on court fees charged for the procedure: the proposed amendment will not harmonise court fees in the Member States. Instead, it would set a maximum cap on court fees for applications under the Regulation, increasing the attractiveness of the procedure for claimants. The measure allows Member States to maintain a fixed minimum court fee.

Provide for an obligation on the Member States to put in place on-line means of payment of court fees: when payment in cash or stamps is the only acceptable means of payment, parties may be discouraged from pursuing their claims. 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.

Limit the requirement to translate the certificate of enforcement in Form D to only the substance of the judgment: the obligation to translate Form D imposes unnecessary costs. The amendment will limit the requirement of translation to the substance of the judgment in point 4.3 of Form D only.

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

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. The operational and administrative costs are estimated at **EUR 437, 000** for the period 2014-2020.