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

2013/0403(COD) - 16/12/2015 - Final act

PURPOSE: to improve the European procedure for small claims.

LEGISLATIVE ACT: Regulation (EU) 2015/2421 of the European Parliament and of the Council amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure.

CONTENT: this Regulation amends the Regulation establishing a European Small Claims Procedure and the Regulation creating a European order for payment procedure.

The objective of the amending regulation is to **make the European small claims procedure more efficient**, in particular by reflecting the technological progress made in the justice systems in the Member States, and to make the procedure accessible in a larger number of cases, in particular for businesses.

The main amendments introduced by the Regulation are as follows:

Scope: this Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, **where the value of a claim does not exceed EUR 5 000** at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority.

This Regulation shall not apply to matters concerning: (a) the status or legal capacity of natural persons; (b) rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage; (c) maintenance obligations arising from a family relationship, parentage, marriage or affinity; (d) wills and succession, including maintenance obligations arising by reason of death; (e) social security; (f) employment law.

Written procedure: it is stated that the European Small Claims Procedure is essentially a written procedure. Oral hearings should only be held exceptionally where it is not possible to give the judgment on the basis of the written evidence or where a court or tribunal agrees to hold an oral hearing upon a party's request. 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 court or tribunal shall **inform the claimant** of such dismissal and whether an appeal is available against such dismissal.

Oral hearing: where an oral hearing is considered necessary, it shall be held by **making use of any appropriate distance communication technology, such as videoconference or teleconference**, available to the court or tribunal, unless the use of such technology, on account of the particular circumstances of the case, is not appropriate for the fair conduct of the proceedings.

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

Taking of evidence: the court or tribunal shall use the simplest and least burdensome method of taking evidence. It may admit the taking of evidence through written statements of witnesses, experts or parties. Where the taking of evidence involves a person being heard, that hearing shall be carried out using videoconference or teleconference.

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

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

Service of documents and other written communications: the documents and judgments given shall be served by postal service, or by electronic means where such means are technically available and where the party to be served has expressly accepted in advance that documents may be served on him by electronic means.

Court fees and methods of payment: the court fees charged in a Member State for the European Small Claims Procedure shall **not be disproportionate** and shall not be higher than the court fees charged for national simplified court procedures in that Member State.

The Member States shall ensure that the parties can pay the court fees by means of **distance payment methods** and should offer at least one of the following methods of payment: (a) bank transfer; (b) credit or debit card payment; or (c) direct debit from the claimant's bank account.

Language of the certificate: each Member State may indicate the official language or languages of the institutions of the Union, other than its own, which it can accept for the certificate concerning a judgment given in the European Small Claims Procedure.

In order to **minimise the need for translation and associated costs**, the court or tribunal should, when issuing a certificate for the enforcement of a judgment given in the European Small Claims Procedure, or of a court settlement approved by or concluded before a court or tribunal in the course of that procedure, in a language other than its own, use the relevant language version of the standard form for the certificate available in a dynamic online format on the European e-Justice Portal.

Court settlements: the Regulation stipulated that a court settlement approved by or concluded before a court or tribunal in the course of the European Small Claims Procedure is enforceable **in the same way** as a judgment given in that procedure.

Information to be provided by Member States: by 13 January 2017, the Member States shall communicate to the Commission information about court fees and methods of payment, as well as about the authorities or organisations competent to give practical assistance in the Member States should be made more transparent and easily available on the internet. To that end, the Member States should provide

that information to the Commission, which in turn should ensure that it is made publicly available and widely disseminated by any appropriate means, in particular through the European e-Justice Portal.

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

Review: by 15 July 2022, the Commission shall present a report on the operation of this Regulation, including an evaluation as to whether:

- a **further increase of the limit of a claim** is appropriate in order to attain the objective of this Regulation of facilitating access to justice for citizens and small and medium-sized enterprises in cross-border cases; and
- **an extension of the scope** of the European Small Claims Procedure, in particular to claims for remuneration, is appropriate to facilitate access to justice for employees in cross-border employment disputes with their employer, after considering the full impact of such an extension.

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

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

ENTRY INTO FORCE: 13.01.2016.

APPLICATION: from 14.07.2017.

DELEGATED ACTS: the Commission shall be empowered to adopt delegated acts in order for the standard forms of the European Small Claims Procedure and of the European order for payment procedure to be kept up-to-date. It shall be conferred on the Commission for an **indeterminate period of time from 13 January 2016**. The European Parliament or the Council may formulate objections with regard to the delegated act within a period of two months of its notification (this period may be extended by two months). If the European Parliament and the Council object, the delegated act may not enter into force.