



Brussels, 17.6.2014
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Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning the Commission's 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 {COM (2013) 794 final}.

As regards the main issues raised in the Bundesrat's Opinion, the Commission would like to make the following clarifications.

In the course of the evaluation of the practical functioning of the European Small Claims Procedure the Commission found that many businesses do not use the procedure mainly because most of their claims exceed the threshold of EUR 2 000. The European business organisations confirmed that an accelerated and simplified procedure is very much to be desired in the business context. An increase in the threshold to EUR 10 000 would allow 50 % of the cross-border claims of small and medium sized enterprises to be dealt with under this simplified procedure. It should be noted that during the whole period of application of the European Small Claims Procedure no complaints have been received with regard to its fairness. Raising the threshold is not likely to change that situation.

Whilst the European Small Claims Procedure sets the highest procedural standards, it does not have the objective to stand as a European code of civil procedure. The procedure could not operate without the national procedural laws which complement it. The European Small Claims Procedure is an alternative to national procedures, and is limited to "cross-border" proceedings.

The revision of the "cross-border" definition is intended to extend the scope of the Regulation to a limited number of de facto cross-border cases where parties may have the expectation that their dispute could benefit from the European simplified procedure.

The current definition of cross-border cases is very narrow. The Commission would like to recall that Article 81 of the Treaty on Functioning of the European Union gives the Union the competence to intervene in "civil matters having cross-border implications", a concept which is broader than the current cross-border definition employed in the Regulation.

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A great number of civil cases concerns transactions that are well documented in writing. The revision of the Regulation would maintain the possibility of organising oral hearings, but in the interest of the parties and to grant them better access to justice, it limits such oral hearings to cases where judgment cannot be given on the basis of the written evidence before the court. It would seem disproportionate and clearly not required by the principle of fair trial to organise oral hearings, which usually involve travel and other costs for the parties and for the courts, where the court does not need any new evidence to pass judgment.

Refusing the parties the benefit of distance means of communication for oral hearings and for taking of evidence, where parties or other participants are located in another Member State than the Member State of the court with jurisdiction, would be equally disproportionate when compared with the one-off costs of installing such means. Moreover, even if the equipment would be acquired for the purpose of implementation of the European Small Claims Procedure its use would not be limited to this procedure. Finally, since such means are accepted in criminal cases, it seems justified to use them in small value civil cases.

The Commission points out that under the current Regulation Member States have already undertaken to provide assistance in filling in the forms. Because of the low level of implementation of this obligation in the Member States, the proposed revision aims at clarifying the scope of this obligation as well as where citizens can find the organisations charged with fulfilling this obligation. This advice should be technical in character and not amount to legal advice.

The disproportionate costs of civil proceedings concerning small claims are de facto barrier to easy access to justice and have to be addressed if the Regulation is to be effective. Article 28 of the Regulation, which requires the Commission to review, among others, the court fees, is proof that the legislator does not exclude the possibility of Union intervention in this area. The Commission agrees that certain costs, paid to external persons (e.g. costs of experts, translators, and witnesses) should not be part of the definition of court fees in the Regulation. However, reducing fees charged by the courts for the performance of their functions, (and which are paid in advance) to a proportionate amount would facilitate access to the courts. The Commission points out that the ceiling of 10 % of the value of the claim is not very restrictive and is already applied in a majority of the Member States.

Finally, the Commission has thoroughly evaluated all obstacles in the use of the European Small Claims Procedure and has already addressed in a systematic manner those which could be tackled through non-legislative means. Following the adoption of the Regulation, the Commission produced several tools facilitating the use of the European Small Claims Procedure, such as interactive, multilingual forms available on the European e-Justice Portal, guides for practitioners and citizens in all official languages explaining the procedure step-by-step, training modules for judges and legal practitioners as well as training materials for SMEs on cross-border debt recovery. While more could be done to increase the level of awareness of the European procedure to the level of awareness of national simplified procedures (which is currently twice as high), awareness-raising alone will not address the problems of disproportionate and unnecessary costs and lengthy procedures which currently discourage claimants from using it.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*