

In their written communication with the Board DG JUST accepted to amend the report along the lines of these recommendations.

(C) Main recommendations for improvements

(1) Improve the problem description and strengthen the baseline scenario. The report should better present the context for this initiative, explaining more clearly in its introduction what the ESCP actually is, when it is applicable, how it works in practice and give examples of its use. The report then should differentiate between the problems arising from poor implementation of the current rules and those relating to deficiencies in those rules such as the limited scope of the Regulation. It should base its problem definition on the results of the evaluation of the implementation of the Regulation, on the views of different categories of stakeholders, including Member States, and on other available evidence, e.g. complaints from users of the procedure. The report should better explain why the ESCP is under-used and how it compares to national simplified procedures in terms of take-up and effectiveness. It should explain links with other initiatives, in particular with Brussels I Regulation, and how these might help to address the problems identified. Moreover, the report should explain how the situation is likely to evolve without EU action, pointing out how trends and possible changes to out-of-court mechanisms and to the judicial systems of Member States.

(2) Strengthen the subsidiarity analysis and better present the options. The analysis of subsidiarity and proportionality should be reinforced when discussing the issues that have been identified in the report as being 'sensitive' (i.e. increasing the threshold, payment via distance means and imposing a cap on the level of court fees). The report should also explain why it is necessary to regulate for 'optional' uptake of the ESCP for domestic cases. The report should assess the impacts of the preferred option in total, and not only of its components, and consider whether other alternatives to the identified sub-options could be identified, for example for the revision of court fees and for the encouragement of electronic court proceedings. Finally, the objectives should not prejudice the choice of the preferred options and monitoring indicators linked to these objectives should be proposed.

(3) Better assess impacts. The report should mention which Member States would be most affected by the options. It should include a summary of the expected impacts per Member State, including estimates of costs in particular for the options of video or teleconference for oral hearings, for distance payment of court fees and for setting court fees, explaining if this leads to a shift of these costs from citizens to courts and governments. The report should explain how the estimations of costs presented in the text have been calculated. It should discuss in greater depth the feasibility and legal certainty of using 'skype' type facilities as a substitute for full conference facilities. It should better explain the consequences of increasing the threshold to €10,000 under the ESCP and the possible risks for the protection of fundamental rights. The report should assess the effectiveness of the options and explain on which criteria the initiative is going to be evaluated and why such a short timing is foreseen (three years). Finally, the report should explain how compliance with these proposals will be ensured in light of the problems identified with implementation of the current measures.

(4) Better present stakeholders' views. The report should better present the views of different categories of stakeholders consulted, particularly in the problem definition, options and impacts sections. When the choices made deviate from stakeholders' views this

should be acknowledged and justified, in particular for Member States' views on the sensitive issues that have been identified.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report and the executive summary sheet should respect the mandated presentation standards. The comparative assessment tables should be better presented, avoid repetitions, be streamlined and be more concise, to enhance their explanatory and illustrative function. Legal terms should be better explained, abbreviations should be spelled out and a glossary defining technical terms should be added. The results of the Eurobarometer survey should be presented in a clearer way. The public consultation feedback statement should be published on the consultation webpage. Finally, a problem tree should be added to better illustrate the problems, the structure of the drivers, and their consequences.

(E) IAB scrutiny process

Reference number	2013/JUST/045
External expertise used	No
Date of IAB meeting	Written procedure (17 July 2013)