

# Procedure file



The information here reflects the current status of the procedure

 Existing summary

## Identification

Reference	<b>COD/2005/0020</b>
Title	<b>Judicial cooperation in civil matters: simplified and accelerated settlement of small claims litigation</b>
Legal Basis	CE 061
Dossier of the committee	JURI/6/27155
Subject(s)	7.40.02 judicial cooperation for civil and commercial matters
Stage reached	<i>EP decision pending, 1st reading or one reading only</i>

## Stages

Stages	Documents: references			Dates	
		Source reference	Equivalent references	of document	of publication in Official Journal
Commission/Council: initial legislative document		EC COM(2005)0087	C6-0082/2005	15/03/2005	
Document annexed to the procedure		EC SEC(2005)0351		15/03/2005	
Document annexed to the procedure		EC SEC(2005)0352		15/03/2005	

## Forecasts



02/10/2006	EP: report scheduled for adoption in committee, 1st or single reading
23/10/2006	EP: probable part-session scheduled by the DG of the Presidency, 1st reading

## Agents

### European Parliament

Committee	Rapporteur / Co-rapporteurs	Political group	Appointed
Legal Affairs (responsible)	Mayer Hans-Peter	PPE-DE	21/04/2005
<i>Civil Liberties, Justice and Home Affairs (opinion)</i>	Alvaro Alexander	ADLE	06/06/2005

### European Commission and Council of the Union

European Commission DG	Justice, Freedom and Security	Transmission date : 15/03/2005	
Council of the Union	 Justice and Home Affairs	meeting : 2732	of : 01/06/2006
Council of the Union	 Justice and Home Affairs	meeting : 2696	of : 01/12/2005

## Summaries

### 01/06/2006 - Council's activities

The Council reached general agreement on a Regulation establishing a European small claims procedure.

This Regulation will simplify and speed up litigation concerning small claims in cross-border cases and reduce costs by establishing a European procedure for small claims. It will also eliminate the intermediate measures necessary to enable recognition and enforcement of judgments given in one Member State in a European Small Claims Procedure in other Member States.

The Regulation will apply, in cross-border cases, in civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2000 at the time the procedure is commenced, excluding all interest, expenses and outlays. It will not apply, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of state authority ("acta iure imperii").

The Regulation will not apply to matters concerning:

- the status or legal capacity of natural persons and maintenance obligations,
- rights in property arising out of a matrimonial relationship, wills and succession,
- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings,
- social security,
- arbitration,
- employment law,
- tenancies of immovable property, except actions on monetary claims,
- violations of privacy and rights relating to personality, including defamation.

A claimant will commence the European Small Claims Procedure by completing a claim form set out in the Annex to the text and lodging it at the competent court or tribunal directly, by post or by any other means of communication such as fax or e-mail acceptable to the Member State in which the procedure is commenced. The claim form will include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.

In the context of the internal market, individuals and businesses will benefit from this instrument when reclaiming smaller debts in a cross-border context.

#### 01/12/2005 - Council's activities

The Council reached agreement on a number of specific issues on the draft Regulation establishing a European small claims procedure.

The Council agreed a way forward in relation to certain outstanding issues, such as:

- the written nature of the procedure, with the possibility of an oral hearing when necessary;
- applying time limits to specific stages of the procedure in order to ensure an accelerated and efficient procedure;
- the use of modern communications technology (e.g. video-conference) in the conduct of hearings and taking of evidence, in accordance with national law;
- legal representation shall not be mandatory;
- regarding the costs of the proceedings, as a general rule the unsuccessful party should bear the costs of the proceedings but the costs should be proportionate to the value of the claim;
- review of implementation.

At the informal JHA Council in Newcastle in September 2005 Ministers unanimously re-affirmed their support for creating a simplified and accelerated European procedure for resolving small claims, based on the principle of proportionality. There was overwhelming support for the view that the proposal should be restricted to cross-border matters and should not cover cases which are purely internal to a Member State.

#### 15/03/2005 - Commission/Council: initial legislative document

**PURPOSE:** the establishment of a European Small Claims Procedure.

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

**CONTENT:** The aim of the proposal is to simplify, speed up and reduce the costs of litigation concerning small claims by establishing a European Small Claims Procedure to be available to litigants as an alternative to the procedures existing under the laws of the Member States which will remain unaffected.

The new procedure will apply in civil and commercial matters where the total value of a monetary or non-monetary claim does not exceed EUR 2.000.

In order to reduce costs and delays, the European Small Claims Procedure provides for several procedural simplifications. Documents shall be served on the parties by registered letter with acknowledgment of receipt (or by any simpler means such as simple letter, fax or email). The procedure shall be a written procedure, unless an oral hearing is considered necessary by the court. The court may hold a hearing through an audio, video or email conference. The parties shall not be obliged to be represented by a lawyer. The court may determine the means of proof and the extent of the taking of evidence according to its discretion. The court may admit the taking of evidence through telephone, written statements of witnesses, and an audio, video or email conference. The judgment shall be immediately enforceable notwithstanding any possible appeal and without the condition of the provision of a security.

Furthermore, the proposal will remove the intermediate measures which are still required to enable recognition and enforcement of a judgment. A judgment given in the European Small Claims Procedure will be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

15/03/2005 - Document annexed to the procedure

## COMMISSION'S IMPACT ASSESSMENT

### 1. PROBLEM IDENTIFICATION:

The disproportionate cost of litigation for small claims has led many Member States to provide simplified procedures for claims of small value that are intended to provide access to justice at a lower cost. The potential number of cross-border disputes is rising as a consequence of the increasing free movement of persons, goods and services and the obstacles to obtaining a fast and inexpensive judgment are clearly intensified in a cross-border context. The details of these procedures have been investigated and documented in detail in studies prepared for the Commission.

*For more information regarding the context of this paper, please refer to the summary of the Commission's initial proposal COM(2005)0087.*

### 2. OBJECTIVES:

The objectives of the Regulation are to simplify and speed up litigation concerning small claims by establishing a European Small Claims Procedure available to litigants as an alternative to the procedures existing under Member States' national laws - which will remain unaffected - and to abolish the intermediate measures to enable the recognition and enforcement of a judgment given in a European Small Claims Procedure in another Member State.

### 3. POLICY OPTIONS AND IMPACTS:

There are essentially two options: either to introduce new legislation or to maintain the status quo.

The objectives behind the first option, i.e. introducing new legislation, are outlined in point 2 of this summary.

The implications of maintaining the status quo are that increased intra-EU trade and exchange will only increase the number of interactions and transactions, a proportion of which will unavoidably lead to disputes. Some proportion of these will prove intractable and lead to the plaintiff seeking redress through litigation.

The potential impacts of the proposed new legislation can be summarised as follows:

- The theoretical scope of the Regulation is in the range of 5 million cases per year. An initial increase in the number of cross-border small claims can be expected which would, however, not necessarily be sustained.

- It is estimated that 7 million citizens are potentially directly involved in a European Small Claims litigation per year.

- Based on the presumption that the average claim value will be EUR 1.000; there are cases within the scope of the proposal that decide the fate of EUR 5.000.000.000.

- It is estimated that the cost of the proceedings potentially governed by the scope of the Regulation is at least another EUR 3.000.000.000. Adding case value to the direct cost of the proceedings potentially covered by the Regulation gives a 'turnover' of at least EUR 8.000.000.000.

- A reduction of the current duration of procedures between 4 and 24 months to a maximum of 6 month (as a rule) would be a significant improvement.

· It is estimated that the abolition of the recognition and enforcement procedure will reduce the potential duration of cross-border proceedings by between 1 and 18 months and will reduce the costs by EUR 250 to EUR 1.300. This will reduce the cost and duration in appropriate cases by 20%.

· Depending on the MemberState and the claim, the potential cost of a EUR 2.000 small claim varies between EUR 520 and EUR 5.400. Therefore a potential plaintiff will need to be well informed about the costs that may arise in his particular circumstances if he is to proceed without risk of finding that the costs outweigh the value of the claim.

· The outcome of the interplay between the new procedure and existing procedures is uncertain. It can be expected that individual claimants will compare factors such as the expected duration, expected cost, transparency, treatment of evidence, process of enforcement, uncertainties etc. of the new and existing procedures on a case-by-case basis.

· The experience of participants of the new procedure and the costs born by the parties will vary between Member States.

· The Regulation will affect most legal professionals (500.000 lawyers, judges and court clerks, bailiffs and a few hundred thousand of other employees at courts, law firms, debt collection agencies and many businesses).

**CONCLUSION:** There is little sign that access to justice in respect of small claims will improve **without a new legal instrument**. The number of EU citizens denied justice would increase, as would the economic costs of the inefficiency and uncertainty.

#### **4. FOLLOW UP:**

There are proximate and ultimate aspects to the monitoring and evaluation requirements of the proposed European Small Claims Procedure. These may be summarised as follows:

- Proximate aspects include monitoring the implementation of the Regulation by Member States; the extent to which consumers and businesses become aware of the Regulation and understand how to use it; and the extent to which it is used, how, where and in relation to what.

- Ultimate aspects relate to: increased confidence in the availability of the legal process to bring resolution to small claims (in relation to domestic and cross-border cases); the reduction in the extent to which uncertainty about legal process is a barrier to cross-border trade; and the increase in intra-EU trade.

- Consumer and business awareness of the procedure is best assessed through EU-wide surveys. An ex-post evaluation of the procedure would need to examine issues such as whether consumers are generally aware of the procedure; whether consumers who have had attempted to pursue a claim are aware of the procedure; and, in the latter case their reasons for using or not using it.