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**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	10075/15 JUSTCIV 152 EJUSTICE 83 CODEC 898
No. Cion doc.:	16749/13 JUSTCIV 278 EJUSTICE 114 CODEC 2695 + ADD 1 + ADD 2
Subject:	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 - Final compromise with a view to a first reading agreement

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**I. INTRODUCTION**

1. By letter of 20 November 2013, the Commission transmitted to the Council a proposal for a Regulation ("the proposed Regulation") amending Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure ("current Small Claims Regulation") 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.

2. The proposal is based on Article 81 of the Treaty on the Functioning of the European Union and is thus subject to the ordinary legislative procedure.
3. The proposed Regulation aims to modify the European Small Claims procedure and the European order for payment procedure with a view to improving the efficiency of litigation of small claims and increasing access to justice in such cases, particularly also for businesses.
4. In accordance with Articles 3 and 4a of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom<sup>1</sup> and Ireland<sup>2</sup> have notified their wish to take part in the adoption and application of the proposed Regulation.
5. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of the proposed Regulation and will not be bound by it or subject to its application.
6. The European Economic and Social Committee adopted its opinion on the proposed Regulation on 25 March 2014.

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<sup>1</sup> 7992/14 JUSTCIV 73 EJUSTICE 31 CODEC 844.

<sup>2</sup> 6877/14 JUSTCIV 47 EJUSTICE 22 CODEC 548.

## II. STATE OF PLAY AND FINAL COMPROMISE PROPOSAL

7. The Council JHA had approved its general approach on the proposed Regulation on 4 and 5 December 2014<sup>3</sup>.
8. After the Legal Affairs Committee of the European Parliament (EP) adopted its report on 16 April 2015, the Presidency started negotiations with the EP with a view to reaching an agreement on the text of the proposed Regulation at first reading.
9. A number of informal technical meetings and three trilogue meetings were held with the EP.
10. The following issues constituted the major political issues in the negotiations with the EP:
  - (a) the threshold for a small claim;
  - (b) the scope of the Small Claims Regulation (whether or not to include employment law claims and claims concerning privacy related rights in the scope);
  - (c) the title of the Small Claims Regulation;
  - (d) court fees;
  - (e) use of, and equipment of courts with, distance communication technology for oral hearings; and
  - (f) whether to use implementing acts or delegated acts for updating the standard forms applicable under the Small Claims Regulation and the European order for payment Regulation.

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<sup>3</sup> 15841/14 JUSTCIV 302 EJUSTICE 119 CODEC 2317 + ADD 1.

11. During the negotiations the EP demonstrated quite some flexibility concerning the text of the Council general approach, in particular as regards numerous technical aspects of the two Regulations under discussion, and at the third trilogue on 23 June 2015 it was possible to find an overall compromise package with the EP also on the major political issues listed in point 10 above.
12. At the meeting on 24 June 2015, JHA Counsellors expressed broad support for the compromise package reached with the EP, though some objections were expressed with regard to (i) the use of delegated acts for the standard forms and (ii) the amendment to Article 20 of the European order for payment Regulation.

**(i) Delegated acts**

13. As regards the compromise to apply delegated acts for updating the standard forms of the Small Claims Regulation and the European order for payment Regulation, the Presidency wishes to recall that this has been a key issue in the negotiations with the EP and is a core element of the compromise which needed to be offered to the EP in a package deal as a concession for the flexibility the EP has demonstrated on other issues, particularly on the threshold, the scope and court fees.

**(ii) Article 20 of the European order for payment Regulation**

14. The amendment to Article 20 of the European Payment Order Regulation ("Review of a European order for payment in exceptional cases") had been proposed by the EP and was initially addressed in an open spirit by the Council. However, during the discussions at the meeting of JHA Counsellors on 24 June 2015, it became apparent that a number of Member States, for technical legal reasons, cannot accept any amendment to Article 20 at this stage and that such amendment required further analyses of its effects on the overall concept of the European order for payment procedure and on other provisions of the Regulation (that have been left untouched by the current amending Regulation).

15. Acknowledging that more in-depth considerations and deliberations at expert level would be needed to ensure that any change to Article 20 achieves the intended legal clarity and certainty, the Presidency therefore suggests that Article 20 should not be part of the amending Regulation.
16. The Presidency will inform the EP and will try to obtain the EP's understanding for the deletion of this element from the compromise package.
17. In the light of these considerations, the Presidency invites Coreper to confirm the compromise text as set out in the Annex to this note.
18. The Presidency wishes to emphasise that the compromise with the EP has to be seen as a package, and appeals to all Member States to show the highest degree of flexibility so that an agreement at first reading can be achieved.

### **III. CONCLUSION**

19. Against this backdrop and with a view to reaching an agreement with the EP at first reading, Coreper is invited:
  - (a) to approve the compromise text set out in the Annex to this note as a package; and
  - (b) to mandate the Chair of Coreper to inform the Chair of the EP's Legal Affairs Committee by letter (with the agreed text in Annex) that an agreement exists between the two institutions if the EP adopts the text<sup>4</sup> as set out in the Annex to this note.

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<sup>4</sup> Subject to the revision of the text by the legal linguists of the European Parliament and of the Council.

2013/0403 (COD)

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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>5</sup> OJ C , , p. .

- (1) Regulation (EC) No 861/2007<sup>6</sup> established the European Small Claims Procedure. It applies to both contested and uncontested cross-border civil and commercial claims of a value not exceeding EUR 2 000. It also **ensures** that the judgments rendered within this procedure are enforceable without any intermediate procedure, in particular without the need for a declaration of enforceability in the Member State of enforcement (abolition of *exequatur*). The general aim of the Regulation was to improve access to justice by reducing costs and accelerating civil procedures with regard to claims within its scope for both consumers and businesses.
- (2) (...)
- (3) The Commission's report on the application of Regulation (EC) No 861/2007<sup>7</sup> **states that, in general, the European Small Claims Procedure is considered to have facilitated cross-border litigation for small claims in the EU. However, the report also** identified (...) obstacles to the full potential of the European Small Claims Procedure to the benefit of consumers and businesses, in particular Small and Medium Enterprises. The report **finds**, among other **things**, that the low threshold of the current Regulation deprives many potential claimants **in** cross-border disputes of the use of a simplified procedure. Furthermore, **it states that** several elements of the procedure could be further simplified in order to reduce costs and **the duration** of litigation. The report concludes that these obstacles could be removed most effectively through an amendment of Regulation **(EC) No 861/2007**.

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<sup>6</sup> OJ L 199, 31.7.2007, p. 1.

<sup>7</sup> OJ C , , p. .

- (4) Consumers should be able to use the opportunities **afforded** by the single market to the fullest extent, and their confidence should not be limited by the lack of effective legal remedies for disputes in which a cross-border element is present. The improvements of the European Small Claims Procedure proposed in this Regulation aim at providing consumers with the means of effective redress, **and** thus contribute to the practical enforcement of their rights.
- (5) Increasing the threshold up to EUR **5 000** (...) would improve access to an effective and cost efficient judicial remedy for cross-border disputes, **particularly for** small and medium enterprises. Increased access to justice would enhance the trust in cross-border transactions and contribute to the fullest use of the opportunities offered by the internal market.
- (6) **This Regulation should** apply to (...) cross-border **cases only. A cross-border case should be considered to exist when at least one of the parties is domiciled or habitually resident in a Member State bound by this Regulation other than the Member State of the court or tribunal seised.** (...)
- (7) (...)
- (8) The European Small Claims Procedure **should** be further improved by taking advantage of the technological developments in the field of justice **and of new tools available to the courts** which **can help to overcome** geographical distance and its consequences in terms of high costs and length of proceedings (...).
- (9) To further reduce the length of the procedure **and costs of litigation**, the use of modern communication technology by the parties and the courts should be further encouraged. (...)



**(9a)** For documents which need to be served on the parties **in the European Small Claims procedure**, electronic service should be on an equal footing with postal service. **To that end, this Regulation should set a general framework that allows the use of electronic service** whenever the **necessary technical means are available and where its use is compatible with the national procedural rules of the Member States involved**. As regards all other written communications between the parties **or other persons involved in the proceedings** and the courts or tribunals, electronic means should be **used as the preferred means to the extent possible, where such means are available and admissible**.

Unless the parties or other addressees are obliged under national law to accept **electronic means**, they should have **the choice as to whether** electronic means, **where such means are available and admissible, or more traditional means are to be used**, for the service of documents or for other written communication **with the court or tribunal**. The agreement to being served by electronic means is without prejudice to the right of a party to refuse to accept a document that is not written in, or accompanied by a translation into, the official language of the Member State in which the addressee is domiciled or habitually resident or, if there are several official languages in that Member State, the official language or one of the official languages of the place where the addressee is domiciled or habitually resident, or in a language, which the addressee understands<sup>8</sup>.

**(9b)** Where electronic means are used for the service of documents or for other written communication, existing best practises should be applied by the Member States to ensure that the content of the documents served is true and faithful to that of the documents sent and that the method used for the acknowledgement of receipt provides confirmation of the receipt by the addressee and of the date of receipt.

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<sup>8</sup> This right is set out in Article 6(3) of the existing Small Claims Regulation, which is not changed by the amending Regulation.

- (10) (...)
- (11) The European Small Claims Procedure is essentially a written procedure. Oral hearings **should only** be held exceptionally where it is not possible to render the judgment on the basis of the written evidence **or where a court or tribunal agrees to hold a hearing upon a party's request (...).** (...)
- (12) **In order to enable persons to be heard without requiring them to travel to the court or tribunal,** oral hearings as well as taking of evidence by hearing witnesses, experts or parties should be carried out **using appropriate** distance means of communication **available to the court or tribunal, unless due to the particular circumstances of the case, the use of such technology would not be appropriate with regard to the fair conduct of the proceedings.** (...) **As regards** persons domiciled **or habitually resident** in a Member State other than the Member State **of the court or tribunal** seised (...), oral hearings should be organised **by making use of the procedures provided for** in Council Regulation (EC) No 1206/2001<sup>9</sup>. (...) (...)
- (12a) **Member States should promote the use of distance communication technology. For the purpose of carrying out oral hearings, arrangements should be made so that courts or tribunals competent for the European Small Claims Procedure have access to appropriate distance communication technology with a view to ensure the fairness of proceedings taking into account the particular circumstances of the case. In relation to videoconference, the Council Recommendations on videoconferencing adopted by the Council on 15-16 June 2015 and the work undertaken in the framework of European e-Justice should be taken into account.**

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<sup>9</sup> Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

- (13) The potential costs of litigation may play a role in the claimant's decision to consider court action. Among other costs, court fees may discourage claimants from taking court action (...). In order to ensure access to justice for cross-border small claims, the court fees **charged in a Member State for a European Small Claims Procedure should not be disproportionate to the (...) claim and should not be higher than the court fees charged for national simplified court procedures in that Member State. This should, however, not prevent the levying of reasonable minimum court fees and should be without prejudice to the possibility to levy, under the same conditions, a separate fee for any appeal procedure against a judgment given in the European Small Claims Procedure.**
- (13a) **For the purposes of this Regulation, court fees should comprise fees and charges to be paid to the court or tribunal, the amount of which is determined in accordance with national law. They should not include, for example, sums which are transferred to third parties in the course of proceedings, such as lawyers' fees, translation costs, costs of service of documents by other entities than a court or costs paid to experts or witnesses.**
- (13b) **Effective access to justice across the European Union is a major objective. To ensure such effective access in the context of the European Small Claims Procedure, legal aid should be provided in accordance with Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules applicable to legal aid for such disputes.**
- (14) The payment of court fees should not require the claimant to **travel to the Member State of the court or tribunal or to hire a lawyer for this purpose. In order to ensure that effective access to the proceedings is also given to claimants who are situated in a Member State other than the Member State in which the court or tribunal is situated, the (...) Member States should, as a minimum, offer (...) at least one of the distance payment methods provided for by this Regulation.**

- (14a) It should be clarified 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.**
- (14b) In order to minimise the need for translation and its costs, the court or tribunal should, when issuing a certificate for the enforcement of a judgment given, or a court settlement approved by or concluded before a court or tribunal, in the course of the European Small Claims Procedure in another language than its own, use the relevant language version of the standard form for the certificate available in a dynamic on-line form on the European e-Justice Portal and it may rely on the correctness of the translation available on the Portal. Any costs for necessary translation of the text entered into the free text fields of the certificate are to be allocated as provided under the law of the Member State of the court or tribunal.**
- (14c) The Member States should provide practical assistance in filling in the standard forms provided for in the European Small Claims Procedure. Moreover, they should provide general information on the applicability of the European Small Claims Procedure and on which courts or tribunals are competent for it. However, this obligation should, not entail the provision of legal aid or of legal assistance in the form of a legal assessment of a specific case. Member States should be free to decide on the most appropriate ways and means of providing such practical assistance and general information and it should be left to the Member States to decide which bodies they task with those obligations. The general information on the applicability of the European Small Claims Procedure and on the competent courts or tribunals may also be provided by way of reference to information given in brochures or handbooks, on national websites or on the European e-Justice Portal, or by appropriate support organisations, such as the ECC (European Consumer Centres) network.**

- (15) Information about the court fees and the 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 this information to the Commission, which in turn should ensure that it is made publicly available and widely disseminated **through any appropriate means, particularly through the European E-Justice Portal**.
- (16) It should be clarified in Regulation (EC) No 1896/2006 that where a dispute falls within the scope of the European Small Claims Procedure, this 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.
- (17) **In order to further facilitate the access to the European Small Claims Procedure, the standard claim form should not only be made available at the courts and tribunals competent for the European Small Claims Procedure, but it should also be made accessible through appropriate national websites. This obligation could be met by providing a link to the European E-Justice Portal on the relevant national websites.**

To improve the protection of the defendant, the standard forms **provided for by** Regulation (EC) No 861/2007 should contain information about the consequences for the defendant if he does not object to the claim or does not **attend an oral hearing when summoned**, in particular the possibility that a judgment may be given or enforced against **him** and that liability may be incurred for costs **of the proceedings. The standard forms should also contain information about the fact that the successful party may not be able to recover the costs of the proceedings to the extent that they are unnecessarily incurred or are disproportionate to the value of the claim.**

- (18) **In order that the standard forms of the European Small Claims Procedure and of the European order for payment procedure are kept up-to-date, (...)** the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of changes to **the Annexes I, II, III and IV of Regulation (EC) No 861/2007 and in respect of changes to the Annexes I, II, III, IV, V, VI and VII of Regulation (EC) No 1896/2006**. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (19) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), the United Kingdom and Ireland have **notified** their wish to take part in the adoption and application of this Regulation.
- (20) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not **taking part** in the adoption of this Regulation and is **not** bound by it **or** subject to its application.
- (21) Regulations (EC) No 861/2007 and (EC) No 1896/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 861/2007 is amended as follows:

- (1) Article 2 is replaced by the following:

*"Article 2*

*Scope*

1. This Regulation shall apply to civil and commercial matters **in cross-border cases as defined in Article 3**, 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 (*acta jure imperii*).
2. (...) <sup>10</sup>

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<sup>10</sup> The cross-border definition has been moved back to Article 3.

3. This Regulation shall not apply to matters concerning<sup>11</sup>:
- (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;**
  - (ba) maintenance obligations **arising from a family relationship, parentage, marriage or affinity;**
  - (bb) wills and succession, **including maintenance obligations arising by reason of death;**
  - (c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
  - (d) social security;
  - (e) arbitration;
  - (f) employment law;
  - (g) tenancies of immovable property, with the exception of actions on monetary claims;  
or
  - (h) violations of privacy and of rights relating to personality, including defamation.
4. (...)”

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<sup>11</sup> Note to translators: the wording of letters (a) to (e) has been taken from Article 1(2) letters (a) to (f) of Regulation (EU) No 1215/2012.



(2) Article 3, **paragraphs 2 and 3**, are replaced by the following<sup>12</sup>:

"2. Domicile shall be determined in accordance with (...) Article 62 and 63 of Regulation (EU) No 1215/2012.

3. **The relevant moment for determining whether a case is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction."**

(3) Article 4 is amended as follows:

(a) In paragraph 4 second subparagraph, the following sentence is added:

"The court **or tribunal** shall inform the claimant of such dismissal **and whether an appeal**<sup>13</sup> **is available against such dismissal."**

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<sup>12</sup> Incorporating this change, Article 3 as a whole would read as follows:

*"Article 3  
Cross-border cases*

1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised.
2. Domicile shall be determined in accordance with Article **62** and **63** of Regulation (EU) **No 1215/2012**.
3. The relevant moment for determining whether **a case is a** cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction.

<sup>13</sup> Note to translators: the word "appeal" should be translated as in Article 11(2) of Regulation (EC) No 1896/2006, for instance it should be "recours" in French and "Rechtsmittel" in German.

(b) Paragraph 5 is replaced by the following:

"5. Member States shall ensure that the standard claim Form A is available, (...) at all courts and tribunals at which the European Small Claims Procedure can be commenced **and is accessible (...) through relevant national** websites (...)."

(4) In Article 5, paragraph 1 is replaced by the following:

"1. The European Small Claims Procedure shall be a written procedure.

**1a.**<sup>14</sup> The court or tribunal shall hold an oral hearing **only** if it considers that it is not possible to render the judgment on the basis of the written evidence (...) or if a party so requests. 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 refusal may not be contested separately from any challenge of the judgment itself.

(...)"

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<sup>14</sup> With a view to emphasising the written nature of the procedure even more strongly, paragraph 1 was split into two separate paragraphs.

(5) Article 8 is replaced by the following:

*"Article 8  
Oral hearing*

1. **Where an oral hearing is considered necessary in accordance with Article 5(1a), 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, due to the particular circumstances of the case, is not appropriate for the fair conduct of the proceedings.**

**Where the person to be heard is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised (...), that person shall attend any oral hearing by way of videoconference, teleconference or other appropriate distance communication technology by making use of the procedures provided for in Council Regulation (EC) No 1206/2001.**

2. **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 the possible costs incurred by them, would be disproportionate to the claim.**
3. **A party summoned to attend an oral hearing through distance communication technology may request to (...) be physically present at the hearing (...). The standard claim form A and the standard answer form C established in accordance with the procedure referred to in Article 27(2) shall provide information to the parties that the recovery of any costs incurred by a party in being physically present at the hearing upon request of that party is subject to the conditions laid down in Article 16.**
4. **The decision of the court or tribunal deciding on a request provided for in paragraphs 2 and 3 may not be contested separately from any challenge of the judgment itself."**

(6) Article 9 is replaced by the following:

*"Article 9  
Taking of evidence*

1. The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. **It** shall use the simplest and least burdensome method of taking evidence.
2. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties.
3. Where taking of evidence implies that a person is heard, the hearing shall be carried out in accordance with the conditions set out in Article 8.
4. The court or tribunal may take expert evidence or oral testimony only if it is not possible to render the judgment on the basis of the **other** evidence (...)."

(7) Article 11 is replaced by the following:

*"Article 11  
Assistance for the parties*

1. The Member States shall ensure that the parties can 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 render a judgment in the European Small Claims Procedure (...)**. **This 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.**
2. The Member States shall ensure that information on the authorities or organisations competent to give assistance in accordance with paragraph 1 is available (...) at all courts and tribunals at which the European Small Claims Procedure can be commenced (...) **and is accessible through relevant national websites."**

(8) Article 13 is replaced by the following:

*"Article 13*

*Service of documents and other communications*

1. The documents mentioned in Article 5(2) **and (6)** and **a judgment given in accordance with Article 7** shall be served
  - (a) by postal **service**, or
  - (b) by electronic means
    - (i) **where such means are technically available and admissible under the procedural rules of the Member State in which the European Small Claims Procedure is conducted and, in case that the two Member States are different, of the Member State in which the addressee is domiciled or habitually resident; and**
    - (ii) **where the party to be served has expressly accepted in advance that documents may be served on him by electronic means or is, in accordance with the procedural rules of the Member State in which the addressee is domiciled or habitually resident, under a legal obligation to accept that specific method of service (...).**

**The service shall be** attested by an acknowledgment of receipt including the date of receipt.

2. All written communications not referred to in paragraph 1 between the court or tribunal and the parties **or other persons involved in the proceedings** shall be carried out by electronic means attested by an acknowledgment of receipt, where such means are **technically available and admissible under the procedural rules of the Member State in which the European Small Claims procedure is conducted provided that the party or person has accepted** such means of communication **or is, in accordance with the procedural rules of the Member State in which the recipient is domiciled or habitually resident, under a legal obligation to accept such means of communication.**
- 2a. **In addition to any other means available under national law for expressing the in advance acceptance required under paragraphs 1 and 2 for the use of electronic means, it shall be possible to express such acceptance by means of the standard claim form A and the standard answer form C.**
3. If service in accordance with paragraph 1 is not possible, service may be effected by any of the methods provided for in Articles 13 or 14 of Regulation (EC) No 1896/2006.

If communication in accordance with paragraph 2 is not possible, **or, due to the particular circumstances of the case, not appropriate**, any other method of communication **admissible under the (...) law of the Member State in which the procedure is conducted** may be used."



(9) The following Article is inserted:

*"Article 15a*  
*Methods of payment of court fees*

1. The court fees charged **in a Member State** for a 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.**
2. The Member States shall ensure that the parties can pay the court fees by means of distance payment methods **which allow the parties to make the payment also from a Member State other than the Member State in which the court or tribunal is situated, by offering 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."**

(10) In Article 17, paragraph 2 is replaced by the following:

"2. Article 15a and 16 shall apply to any appeal."

(11) Article 18 is replaced by the following:

*"Article 18*

*Review of the judgment in exceptional cases*

1. A defendant who did not enter an appearance shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the **competent court (...)** of the Member State **in which** the judgment was given, **where**:
  - (a) the defendant was not served with the claim form **or, in the event of an oral hearing, was not summoned to that hearing** in sufficient time and in such a way as to enable him to arrange for his defence; or
  - (b) the defendant was prevented from contesting the claim by reason of *force majeure* or due to extraordinary circumstances without any fault on his part;unless the defendant failed to challenge the judgment when it was possible for him to do so.
2. The time limit for applying for a review shall be 30 days. It shall run from the day the defendant was effectively acquainted with the contents of the judgment and was able to react, at the latest from the date of the first enforcement measure having the effect of making property of the defendant non-disposable in whole or in part. No extension of the time limit may be granted (...).
3. If the court rejects the application for a review referred to in paragraph 1 on the basis that none of the grounds for a review set out in that paragraph apply, the judgment shall remain in force.

If the court decides that a review is justified for one of the reasons laid down in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void. However, the **claimant** shall not lose the benefit of **any** interruption of prescription or limitation periods **where such an interruption applies under national law."**

**(11a) Article 20(2) is replaced by the following:**

**"2. At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost. Upon request, the court or tribunal shall provide that party with the certificate in any other official language of the institutions of the Union by making use of the multilingual dynamic standard form available on the European e-Justice Portal. Nothing in this Regulation shall oblige the court or tribunal to provide a translation and/or transliteration of the text entered into the free text fields of the certificate."**<sup>15</sup>

**(12) Article 21 paragraph 2 letter (b) is replaced by the following:**

**"(b) (...) the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept."**<sup>16</sup>

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<sup>15</sup> The first sentence corresponds to the existing text of Article 20(2). The second and third sentence are new and have to be read in context with point (b) of Article 21(2) and with Article 21a(2).

<sup>16</sup> In order to enhance the readability of point (b) of Article 21(2), the last two sentences of this provision have been moved to a separate (new) Article 21a.

**(12a) The following Article is inserted:**

*"Article 21a*

*Language of the certificate*

1. Each Member State **may** indicate **the** official language or languages of the institutions of the European Union other than its own which it can accept **for the certificate referred to in Article 20(2)**.
2. **Any translation of the information on the substance of the judgment provided in a certificate as referred to in Article 20(2) shall be done by a person qualified to make translations in one of the Member States."**

**(12b) The following Article is inserted:**

*"Article 23a*

*Court settlements<sup>17</sup>*

**A court settlement approved by or concluded before a court or tribunal in the course of a European Small Claims Procedure that is enforceable in the Member State in which the procedure was conducted shall be recognised and enforced in another Member State under the same conditions as a judgment given in the European Small Claims Procedure.**

**The provisions of Chapter III shall apply to court settlements, as appropriate."**

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<sup>17</sup> This amendment should not entail the creation of a new certificate but should be implemented by inserting at the appropriate places in the existing standard form D (certificate) a reference also to court settlements.

(13) Article 25 is replaced by the following:

*"Article 25*

*Information to be provided by Member States*

1. By ...<sup>18</sup> the Member States shall communicate to the Commission:
  - (a) which courts or tribunals have jurisdiction to give a judgment in the European Small Claims Procedure;
  - (b) which means of communication are accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1);
  - (ba) which authorities or organisations are competent to provide practical assistance in accordance with Article 11;**
  - (bb) which means of electronic service and communication are technically available and are admissible under their procedural rules in accordance with Article 13(1), (2) and (3), and which means of in advance acceptance for the use of electronic means as required by Articles 13(1) and (2), if any, are available under their law;**
  - (bc) which persons or types of professions, if any, are under a legal obligation to accept service or other forms of communications by electronic means in accordance with Article 13(1) and (2);**
  - (c) what (...) the court fees for the European Small Claims Procedure **are** or how they are calculated, as well as the methods of payment accepted for the payment of court fees in accordance with Article 15a;

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<sup>18</sup> Six months before the date of application of this Regulation.

- (d) *(moved to point (b1))*
- (e) whether an appeal is available under their procedural law in accordance with Article 17, the time **period** within which such an appeal must be lodged and with which court or tribunal the appeal may be lodged;
- (f) the procedures for applying for a review as provided for in Article 18 **and which courts are competent for such review**;
- (g) which languages **they accept** pursuant to Article 21**a(1)**; and
- (h) which authorities have competence with respect to enforcement and which authorities have competence for the purposes of the application of Article 23.

Member States shall apprise the Commission of any subsequent changes to that information.

2. The Commission shall make the information **communicated** in accordance with paragraph 1 publicly available **through** any appropriate means, such as through **the European E-Justice Portal.**"

- (14) Article 26 is replaced by the following:

*"Article 26  
Amendment of the Annexes*

The Commission shall be empowered to adopt delegated acts in accordance with Article 27 concerning the amendment of Annexes I, II, III and IV."

(15) Article 27 is replaced by the following:

*"Article 27  
Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 26 shall be conferred on the Commission for an indeterminate period of time from [*date of entry into force*].
3. The delegation of power referred to in Article 26 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 26 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."

(16) Article 28 shall be replaced by the following:

*"Article 28*

*Review*

1. By ...<sup>19</sup>, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the operation of this Regulation, **including an evaluation**
  - (a) **as to whether a further increase of the threshold referred to in Article 2(1) is appropriate in order to attain the objective of the Regulation to facilitate access to justice for citizens and SMEs in cross-border cases; and**
  - (b) **as to whether an extension of the scope of the European Small Claims Procedure is appropriate to facilitate access to justice for employees in cross-border employment disputes with their employer, in particular to claims for remuneration after considering the full impact of such an extension.**

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

To that end and by ...<sup>20</sup>, Member States shall provide the Commission with information relating to the number of applications under the European Small Claims Procedure as well as the number of requests for enforcement of judgments given in a European Small Claims Procedure.

2. **By ...<sup>21</sup>, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the dissemination of information about the European Small Claims Procedure in the Member States, and may produce recommendations related to improving the publicity of this instrument."**

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<sup>19</sup> 5 years after the date of application of this Regulation.

<sup>20</sup> 4 years after the date of application of this Regulation.

<sup>21</sup> 2 years after the date of application of this Regulation.



*Article 2*

**Regulation (EC) No 1896/2006 is amended as follows:**

**(1) Article 7(4) is replaced by the following:**

**"4. In an Appendix to the application the claimant may indicate to the court which, if any, of the procedures listed in points (a) and (b) of Article 17(1) he requests to be applied to his claim in the subsequent civil proceedings in the event the defendant lodges a statement of opposition against the European order for payment.**

**In that Appendix the claimant may also indicate to the court that he opposes a transfer to civil proceedings within the meaning of point (a) or (b) of Article 17(1) in the event of opposition by the defendant. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued."**

**(2) Article 17 (...) is replaced by the following:**

*"Article 17*

*Effect of the lodging of a statement of opposition*

1. If a statement of opposition is lodged within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin unless the claimant has explicitly requested that the proceedings be terminated in that event. The proceedings shall continue in accordance with the rules of:

- (a) the **European Small Claims** Procedure laid down in Regulation (EC) No 861/2007, **if applicable**; or
- (b) **any appropriate national** civil procedure.

- 1a.** Where the claimant has not indicated which of the procedures listed in points (a) and (b) of paragraph 1 he requests to be applied to his claim in the proceedings that ensue in the event of a statement of opposition or where the claimant has requested the European Small Claims Procedure laid down in Regulation (EC) No 861/2007 to be applied to a claim that does not fall within the scope of that Regulation, the proceedings shall be transferred to the appropriate national civil procedure, unless the claimant explicitly requested that such transfer not be made.<sup>22</sup>
- 1b.** Where the claimant has pursued his claim through the European order for payment procedure, nothing under national law shall prejudice his position in subsequent civil proceedings.
2. The transfer to civil proceedings within the meaning of points (a) and (b) of paragraph 1 shall be governed by the law of the Member State of origin.
3. The claimant shall be informed whether the defendant has lodged a statement of opposition and of any transfer to civil proceedings within the meaning of paragraph 1."
- (3) Article 25(1) is replaced by the following**
- "1. Where, in a Member State, the court fees for civil proceedings within the meaning of point (a) or point (b) of Article 17(1), as applicable, are equivalent to or higher than those of the European order for payment procedure, the total of the court fees for a European order for payment procedure and for the civil proceedings that ensue in the event of a statement of opposition in accordance with Article 17(1) shall not exceed the fees for those proceedings without a preceding European order for payment procedure in that Member State.**

**No additional court fees may be charged in a Member State for the civil proceedings that ensue in the event of a statement of opposition in accordance with point (a) or point (b) of Article 17(1), as applicable, if the court fees for that kind of proceedings in that Member State are lower than those of the European order for payment procedure."**

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<sup>22</sup> Appendix 2 to the application form will have to be amended to set out the different options the claimant can choose.

- (4) Article 30 is replaced by the following:

*"Article 30  
Amendment of the Annexes*

**The Commission shall be empowered to adopt delegated acts in accordance with Article 31 concerning the amendment of Annexes I, II, III, IV, V, VI and VII."**

- (5) Article 31 is replaced by the following:

*"Article 31  
Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 30 shall be conferred on the Commission for an indeterminate period of time from [*date of entry into force*].
3. The delegation of power referred to in Article 30 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. **A delegated act adopted pursuant to Article 30 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."**

*Article 3*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from ...<sup>23</sup> **with the exception of point (13) of Article 1 amending Article 25 of Regulation (EC) No 861/2007, which shall apply from ...<sup>24</sup>.**

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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<sup>23</sup> 18 months after the entry into force of this Regulation.

<sup>24</sup> Six months before the date of application of this Regulation.