

CCBE RESPONSE TO THE PUBLIC CONSULTATION ON THE EUROPEAN SMALL CLAIMS PROCEDURE

18/05/2013

I. Background information

This consultation is addressed to the broadest possible, as it is important to get views and input from all interested parties and stakeholders. In order to best analyse the responses received, there is a need for a limited amount of background information about you as a respondent.

1. Please indicate your role for the purpose of this consultation (compulsory)

- Private individual
- Company

Please indicate the size of your company:

- large (more than 250 employees)
- medium (less than 250 employees)
- small (less than 50 employees)
- micro (less than 10 employees)
- Judge
- Lawyer
- Court staff member
- Public authority
- Academic
- Consumer organisation
- Other**, please specify : **Lawyers organisation**

2. Have you had practical experience with the European Small Claims procedure and if so, in what capacity? (compulsory)

- Yes
 - as a plaintiff acting as
 - consumer
 - SME
 - other
 - as a defendant acting as
 - consumer
 - SME
 - other
- as a judge

X as a lawyer

as a court staff member

as a bailiff

as other legal practitioner

other (please specify)

No

3. Please indicate the country where you are located: (compulsory)

X EU Country: Belgium

Postal Code: **1000**

Municipality: **Brussels**

Non- EU Country:

Please specify: ...

4. Please provide your contact information (name, address and email address) (compulsory)

Council of Bars and Law Societies of Europe (CCBE)

Rue Joseph II, 40/8 – 1000 BRUXELLES

Tel.: +32 (0)2 234 65 10 - Fax: +32 (0)2 234 65 11

Contact: Karine Métayer

Email: metayer@ccbe.eu

II. General assessment

Q1 – Do you think that the European Small Claims Procedure is a helpful and efficient tool for consumers in cross border disputes?

No. If no, what are the main issues that prevent it from being useful?

X Yes.

Q2 – Do you think that the European Small Claims Procedure is a helpful and efficient tool for SMEs doing cross-border transactions?

X Yes.

No. If no, what are the main issues that prevent it from being useful?

III. Specific issues

Q3 – Do you think that the standard forms provided for in the European Small Claims Procedure Regulation are comprehensible and "user friendly"?

Yes.

X No. If no, which elements could be changed/improved?

The document should draw the defendant's attention to the fact that it is actually a legal action and that replaces a writ of summons. Standard forms should reflect all procedural rights. It should not undermine the rights of citizens and the laws that govern judicial actors.

Q4 – Does the Member State in which you are domiciled provide free of charge assistance in completing the application form?

O Yes. If yes, how is this organised? How does it work in practice? How is information of the assistance disseminated?

O No.

This depends on the Member States' systems. We refer to the [CCBE Legal Aid Recommendations](#) adopted in 2010, which among other things, proposed to set up a specific EU budget item to ensure the development of a European legal-aid scheme and to support national schemes within Member States.

Q5 – There are several Member States that have increased the threshold amount for claims in their national simplified procedures. Should the European Small Claims Procedure follow this trend and be available for claims e.g. up to 10.000 euro?

O Yes. If yes, would you propose any other upper limit?

X No.

There is no need to increase the threshold. The regulation is intended to cover small claims only.

Q6 – The European Small Claims Procedure sets certain procedural deadlines that aim at speeding up the proceedings; however there is no sanction for the non-observance of such deadlines. Do you think that the Regulation should be strengthened to address the effect of lapse of time provided for under the Regulation?

X Yes. If yes, do you have specific proposals for such strengthening?

The Regulation establishing the European Small Claims Procedure states that, "if the claimant, which is invited by the tribunal to complete or rectify the claim form, doesn't answer within the time specified, the application shall be dismissed" (Art. 4, §4, al. 2). The same sanction for non-observance of deadlines could be expanded to situations where the tribunal demands to the claimant further details concerning the claim (Art. 7, §1, a).

Recital Number 19, concerning translations, states: "a party may refuse to accept a document at the time of service or by returning the document within one week if it is not written in, or accompanied by a translation into, the official language of the Member State addressed (...) or a language that the addressee understands". In order to make the time limit binding, this recital could be transformed into a provision of the Regulation.

In the case of non-observance of a tribunal deadline to provide the translation of a document (Art. 6, §§ 2 and 3), the tribunal should be authorised to issue a judgment without regard to the translation.

In general, the possibility of a tribunal to extend time limits could be framed as follows:

- *the Regulation could provide a maximum time, at the end of which the claimant would be authorized to update his claim form¹;*
- *In any cases where the tribunal decides to extend a time limit, the tribunal should automatically inform the parties of its decision, in order to ensure visibility and transparency of the procedure.*

O No

Q7 – The court fees, in particular those paid at the start of the proceedings may have a deterrent effect on the use of the European Small Claims Procedure. Do you think that the issue of court fees should be addressed in the possible revision to tackle such problem?

X Yes. If yes, how do you propose this should be done?

Court fees should be proportionate to the amount of the claim. They should be transparent and should not impede access to justice.

¹ See also E. GUINCHARD, "Le Règlement des petits litiges: un premier bilan plutôt décevant", in *Recouvrement de créances sans frontières*, Larcier, Bruxelles, 2013, p. 76, note 152.

No

Q8 – The European Small Claims Procedure, similarly to other civil procedures entail costs for the parties, relating to e.g. translations, service of documents, travel expenses in case of a hearing, remuneration of witnesses etc. Do you consider that these costs should be addressed in the possible revision?

Yes. If yes, how the costs of the European Small Claims Procedure could be reduced?

X No.

These costs should be covered by legal aid (when applicable), which implies an effective legal aid scheme in all Member States.

As indicated in the [CCBE Legal Aid Recommendations](#) (referred to in Question 4), additional costs implied by cross-border cases should also be covered by legal aid, when applicable (e.g., interpretation and translation).

Q9 – Though the European Small Claims Procedure is a written procedure, the court may decide to hold a hearing. In order to increase the efficiency and speed of the European Small Claims Procedure, could the discretion of the court to hold an oral hearing be limited in some circumstances?

Yes, If yes, what would be such circumstances?

X No

Q10 – The Member States may accept a transmission of the European Small Claims Procedure application by any means of communication, including email. The use of electronic means could be further improved. Do you think that the seller, or the service provider who communicates with the customers through electronic means, should legally accept to receive the documents in the framework of the European Small Claims Procedure through the same means?

Yes. If yes, would this need any conditions?

No

This aspect should be regulated in the context of EU initiatives on business-to-consumer relationships and the enhancement of e-justice tools. In this context, the security of electronic communication is very important in order to avoid any misrepresentation. Any electronic system must not – because of ease of technology or harmonized procedures – undermine the rights of citizens and the laws that govern judicial actors.

Q11 – The courts competent for the European Small Claims Procedure are mostly the numerous lowest instance courts that may not be appropriately equipped to carry out the procedure. For example the electronic communication and videoconferencing could increase efficiency of the European Small Claims Procedure and reduce its costs. Do you think that there is need for a better organisation and/or for adequate equipment of courts?

X Yes. If yes, what would you propose for better organisation of courts or for their better equipment?

The CCBE refers to e-Codex, a pilot project on small claims that will make the procedure fully available online (see response to Question 14). As already mentioned in response to Question 10, any electronic system must not – because of ease of technology or harmonized procedures – undermine the rights of citizens and the laws that govern judicial actors.

There is a serious need for the improvement of equipment in many Member States to carry out the procedure as provided by the Regulation.

There is also a need for better organisation of the courts. In this regard, the number of national courts having jurisdiction for European small claims could be limited. Such a solution would make the procedure much more accessible.

However, national courts should not be exclusively competent for such small claims. Firstly, the Regulation does not have, at this time, enough success for such a solution. Secondly, it

is important that the judge maintain his ordinary activities in order to avoid two-tier justice. On that point, there is a difference with the European Order for Payment Procedure, which does not involve a full examination of the claim. This examination "may take the form of an automated procedure" and could then be done by a court exclusively competent for the treatment of applications for European Orders for Payment.

No

Q13 – Whilst a judgment given in the European Small Claims Procedure is to be directly enforced within the European Union, the Commission has received complaints on the lack of information on the national enforcement rules and procedures in situations when the judgement resulting from the European Small Claims Procedure is to be enforced in another Member State. Do you think that the Member States should be required to provide structured and updated information on the national enforcement procedures for the judgements resulting from the European Small Claims Procedure, including the possible costs, addresses, etc.?

X Yes. If yes, how could this be realised?

This question is much broader than the European Small Claims Procedure, since it concerns all cross-border litigation.

The European Judicial Network should be used to provide structured and updated information on the national enforcement procedures.

The central body instituted by Regulation N° 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) could also take part in the gathering and the diffusion of information.

No

Q14 – Are there other elements of the European Small Claims Procedure than those discussed above that should be reformed/improved? You can also write here any other comments that you may have concerning the European Small Claims Procedure. If yes, what do you propose?

X Yes

- *Consumers, PME's, lawyers and courts should be much more informed about the European Small Claims Procedure. Member States should take their obligation of collaboration provided by the Regulation² much more seriously. They should enforce specific legislation for the utilisation of the European Small Claims Procedure and communicate about it. This communication should be complete and correct³. It would be useful to publish statistical data on the use of the procedure in various Member States.*
- *The CCBE would like to underline the crucial role that lawyers play in small claims proceedings. Citizen's legal interests are best safeguarded by the use of a lawyer. Lawyers have the training to protect the needs of citizens, whether claims are large or small. Especially in cross-border cases, it is of particular importance that legal advice is provided by a professional who has the necessary qualifications and expertise. Lawyers also have an important role to play in order to avoid the risk of misjudgement and unprofessional or unethical handling of cases, which are detrimental to citizens and to general trust in the legal system. Therefore, the CCBE would strongly recommend that any future legislation at the EU level should take into consideration the necessity of maintaining high professional standards in all legal proceedings, whether large or small, in the interest of citizens. We know from certain Member States that the European Small Claims Procedure is mainly used by lawyers and that lawyers act as an information disseminators in these countries. Citizens should be made aware of the risks of initiating a small claims procedure without seeking prior advice from a lawyer, especially if the threshold is increased.*
- *The CCBE would like to refer to the e-Codex pilot project on small claims, which will make the procedure fully available online, hence enabling European Union citizens and companies to process civil claims and deliver related documents online. It will be simpler,*

² E. GUINCHARD, "Le Règlement des petits litiges: un premier bilan plutôt décevant", in *Recouvrement de créances sans frontières*, Larcier, Bruxelles, 2013, pp. 81 et s.

³ For Belgium, see esp. A. BERTHE "La procédure européenne de Règlement des petits litiges en pratique", *Chronique de droit à l'usage des juges de paix et de police*, 2012, vol. 17, p. 320, note 75.

faster and more secure. e-CODEX will help to eliminate existing barriers in legal disputes that cross national borders. Seven Member States are participating in the pilot project.

- *It would be useful for the Commission to produce teaching material on the European Small Claims Procedure that could be used in the training of legal professionals.*
- *Finally, several judges frequently raise concern about the actual domicile of the defendant. They would like to be able to check the domicile mentioned by the claimant in its claim Form. This verification has proven to be very difficult when the defendant has its domicile in another state than the court's one. Article 4 of the Regulation could be amended to state that the claimant has to provide any appropriate document establishing the domicile of the defendant. This document would not have to be an official document because of the difficulty and the costs for the claimant, which is generally domiciled in another Member State, to obtain such a document.*