



The Consumer Voice in Europe

European Small Claims

BEUC response to European Commission consultation

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Summary

BEUC welcomes the Commission consultation which aims to identify solutions to the practical burdens consumers face when trying to use European Small Claims Procedures. The Regulation was adopted with a view to simplify access to justice for citizens with cross-border disputes of small value (the current limit in the Regulation is 2000 EUR), but so far remains of limited use.

Various obstacles; such as language, costs and lack of information about the jurisdiction and enforcement procedures, prevent the procedure from being widely used. In addition, awareness of the European Small Claims procedure (hereafter 'ESCP') seems to be very low, both among consumers and the judiciary.

Some of the difficulties consumers face – completing standard forms, understanding jurisdiction, understanding the responses and requests of foreign courts, choosing the right evidence to be translated and submitted – can be solved by establishing **assistance points** in each Member State. Advice is often also needed at the enforcement stage, where consumers have problems in serving the judgement to the counterpart or finding the appropriate enforcement body or official.

Every step of the procedure can entail additional costs (for translations, fees for enforcement, service of documents etc.), so this **information should be available** well in advance in order for the consumer to evaluate if it is worthwhile to take the case to court.

The issue of court fees is very important and should be addressed in the revision. If the **court fees** are disproportionately high in comparison to the claim, consumers are discouraged from using the procedure. Therefore the level of the court fees has to take account of the level of the claim.

It is also worth considering whether the **enforcement procedure** for European Small Claims should be free of charge. It is remarkable that in national enforcement procedures the cost of initiating or pursuing enforcement might even outweigh the value of the claim.

We call for the **revision of the European Small Claims Regulation** in order to address the current shortcomings and make it a useful redress tool for consumers.

BEUC welcomes the European Commission consultation on the European Small Claims Procedure. For consumers who are ready to go to court with their dispute, simplified small claims procedures can be very useful in terms of saving time and resources. However, it is crucial to ensure small claims procedures are in practice simpler and more accessible than 'conventional' court redress and do not have any hidden burdens for consumers. In addition, as the European Small Claims Procedure applies to cross-border cases, it has to take into account that the situation for the parties is already complicated in terms of different languages, unknown procedures etc.

European Small Claims Procedures are still very much under used and various reports¹ identify a number of burdens for the parties (especially the plaintiff) to effectively benefit from it. **Therefore we call for the revision of the European Small Claims Regulation in order to address the shortcomings.**

We detail our suggestions in answering the consultation questions below.

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?

Yes

No.

If no, what are the main issues which prevent it from being useful?

European Small Claims Procedures have ample potential to be useful for consumers in cross-border disputes. At the moment however, consumers still face too many practical burdens when using it and it is not as effective as it could be. Various obstacles such as **language, costs, lack of information about the jurisdiction and enforcement procedures** prevent the procedure from being widely used.

In addition, the **awareness** of the ESCP seems to be very low. Consumers who are unaware of the redress mechanisms available to them are unlikely to use them irrespective of how well designed they are.

Even worse, a consumer who knows of the procedure can be prevented from using it by uninformed courts. According to European Consumer Centre (ECC) study (2012), as much as 47% of courts and judges in Member States are unaware of the ESCP. This is also supported by a survey conducted by one of our member organisations, Test-Achats (Belgium) in 2010:

Test-Achats conducted a 'mystery shopping' survey 'justices of the peace' and 1st instance tribunals in all three Regions of Belgium: it transpired that the justices of the peace were not at all aware of the ESCP, and only 2 out of 5 tribunals had some information on the subject. In neither case were standard forms available on the premises, even though this is an obligation under the Regulation.

¹ European Consumer Centre's study 'Procédure de règlement des petits litiges et injonction de payer Européenne' 2011; European Parliament 'study on Cross Border Alternative Dispute Resolution in the European Union' 2012; ECC-Net European Small Claims Procedure report, 2012.

In this respect more information to judges and courts would be necessary to get them acquainted with the ESCP. Another issue to point out is that some countries (for instance the UK) have well functioning national small claims procedures which consumers prefer to use to launch their claim. It is only if the defendant does not comply with the court order that the consumer needs to get involved with foreign courts.

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

Yes

No.

If no, what are the main issues which prevent it from being useful?

N/A

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

No

If no, which elements could be changed/improved?

Completing the standard form can be a big challenge for the average consumer. The standard ESCP forms are **too technical** and contain specific legal language and terms (for example, "claimant", "defendant", "jurisdiction", "counterclaim"). The complexity of the forms, combined with no assistance with filling them in are two of the factors which discourage consumers from using the procedure.

First, simpler terms must be used. Whenever possible, should be an explanation of what the term means and its implication in practical terms (for instance, when choosing the jurisdiction).

Secondly, assistance with filling in the forms has to be available free of charge (please see our answer to the subsequent question).

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

Yes

If yes, how is this organised?

How does it work in practice?

How is information of the assistance disseminated?

No

The availability of assistance in completing the forms is crucial for consumers, especially if the ESCP intends to discourage the use of lawyers. However, such assistance is generally unavailable in Member States.

We also note that, in general, the availability of legal aid and free of charge assistance is diminishing due to economic constraints in many Member States, thereby making this problem even more acute.

In addition, **assistance should not be limited to completing the form**. If consumers are to represent themselves in any meaningful way they must have access to **appropriate preliminary advice** which equips them suitably to represent themselves, or highlight the risks of pursuing a case.

Companies would always hire a lawyer, even in Small Claims procedures. This means that consumers once again turn out to be a weaker party, as they are not able to construct the arguments in the same way as experienced lawyers, may not know which evidence is important to submit and can be intimidated by complicated legal notions used by other parties.

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?

Yes

If yes, would you propose any other upper limit?

No

Increasing the threshold amount could help increase use of the procedure, and as a result awareness of it, especially among the judiciary. The more ESCPs are used, the more national courts will become acquainted to it and thus easier for consumers to get the necessary information about it in courts.

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?

Yes

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

No

The main problem in terms of non-observance of deadlines is that those deadlines are not observed by courts (nor by the parties to the procedure) and it might take much longer than foreseen for courts to conclude cases under the Regulation.

Rather than foreseeing sanctions, the underlying reasons for delay should be addressed and Member States should be encouraged to equip their court system in such a way that justice is not unacceptably delayed.

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?

Yes

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

No

We think the issue of court fees is very important and should be addressed in the revision. If the court fees are disproportionately high in comparison to the claim, consumers are discouraged from using the procedure. In several Member States court fees are relatively high and could constitute a burden for consumers, especially taking into account that in cross-border cases consumers can be resident in less affluent Member States. For instance, in the Netherlands for claims under €500 the fee is €75, for claims above €500 it is €213. In Portugal, the consumer must pay the court fees that are a feature of all lowest instance courts, which is about €102 for every procedure. This demonstrates that the court fees can indeed be disproportionately high for someone with a small claim.

We suggest that the level of the court fees is set up taking into account the level of the claim in a more nuanced way. For instance, in order to allow maximum accessibility there could be a rule that the court fee in ESCPs should not be higher than 10% of the claim.

However, even more problematic is the fact that in some countries (e.g. Portugal) if the losing party does not comply with the decision, the consumer must pay another fee to the court in order to enforce the decision as well as a fee to the 'enforcement agent' dependent on the amount of the claim and the complexity of the enforcement.

As we suggest under Question 13, abolishing these costs for Small Claims Procedures should be considered.

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?

No.

First and foremost, consumers should be informed about these costs at the outset of the procedure. They have to know from the start whether and how much they will have to pay for translations, expert opinions, enforcement of the decision and whether there is a possibility to claim those costs back from a losing party. Having this information in advance will allow consumers to make informed decisions on whether to start a case.

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?

No

The oral hearing should be held only in instances when the court cannot take the decision based on the evidence submitted by parties. Written witness statements (instead of oral) should also be encouraged. There are still countries where the procedure is oral as a rule (e.g. in Portugal) and this might constitute an important burden in cross-border cases.

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

Yes, it would make the procedure agile and more flexible. However, the original documents should always be at the parties' disposal if requested by the court.

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?

Yes

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

No

Better organisation and equipping of courts are important not only for European Small Claims procedures, although for instance it is true that in cross-border situations video conferencing might help avoid the expenses of travel to oral hearings or facilitate witness testimonies. However, if video conferencing is to be more widely used, consumers must also have support in finding where it is possible for them to avail of it and then be assisted in using it.

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?

Yes

If yes, how could this be realised?

No

The parties to the procedure should not only receive very **practical information** about national enforcement procedures (who exactly to contact, how much it will cost, how long it will take, can the bailiffs in another country require a translation of a judgment or other documents etc.), but also **individual advice** must be available, as with filling in the forms at the beginning of procedure.

It is important to note that if Member States were to provide information on enforcement to be put in the European Judicial Atlas or other sources of information, it would not be enough to have general provisions indicating that, for instance, bailiffs are to be contacted. Consumers would need more practical and specific information with the addresses, costs and the documents needed for the enforcement procedure.

It is also worth considering if the enforcement procedure for European Small Claims **should not be free of charge**. It is remarkable that in the national enforcement procedures, the cost to initiate or pursue enforcement might even outweigh the value of the claim. Even where the costs can later be reclaimed from the losing party, covering enforcement fees can be very frustrating for consumers, especially if they did not have advance information about those costs.

Related to the question of enforcement is the issue of servicing the judgment. After receiving a judgment in their favour consumers need to notify the counterpart of it. The survey conducted by the European Consumer Centres identified that most consumers have no information on how to carry out this task. Some of them sent the document by fax or registered mail, but as it is normally issued in their own language, the defendant often did not understand it and it was not properly considered. Reflection as to whether for ESCPs it should not be **up to the court issuing judgement to serve it to both plaintiff and defendant**. This would not only make it easier for the consumer, but would also increase the chances of the losing party following the judgement.

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.

Yes

If yes, what do you propose?

No

First, assessment of the consumer's jurisdiction, particularly by a consumer, might be difficult and individual advice is certainly needed for this issue.

Second, the language barrier is one of the main difficulties. Even if the forms are available in various languages, during the procedure parties will receive letters from foreign court in a foreign language with very short deadlines to respond.

According to civil procedure legislation in force in some Member States, all documents supporting the claim must be officially translated. Even if this is not the case everywhere, the consumer most probably has to bear the translation costs as only a few Member States accept documents in languages other than their own official language. Hence it may be that the costs for translation are greater than the claim itself.

Although a translation tool is provided on the website of the European Judicial Atlas, it cannot be considered a reliable method of translating the documents. In addition, the courts may require official translations, certified by the authorised translators. Therefore, consumers again have to be advised as to what is most relevant as evidence, as each piece of translation adds further cost.

All this leads to the conclusion that **individual advice should be available for consumers** in order to effectively make use of and benefit from the European Small Claims Procedure. Each Member State should have certain **advice/contact points**, whose contacts details are clearly available in court houses, together with the standard ESCP forms, in the documentation that courts send to the parties and any other material and websites concerning European Small Claims.

In addition, the information in European Judicial Atlas must be presented in a much more user-friendly way, explaining what consumers have to do in order to find concrete information. For instance, if someone were looking for a court in Lithuania, it is not clear how to find it: the form asks for a postal code and municipality to be entered, but it is highly unlikely consumers would know which municipality they have to look for. It should be explained that in case it is the court of the consumer's residence, he should enter his address to find the court, if the jurisdiction is in the place of defendant, then it is the address of the defendant and so on while there should be the facility of whom to contact if the consumer does not know which jurisdiction applies.

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