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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council amending

**Regulation (EC) No 861/2007 of the European Parliament and of the Council
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**

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1. PROBLEM DEFINITION

The objectives of the Regulation establishing a European Small Claims Procedure (herein after "ESCP" or "the Regulation") are better access to justice and improvement of mutual recognition of judgements in civil and commercial matters. While the latter objective was successfully attained through abolition of *exequatur*, access to justice in low value disputes did not improve satisfactorily. The benefits of the European simplified procedure are not exploited to their full potential and access to justice was not sufficiently improved for some stakeholders, particularly SMEs.

Problem 1: Limited scope of the Regulation

The €2,000 threshold is too low

The threshold of €2,000 severely limits the availability of the procedure for SMEs, whose cross-border disputes with another business amount on average to €39,700. About 30 % of the claims of businesses have a value between €2,001 and €10,000. These businesses have to revert to national small claims procedures or – where there is no such national procedure in place for cross-border cases – to ordinary civil proceedings. Particularly in Member States which do not provide for procedural simplifications in small claims disputes, this leads to **disproportionate litigation costs and lengthy proceedings**, which in turn deter claimants from pursuing their claims.

This leads to financial losses and decreased confidence in engaging in cross-border trade.

The narrow definition of "cross-border" The Regulation currently applies only to disputes where 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 seized. This limit reduces the scope of the Regulation, resulting in the unavailability of the procedure in other cross-border cases where it could save citizens costs and time. In particular, where the claimant may choose under the provisions of Regulation (EC) No 44/2001 between the jurisdiction of the courts of the Member State where both him and the defendant are domiciled and the special jurisdiction under section 2 of the Brussels I Regulation, the choice of the jurisdiction of the common domicile should not have the effect of depriving the claimant of the possibility to use the European Small Claims Procedure which would otherwise be available.

Furthermore, the limitation bars applications under the European Small Claims Procedure lodged before courts of EU Member States by or against nationals of third countries, for example where the consumer is in the EU, and the business is located in a third country.

Problem 2: Inefficiencies of the ESCP due to high costs and length of the current procedure in cross-border cases below €2,000 *Inefficiency deriving from the priority given to postal service over electronic service:* the ESCP is in principle a written procedure. Whenever the service of a document is required, the Regulation sets postal service with acknowledgement of receipt as the primary method of service. Other service methods could be applied only if service by post is not possible.

Even though postal service is already cheaper than other methods of service used in ordinary proceedings in the Member States, it still generates costs and delays which could be avoided by the use of electronic service of documents.

Need to travel because of low up-take of distance means of communication for oral hearings and taking of evidence: although the ESCP is a written procedure, the court of tribunal may hold an oral hearing if it considers this to be necessary. If the court does not use ICT technologies, persons summoned are required to travel to the court which may be situated in another Member State.

This may entail significant additional costs and delays for the parties. The use of ICT technologies can be a viable solution to the lack of proximity and geographical access to courts.

Disproportionate court fees to the value of the claims: the majority of the Member States levies the court fees upon the parties upfront. Court fees which are higher than 10% of the value of the claim are considered to be disproportionate and may be a factor in the citizens' decision not to pursue legal action. In some Member States, court fees are disproportionate to the value of the claim, in particular for lower value claims, and the lower the value of the claim, the more disproportionate the court fees.

Practical obstacles to the payment of court fees: payment methods differ across Member States and range from actual physical payment at the court premises to bank transfer. Especially when payment in cash, stamps, cheques or by lawyers is required, parties would need to incur travel costs or hire a lawyer in the Member State of the court, which may make their claims unworth pursuing.

Unnecessary translation costs: the party seeking enforcement of a judgment must produce an original copy of the judgement and of Form D (Certificate concerning a judgment in the ESCP). The obligation to translate Form D imposes unnecessary costs in that only Section 4.3 of the form (Substance of the judgment) should need to be translated, as the other fields contain only names and numbers. *Lack of transparency of information concerning costs of litigation and methods of payment of court fees in ESCP cases:* the Regulation already requires the Member States to exchange information on several practical aspects. However, information on litigation costs and accepted methods of payment of the court fees under the ESCP is currently not available:

Lack of transparency of information on the availability of practical assistance to citizens: although Member States currently have an obligation to ensure that citizens receive assistance in filling in the forms, in practice there seems to be little transparency with regard to the actors or organisations that are responsible for providing such support.

Problem 3: Limited awareness of the existence and operation of the procedure

For a successful application of the ESCP, it is necessary that the relevant actors - the citizens, the courts and other organisations providing support and advice - are aware of its existence and of its operation. Evidence shows however that neither citizens, nor courts are yet well-informed about the existence and the procedures of the ESCP.

The Commission has tried to address this problem by a range of actions undertaken to raise awareness and develop training.

It is likely that these measures will yield positive results and that an increasing number of applications under the ESCP will follow.

2. ANALYSIS OF SUBSIDIARITY

The issue being addressed has transnational aspects, which cannot satisfactorily be dealt by the Member States' individual action. National simplified procedures, where they exist, are extremely diverse both in terms of threshold and the procedural simplification achieved. In the absence of uniform EU-wide procedural standards, the additional inherent complexity and cost of pursuing a cross-border claim, would amplify the disproportionate costs and length of litigation. Distortions of competition within the internal market due to imbalances with regard to the functioning of the procedural means afforded to claimants/creditors in different Member States entails the need for EU action that guarantees a level-playing field for creditors and debtors throughout the EU.

Action at the EU level would produce clear benefits in terms of effectiveness as the amended Regulation will set up uniform procedural tools for all cross-border claims in the EU, regardless of where in the EU the court hearing the case is situated.

3. OBJECTIVES OF EU INITIATIVE

The main objectives of this initiative are to provide better access to justice for a wider range of cross-border small value claims and reduce the current economic detriment to SMEs and consumers resulting from expensive litigation.

4. POLICY OPTIONS

Four policy options have been considered. Policy option 1 and 3 were assessed in detail.

Policy Option 1 – Status quo (baseline scenario): the Regulation remains unchanged.

Policy Option 2 – Simplification by repealing the Regulation: the entry into application of Regulation (EC) No 1215/2012 on jurisdiction, recognition and enforcement in civil and commercial matters (the Brussels I recast) on 10 January 2015 will lead to the abolition of *exequatur* proceeding in general in the EU. Nevertheless, the added value of the ESCP Regulation is that it offers a predictable, uniform, speedy and simple procedure, which is a cost-effective alternative to the national procedures. For these reasons, this option was **discarded**.

Policy Option 3 - Revision of the Regulation: three main elements are amenable to revision and for each several sub-options were considered.

First, **the disproportionate costs for cross-border claims above €2,000** could be addressed by raising the threshold up to 1) €5,000, 2) €10,000 or 3) above €10,000.

Second, **the narrow definition of "cross-border cases"** could be addressed by broadening the scope to cover all cases with a cross-border element.

Third, **the inefficiencies of the current procedure** could be addressed by a number of improvements in respect of:

priority given to postal service, by either 1) placing electronic service and postal service on an equal footing where electronic service is in place in the Member States, or 2) obliging all Member States to introduce electronic service;

need to travel because of low up-take of distance means of communication for oral hearings and taking of evidence, by ensuring that all oral hearings were organised by distance means of communication, with the exception of the party who requests to be present in court;

disproportionate court fees, by either 1) imposing a limitation of level of court fees to maximum 5% of the value of the claim, with a possible minimum limit of no more than €45, or 2) imposing a limitation of level of court fees to maximum 10% of the value of the claim, with a possible minimum limit of no more than €35;

practical obstacles to the payment of court fees, by 1) ensuring the mandatory acceptance of at least bank transfers or 2) ensuring the mandatory acceptance of at least bank transfers and credit/debit card on-line payment systems;

unnecessary translation costs in the enforcement stage, by removing the obligation of translation of form D, except for Section 4.3 of Form D (The substance of the judgment);

costs related to lack of transparency regarding the costs of litigation, the method of payment of court fees and the availability of assistance on the ESCP, by introducing an obligation on Member States to notify this information to the Commission.

Policy Option 4 – Harmonisation of national small claims procedures through a directive: this option would consist of creating a unique procedure for small claims under a certain threshold that would harmonise the national procedural rules applicable for cross-border and domestic cases without distinction. However, the harmonisation of the procedural law of the Member States is likely to be highly contentious. For these reasons, this option was also **discarded**.

5. ASSESSMENT OF IMPACTS

To date, only limited use has been made of the ESCP, for the reasons set out in the problem definition above. However, the potential benefits from greater use of a simplified procedure are substantial. To illustrate the scale of the benefits that would result from implementation of Policy Option 3, it has been assumed that in those Member States that have a national simplified procedure in place, 50% of the claims up to €10000 would be pursued using the ESCP. In the other Member States, it is assumed that all such claims would go under ESCP, given the sizeable difference in the costs of pursuing a claim under the ESCP and under an ordinary procedure. The combined time and cost savings of the individual elements of the preferred option account for a potential reduction of costs of about €325 – 418 million.

Assessment criteria	Rating Status Quo	Rating Preferred option	Explanation
Effectiveness of the policy options in reaching the objectives	0	2	Provide better access to justice: the revision is expected to result in a significant increase in the number of ESCP applications. By increasing the threshold to €10,000, up to 217 500 new cases are expected to benefit from this procedure. Second, the procedural improvements of the procedure for claims up to €2,000 is also likely to result in new ESCP applications, estimated in the long run to amount to 414 060 potential cases (from 3 500 in 2012). Simplify the court procedure: the ESCP procedure will be further simplified by the use of technology which makes geographical distance almost irrelevant.

			Reduce costs and length of litigation: the use of modern technology will also lead to a reduction of the costs and length of the procedure. Improve transparency of the procedure: Member States will be required to provide the Commission with additional information. The Commission will make such information publicly available on the Internet (on the e-Justice portal).
Implementation costs	0	1	Implementation costs amount to between €500 and €10,000 for distance means of holding oral hearings. Cost of introducing on-line credit card payment methods may differ depending on the administrative organisation of the court systems in each Member State. It is estimated that a fixed cost of € 14,400 is necessary.
Social impact	0	1	The proposed changes to the Regulation are expected to have a positive impact especially for economically disadvantaged persons , since the existence of disproportionate costs particularly affects this social group.
Wider economic impact	0	2	Proposed changes to the Regulation will result in increased access to justice, leading to an increase in confidence in cross-border trade and consequently an improvement of the functioning of the Internal Market .
Feasibility	0	3	As the ESCP is directly applicable in the Member States, most of them have not enacted supplementary national legislation, and will therefore not have to adapt their national legislation as a result of the revision of the Regulation.
Fundamental rights	0	1	Procedural safeguards become more important as the value of the claim increases. This is why Policy Option 3 complements the introduction of a higher threshold with a limitation of the judges' discretion to refuse an oral hearing via ICT under the ESCP, and the use of distance means of communication with the possibility for citizens to use traditional means of communication.

6. PREFERRED OPTION

On the basis of the assessment of impacts, the **preferred option** is Policy Option 3 with the following combination of sub-options:

Raise the threshold to €10,000: by making the simplified procedure available also to claims valued between €2,000 and €10,000, the costs of litigation in such cross-border cases will be reduced. **Extend the territorial scope of the Regulation to cover all cases** which are not purely domestic. Ensure that the **electronic service** will be on an equal footing with postal service; this will reduce overall costs of transmission of documents ;

Introduce an obligation, in case hearings are necessary, to organise such hearings by distance means, such as videoconference or teleconference: advantages include the reduction of transport time and costs for SMEs and consumers.

Limit court fees to 10% of the value of the claim combined with the possibility to set a fixed minimum fee of no more than €35: Setting a maximum fee allowed for cross-border small claims procedures would reduce costs in those Member States where the fees are disproportionate to the value of such claims.

Ensure mandatory acceptance of bank transfers and credit/debit card as means of payment of fees: the overall efficiency of the judicial system is likely to increase, since parties will experience reduced costs and time and public authorities are likely to incur only minor implementation costs.

Remove the obligation to translate Form D, except for Section 4.3 (substance of the judgment): this solution will reduce enforcement costs.

Introduce an obligation for Member States to notify the Commission of the information on litigation costs and methods of payment of court fees: this amendment would improve transparency.

Introduce an obligation for Member States to notify the Commission of the information on where the parties can obtain practical assistance in filling in the forms: this amendment would improve transparency.

7. MONITORING AND EVALUATION

In order to monitor the effective application of the amended Regulation, regular evaluation and reporting by the Commission will take place. To fulfil these tasks, the Commission will prepare regular evaluation reports on the application of the Regulation, based on consultations with Member States, stakeholders and external experts. Regular expert meetings will also take place to discuss application problems and exchange best practices between Member States in the framework of the European Judicial Network in civil and commercial matters.