

Position Paper

UEAPME¹ position on the proposal for a Regulation amending regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure

1. Introduction

UEAPME welcomes the proposal to review the European Small Claims Procedure and the European order for payment procedure.

Indeed, although UEAPME is of the opinion that the European Small Claims Procedure could be a helpful tool for SMEs, solving cross border disputes regarding payment issues, it is currently not used much in practice. Reasons for this are that it is mostly unknown among SMEs. Therefore an awareness raising campaign on the existence, and of course also on the benefits, of the small claims procedure needs to be developed in cooperation with the representative SME organisations.

In its previous position paper², UEAPME already mentioned a couple of practical barriers as to why the current European Small Claims Procedure is not used much by SMEs in practice, if they are aware of the existence of this procedure. UEAPME is glad to see that some of these barriers are addressed in the current Commission proposal.

2. Opinion on the current proposal of the European Small Claims Procedure

- Providing a ceiling on court fees charged for the procedure

SMEs aware of this procedure inform us that the costs hold them back from either using it or using it profusely. The costs for ensuring a claim in the European Small Claims Procedure are still potentially high compared to the value of the claim if you consider the translation costs and the costs of cross border enforcement. Therefore, introducing a ceiling on court fees for the procedure is theoretically a good idea for lowering the costs for SMEs. However, it needs to be checked whether the EU has the competences to regulate court fees of Member States.

- Limiting the requirements to translate Form D, containing the Certificate of enforcement

A problem for SMEs is also that the forms can only be introduced in the language which is accepted by the competent authorities. In most Member States only the language of the competent court will be accepted, hence the language barrier remains, unless one invests in professional translation, which is of course costly. Therefore, limiting the requirements to translate Form D is already very helpful. Maybe it should also be

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is 55820581197-35.

²http://www.ueapme.com/IMG/pdf/UEAPME_Position_Paper_on_the_Public_Consultation_on_a_European_Small_Claims_Procedure_-_201206.pdf

considered to oblige all courts to accept claims in English and French on top of their national languages.

- Imposing obligations on Member States to provide assistance in filling in the forms and imposing obligations on information

SMEs complain that in most Member States free of charge assistance in completing the application forms is not provided. However, such assistance free of charge is needed to increase the use of the European Small Claims Procedure. UEAPME welcomes the obligations on Member States to provide assistance in filling in the forms but they should be free of charge.

Further information requirements on Member States to inform about court fees and method of payment of court fees are also supported by UEAPME. In addition, more structured and updated information on the national enforcement procedures for judgments resulting from the European Small Claims Procedure are also needed. This could maybe be done via a central website on the European Judicial Network.

SMEs also complain about their difficulties in searching for the competent authority, this issue should also be included in the information requirements by Member States.

- Improving the use of electronic communication, including for service of certain documents.

UEAPME welcomes the use of electronic communication as it could make procedure quicker, cheaper and more easily accessible for SMEs.

- Imposing an obligation on courts to use modern electronic means.

The same applies for imposing obligations on courts to use modern electronic means like videoconferencing etc. Making the procedure quicker and cheaper by adapting to modern electronic means is certainly welcomed by UEAPME

- Providing an obligation on Member States to put in place distance means of payment of court fees:

Introducing distance means of payment of court fees is necessary to adapt the procedure to modern business life.

- Extension of the scope of the Regulation to cross-border claims up to 10,000 Euro.

The reasons for barely using the Small Claims Procedure for SMEs do not lie in the limitation of 2,000 Euro but more on the practical barriers mentioned above. However, once the practical barriers are overcome, the extension of the amount to 10,000 Euro would indeed be beneficial for SMEs. The practical application however is not clear. Some Member States do have compulsory legal representation for claims starting from 5,000 Euros. Would this mean that legal representation would be compulsory for the European Small Claims Procedure in some countries but not in others?

- Extension of the definition of cross border cases.

The current limited scope does not seem to be a problem for the SMEs, but UEAPME also is not objecting the extension of the definition of cross border cases in general. However, as this procedure needs to be simple and clear the definition for the extension of scope also needs to be simple and clear. If the extension leads to legal uncertainty, it would be more beneficial for SMEs, to leave the scope of cross border cases, as it is right now.

3. Conclusion

UEAPME is happy to see that many of the practical barriers which prevent SMEs from using the Small Claims Procedure have been tackled in the Commission's proposal. Improving information on the Small Claims Procedure and reducing costs are the most essential barriers which were addressed. Introducing electronic

means and distance means of payments will make the proposal fit for modern business life. Implementing the proposal, with the suggestions mentioned above, will certainly make the instrument more attractive for SMEs.

However, the best proposal is useless if it is unknown. Therefore, raising awareness amongst SMEs through their representative business organisations and those working closely with SMEs, e.g. accountants, is fundamental for promoting the success of the Small Claims Procedure.

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