

European Small Claims Procedure

January 2009



Regulation 861/2007/EC of the European Parliament, establishing a cross-border European Small Claims Procedure, became operative on 1 January 2009. The Regulation is applicable to all EU Member States, excluding Denmark, and seeks to reduce costs and speed up and simplify the process by which people can make low-value claims between Member States. It also eliminates the intermediate proceedings necessary to enable recognition and enforcement, in other Member States, of judgements given in one Member State in the European Small Claims Procedure.

The new European Procedure is available as an alternative to litigants in cross-border cases under the existing laws of Member States in civil and commercial matters. For the purposes of the 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.

The value of the claim must not exceed €2000 at the time the claim form is received by the court or tribunal having jurisdiction, although this amount excludes all interest, expenses and disbursements. The Regulation does not extend to revenue, customs or administrative matters or to the liability of the State. Furthermore it does not apply to matters concerning:

- (a) the status or legal capacity of natural persons;
- (b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession;
- (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.

It is notable that whilst it is not possible to bring claims in respect of Road Traffic Accidents or Personal Injury in a small claims court in Northern Ireland, there does not appear to be a similar restriction in the new European Procedure.

An Application is made by filling in and lodging standard claim Form A with a court or tribunal in a Member State having appropriate jurisdiction. Form A is set out as an annex to the Regulation and Member States are to ensure that the form is available at all courts and tribunals at which the European Small Claim Procedure can be commenced. The form includes a description of the evidence supporting the claim and should be accompanied, where appropriate, by any relevant supporting documents. It is important that the applicant knows the name and full physical address of the trader, even if the goods were purchased over the internet, in order to complete the form.

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The European Procedure will usually be a written procedure although the court may hold an oral hearing if it considers it necessary or if a party so requests (although the court may refuse such a request if it is obvious an oral hearing isn't necessary for the fair conduct of proceedings).

As with proceedings in a small claims court in Northern Ireland against a local trader there is no requirement under the European Procedure that the applicant is legally represented. However, unlike a local action where the judge has only a very limited discretion to award costs against the unsuccessful party, the European Procedure requires that the unsuccessful party bears the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

Once the court has made its ruling the decision shall be recognised and enforced automatically by all other Member States (except Denmark) without any possibility of the other Member States opposing its recognition. The enforcement procedures shall be governed by the law of the Member State of enforcement.

Subject to the provisions of the Regulation, the European Procedure shall be governed by the procedural law of the Member State in which the Procedure is conducted. Member States are to inform the Commission whether an appeal against a judgement given in the European Small Claims Procedure is available under their procedural law and within what time limit such appeal shall be lodged.

This new European Small Claims Procedure should make life easier for consumers in resolving cross-border disputes by simplifying and speeding up lower value cross-border litigation.

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