Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 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'

COM(2013) 794 final — 2013/0403 (COD)

(2014/C 226/08)

Rapporteur: **Ms Mader**

On 9 December and 16 December 2013 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 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

COM(2013) 794 final — 2013/0403 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 March 2014.

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 128 votes to two, with one abstention.

1. **Conclusions and recommendations**

1.1 The European Economic and Social Committee (EESC) takes good note of the proposal for a regulation, which is intended to improve access to justice in cross-border disputes and thus help to boost cross-border trade.

1.2 The Committee supports the proposal to extend the procedure's scope by raising the ceiling to EUR 10 000 and broadening the concept of 'cross-border disputes', which will make it easier for consumers and SMEs to use the procedure.

1.3 The EESC endorses the proposal to limit the costs of proceedings, as these costs present a real disincentive for consumers and small businesses when deciding whether or not to start proceedings. The Committee recommends, however, that the term 'costs of proceedings' be clearly defined, to ensure that the measure is effective.

1.4 The Committee is pleased to note that judgments remain enforceable under this regulation, with recourse to the exequatur procedure no longer being required.

1.5 The EESC believes that the success of the European small claims procedure will depend just as much on the simplification and straightforwardness of the measures entailed as on raising the ceiling.

1.6 The Committee highlights the Commission's desire to encourage the use of new technologies notwithstanding the fact that this is an approach which diverges from well-established practices and will have an impact on the workings of the courts; introducing it in all small claims courts may not be an easy matter.

1.7 However, the Committee considers that all ways and means of making procedures easier for the parties should be supported, provided that they do not jeopardise the effectiveness of the parties' rights of defence and the application of the fundamental principles of civil law recognised by all Member States. The Committee notes and welcomes the fact that these technologies may only be used with the agreement of the parties.

1.8 In this context, the Committee wonders about the means of redress available under the small claims regulation.

1.9 The Committee also stresses the need for vigilance as regards the security and confidentiality of electronic exchanges of documents relating to legal proceedings.

1.10 The Committee reiterates the need to provide for consumers and SMEs to have access to assistance throughout proceedings, especially since the services of a lawyer are not mandatory. Resources, especially financial resources, would need to be made available for this purpose.

1.11 On this point, the Committee considers that consumer associations, European consumer centres and business federations which have experience in this area, could play a useful role in providing such assistance and in informing people of the existence of this procedure.

1.12 The EESC draws attention to the fact that the stated aim of encouraging the regulation of small disputes will not be achieved unless appropriate information on its existence is made available by the different stakeholders concerned, by the courts and by institutions providing legal training ([1]).

1.13 The EESC considers, furthermore, that in order to be effective, the procedural forms must be clear and easy for everyone to understand. It is essential that the official language of the country of the parties be used, including for the proceedings and especially for the hearing. In order to comply with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union on the right to an effective remedy and the right of defence, this requirement should not be confined to the translation of forms.

1.14 The EESC notes that the arguments put forward concerning the principles of subsidiarity and proportionality make a useful contribution to the debate on establishing a European action group.

2. **Introduction**

2.1 The aim of the Commission proposal is to connect with the general public, consumers and SMEs by providing easier access to justice and boosting their confidence, encouraging them to take advantage of the opportunities offered by the single market.

2.2 It is one of the 12 practical measures outlined in the second EU Citizenship Report designed to strengthen the rights of Union citizens, in this instance by facilitating the settling of disputes regarding purchases made in another Member State.

2.3 The initiative is also recommended in the European Consumer Agenda and the Small Business Act as a means of improving enforcement of consumer and SME rights.

2.4 Building on the experience gained since the entry into force of Regulation (EC) No 861/2007 ([2]) complementing the usual national procedures for debt recovery, and after holding a number of consultations, the Commission proposes to simplify the procedure still further, making it less costly and more in tune with the needs of both consumers and small and medium-sized enterprises.

2.5 The European Small Claims Procedure established by Regulation (EC) No 861/2007 can be summarised in a few key points:

— it applies to border disputes not exceeding EUR 2 000 at the time the claim is received;

— the claimant must use a 'Type A' form and send it to the competent court by post or by any other means of communication acceptable to the Member State in which the procedure is launched;

— the form includes a description of any evidence and, where appropriate, supporting documents;

— this is, in principle, a written procedure, unless the court decides otherwise;

— the parties may have legal representation but this is not mandatory;

— the court should in principle give its judgment within 30 days of hearing the views of the parties at a hearing or of having received all the information it needs to take a decision.

2.6 The judgment given by the court is enforceable and automatically recognised in all Member States. At the request of one of the parties, the court shall issue a certificate confirming the judgment, at no extra cost.

([1]) Universities, law schools, judicial training institutes, etc.

([2]) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199 of 31.7.2007, p. 1).

2.6.1 As provided for by the 2007 regulation, the Commission carried out an evaluation before 1 January 2014, the initial results of which it deems encouraging, as it found that use of this procedure would reduce costs by 40 % and would shorten the average length of disputes from two years to five months ([3]).

2.7 The Commission takes the view, however, that the procedure would be even more effective if the ceiling were increased in order to enable SMEs to use it too.

3. **Commission proposal**

3.1 This provides for two main sets of measures: purely legal measures and more practical measures, all of which are aimed at reducing the cost of proceedings.

3.2 Legal measures

3.2.1 The first measure aims to raise the ceiling from EUR 2 000 to EUR 10 000 in order to enable SMEs to use this procedure, which is entirely optional.

3.2.2 The second measure concerns extending the definition of a cross-border dispute, thereby ensuring that the regulation applies to all claims with a cross-border component, including those involving third-country nationals.

3.3 Practical measures

3.3.1 In order to reduce costs, the Commission proposes that electronic exchanges of documents, videoconferencing or teleconferencing be commonly used when oral hearings are required.

3.3.2 It also wishes to cap judicial costs at a maximum of 10 % of the value of the claim, with an authorised threshold of EUR 35, the amount payable by bank transfer or online by credit or debit card.

4. **General comments on the proposal**

4.1 The EESC considers the proposal to be relevant, but notes that the procedure must be clear and transparent if it is to serve its purpose. This means that the forms must be suitable for all target groups.

4.1.1 Furthermore, claimants and courts must be provided with information on the proposed arrangements. In this respect, the EESC would point out that courts were informed very belatedly about the European order for payment procedure and the European small claims procedure by an information brochure produced by the European Judicial Network in civil and commercial matters ([4]).

4.1.2 Encouraging the use of electronic means of communication, including for the service of documents, and imposing on courts the obligation to use videoconferencing for hearings, unless one of the parties requests otherwise ([5]), represent an approach that diverges from well-established practices. This will have an impact on the workings of the courts. It will also require technical assistance for claimants, especially since the procedure may take place without the services of a lawyer.

4.2 With regard to the substance, the most important measure is that of raising the ceiling from EUR 2 000 to EUR 10 000.

4.2.1 The main beneficiaries of this change will be SMEs which, according to the Commission's figures, account for only 20 % of current claims, as detailed in the impact assessment, based on answers given by a sample group that the EESC considers to be rather limited.

4.2.2 While the Committee supports raising the ceiling to EUR 10 000, it thinks that this ceiling might be rather high, given the average amounts involved in consumer claims.

4.3 The stated aim is to restore confidence and boost trade within the internal market, while making justice more effective. This being the case, the EESC wonders about the remedies available under the small claims regulation.

([3]) Point 3.2 of the impact assessment.

([4]) Citizens' guide to cross-border civil litigation in the European Union.

([5]) Article 8 of the proposal for a regulation.

4.4 In the EESC's view, this aim is a welcome one, but highlights the numerous national differences in this area. It notes, for instance, that the proposal aims to limit the 'costs of proceedings', but this concept may be understood differently from one Member State to another, as seen in the data on the 26 Member States featured on the e-justice website, and in the European Commission Study on the Transparency of the Costs of Civil Judicial Proceedings in the EU ([6]).

4.5 The Committee thinks that the 10 % ceiling for costs of proceedings is high. It could have a negative impact in the Member States where costs do not reach this level.

4.6 By raising the ceiling for claims and by broadening the concept of what constitutes a 'cross-border dispute', the proposal is indicating to the public at large and SMEs that it is attentive to their very real concerns and is taking action to address them.

4.7 It also reflects the results of a Eurobarometer survey published in April 2013, in which 45 % of the businesses questioned stated that they did not take legal action because judicial costs were disproportionate to the value of their claim.

4.8 The proposed revision also entails an obligation to amend Regulation (EC) No 1896/2006 concerning the European order for payment procedure ([7]). This provides that a statement of opposition filed by the defendant should lead to an automatic transfer of the case to ordinary civil proceedings. Since the entry into force of Regulation (EC) No 861/2007, however, this restriction is no longer justified for small claims.

4.9 Regulation (EC) No 1896/2006, which ought already to have been revised, should stipulate that when a dispute is covered by the European small claims procedure, this procedure should also be open to a person or an undertaking involved in a European order for payment procedure and that has filed a statement of opposition to a European order for payment.

4.10 The EESC notes that the discussion on the principle of subsidiarity and proportionality makes a positive contribution to the implementation of European collective action.

5. **Specific comments on the proposal**

5.1 The use of videoconferencing systems is an interesting idea, although it does not yet appear to be something that all small claims courts can implement easily.

5.2 Many do not have a website and do not communicate by electronic means. It remains common practice to have to go in person to obtain the forms needed for bringing legal proceedings, as such proceedings are still paper-based. The Committee also stresses the need for vigilance as regards the security and confidentiality of electronic exchanges of documents relating to legal proceedings.

5.3 In this regard, the EESC stresses that the forms must be clear and easily understandable. The assistance envisaged by the proposal must therefore be adequate, which would require a significant financial investment by States at a difficult time.

5.4 Lastly, information for the claimant is the main issue that needs to be addressed in order to ensure effective justice. The claimant, in particular the consumer and SMEs, must have access to reliable and independent information, in order to be able to make an informed choice as to the course to adopt.

5.5 Experienced consumer associations, European consumer centres and business federations have a fundamental role to play in providing this high-quality information.

5.6 For example, the European Judicial Enforcement (EJE) project contains very practical files and factsheets that are primarily aimed at bailiffs, but which would be useful to a much wider audience, since they concern access to the law and the exercise of rights. Such sources of information are not widely available, however.

([6]) https://e-justice.europa.eu/; https://e-justice.europa.eu/content_costs_of_proceedings-37-en.do?init=true (Demoulin, Brulard, Barthélémy, Hoche).

([7]) OJ L 399 of 30.12.2006, p. 1.

5.7 To conclude, the EESC reiterates the need to enable parties to have the entire procedure conducted in their official language. This requirement has its origins in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union concerning the right to an effective remedy and the right of defence, which should not be confined to simply translating forms.

Brussels, 25 March 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE