

Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure

CHAPTER II

**THE EUROPEAN SMALL CLAIMS PROCEDURE**

*Article 4*

**Commencement of the Procedure**

1 The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Annex I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced. The claim form shall include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.

2 Member States shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available.

3 Where a claim is outside the scope of this Regulation, the court or tribunal shall inform the claimant to that effect. Unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.

4 Where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear or if the claim form is not filled in properly, it shall, unless the claim appears to be clearly unfounded or the application inadmissible, give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies. The court or tribunal shall use standard Form B, as set out in Annex II, for this purpose.

Where the claim appears to be clearly unfounded or the application inadmissible or where the claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed.

5 Member States shall ensure that the claim form is available at all courts and tribunals at which the European Small Claims Procedure can be commenced.

*Article 5*

**Conduct of the Procedure**

1 The European Small Claims Procedure shall be a written procedure. The court or tribunal shall hold an oral hearing if it considers this to be necessary or if a party so requests. The court or tribunal may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair conduct of the proceedings. The reasons for refusal shall be given in writing. The refusal may not be contested separately.

2 After receiving the properly filled in claim form, the court or tribunal shall fill in Part I of the standard answer Form C, as set out in Annex III.

A copy of the claim form, and, where applicable, of the supporting documents, together with the answer form thus filled in, shall be served on the defendant in accordance with Article 13. These documents shall be dispatched within 14 days of receiving the properly filled in claim form.

3 The defendant shall submit his response within 30 days of service of the claim form and answer form, by filling in Part II of standard answer Form C, accompanied, where appropriate, by any relevant supporting documents, and returning it to the court or tribunal, or in any other appropriate way not using the answer form.

4 Within 14 days of receipt of the response from the defendant, the court or tribunal shall dispatch a copy thereof, together with any relevant supporting documents to the claimant.

5 If, in his response, the defendant claims that the value of a non-monetary claim exceeds the limit set out in Article 2(1), the court or tribunal shall decide within 30 days of dispatching the response to the claimant, whether the claim is within the scope of this Regulation. Such decision may not be contested separately.

6 Any counterclaim, to be submitted using standard Form A, and any relevant supporting documents shall be served on the claimant in accordance with Article 13. Those documents shall be dispatched within 14 days of receipt.

The claimant shall have 30 days from service to respond to any counterclaim.

7 If the counterclaim exceeds the limit set out in Article 2(1), the claim and counterclaim shall not proceed in the European Small Claims Procedure but shall be dealt with in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.

Articles 2 and 4 as well as paragraphs 3, 4 and 5 of this Article shall apply, *mutatis mutandis*, to counterclaims.

#### *Article 6*

#### **Languages**

1 The claim form, the response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents shall be submitted in the language or one of the languages of the court or tribunal.

2 If any other document received by the court or tribunal is not in the language in which the proceedings are conducted, the court or tribunal may require a translation of that document only if the translation appears to be necessary for giving the judgment.

3 Where a party has refused to accept a document because it is not in either of the following languages:

- a the official language of the Member State addressed, or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched; or
- b a language which the addressee understands,

the court or tribunal shall so inform the other party with a view to that party providing a translation of the document.

## *Article 7*

### **Conclusion of the Procedure**

- 1 Within 30 days of receipt of the response from the defendant or the claimant within the time limits laid down in Article 5(3) or (6), the court or tribunal shall give a judgment, or:
  - a demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days;
  - b take evidence in accordance with Article 9; or
  - c summon the parties to an oral hearing to be held within 30 days of the summons.
- 2 The court or tribunal shall give the judgment either within 30 days of any oral hearing or after having received all information necessary for giving the judgment. The judgment shall be served on the parties in accordance with Article 13.
- 3 If the court or tribunal has not received an answer from the relevant party within the time limits laid down in Article 5(3) or (6), it shall give a judgment on the claim or counterclaim.

## *Article 8*

### **Oral hearing**

The court or tribunal may hold an oral hearing through video conference or other communication technology if the technical means are available.

## *Article 9*

### **Taking of evidence**

- 1 The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties. It may also admit the taking of evidence through video conference or other communication technology if the technical means are available.
- 2 The court or tribunal may take expert evidence or oral testimony only if it is necessary for giving the judgment. In making its decision, the court or tribunal shall take costs into account.
- 3 The court or tribunal shall use the simplest and least burdensome method of taking evidence.

## *Article 10*

### **Representation of parties**

Representation by a lawyer or another legal professional shall not be mandatory.

### *Article 11*

#### **Assistance for the parties**

The Member States shall ensure that the parties can receive practical assistance in filling in the forms.

### *Article 12*

#### **Remit of the court or tribunal**

- 1 The court or tribunal shall not require the parties to make any legal assessment of the claim.
- 2 If necessary, the court or tribunal shall inform the parties about procedural questions.
- 3 Whenever appropriate, the court or tribunal shall seek to reach a settlement between the parties.

### *Article 13*

#### **Service of documents**

- 1 Documents shall be served by postal service attested by an acknowledgement of receipt including the date of receipt.
- 2 If service in accordance with paragraph 1 is not possible, service may be effected by any of the methods provided for in Articles 13 or 14 of Regulation (EC) No 805/2004.

### *Article 14*

#### **Time limits**

- 1 Where the court or tribunal sets a time limit, the party concerned shall be informed of the consequences of not complying with it.
- 2 The court or tribunal may extend the time limits provided for in Article 4(4), Article 5(3) and (6) and Article 7(1), in exceptional circumstances, if necessary in order to safeguard the rights of the parties.
- 3 If, in exceptional circumstances, it is not possible for the court or tribunal to respect the time limits provided for in Article 5(2) to (6) and Article 7, it shall take the steps required by those provisions as soon as possible.

### *Article 15*

#### **Enforceability of the judgment**

- 1 The judgment shall be enforceable notwithstanding any possible appeal. The provision of a security shall not be required.

2 Article 23 shall also apply in the event that the judgment is to be enforced in the Member State where the judgment was given.

#### Article 16

##### Costs

The unsuccessful party shall bear 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.

#### Article 17

##### Appeal

1 Member States shall inform the Commission whether an appeal is available under their procedural law against a judgment given in the European Small Claims Procedure and within what time limit such appeal shall be lodged. The Commission shall make that information publicly available.

2 Article 16 shall apply to any appeal.

#### Article 18

##### Minimum standards for review of the judgment

1 The defendant shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the court or tribunal with jurisdiction of the Member State where the judgment was given where:

- a (i) the claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally, as provided for in Article 14 of Regulation (EC) No 805/2004; and
- (ii) service was not effected in sufficient time to enable him to arrange for his defence without any fault on his part,

or

- b the defendant was prevented from objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

2 If the court or tribunal rejects the review on the basis that none of the grounds referred to in paragraph 1 apply, the judgment shall remain in force.

If the court or tribunal decides that the review is justified for one of the reasons laid down in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void.

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*Status: This is the original version (as it was originally adopted).*

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### *Article 19*

#### **Applicable procedural law**

Subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted.