

Reply of the Netherlands to the Consultation Small Claims Regulation 861/2007

Preliminary remarks

The Dutch government would like to make some preliminary remarks about the consultation on Small Claims (Regulation 861/2007). The starting point in the consultation seems to be that it must become easier for parties to an international legal dispute about a small claim to solve their dispute in international legal proceedings. Many of the questions seem to suggest that improvements can be achieved in the context of international small claims by improving the small claims procedure in the Regulation. The Netherlands sees two preliminary caveats as to this supposition in the consultation.

Firstly, however simple a European Small Claims procedure is going to be, it does not automatically make any international small claim a simple dispute. On the contrary, international small claims inherently involve some legal questions of a rather complex nature. Matters of international jurisdiction, the applicable law to the small claim, differences in the language of the claimant and the defendant all need to be addressed in the court proceedings. However small the small claim, these matters may be as much at the core of a small claim procedure as in any other international civil claim.

The European instruments applicable in this context offer no practical solution to suit the situation of international small claims. The recast of Brussels I has not simplified the European rules on international jurisdiction. Rome I and Rome II are the subject of many legal deliberations. In this respect any ambitions for a European Regulation for a small claims procedure as a *panacea* for international small claims ought to be brought down to a more modest level.

Secondly, a purely practical point. Where questions in the consultation relate to the costs of either translations or elements of the procedure itself a clear distinction should be made between two different situations. In as far as costs can be avoided by having different rules and innovative systems, amending the rules may be justified. However, some costs are an inherent element of solving the legal dispute (e.g. costs of translation of relevant documents) or serve as a contribution to the costs of court's work (e.g. court fees). Amending the rules relating to the latter type of costs will only lead to a shift of those costs from citizens to courts and governments. In times of financial crises for every country in Europe such cost shifting is unacceptable.

I Background information

1. Other, government.
2. No.
3. The Netherlands.
4. Contact details:

II General Assessment

Q1. Do you think that the European Small Claims Procedure is a helpful and efficient tool for consumers in cross border disputes?

Yes, the Small Claims procedure is a **helpful** tool for EU-consumers since it offers them a uniform court procedure for their international small claims regardless of which court in which Member State is going to deal with those proceedings. It is therefore more easily accessible than some unknown foreign court procedure. The use of standard forms also helps in this respect. If the rules on jurisdiction allow the consumer to sue the defendant for the courts of the consumer's country, the use of any existing national small claims procedure might be more favorable to the consumer. It will probably be easier – and thus cheaper – for him to obtain legal advice on the more widely used national procedure.

It could be **more efficient** if electronic court proceedings became more available throughout the EU. However, this process of court proceedings becoming more E-proceedings has proved to be a hard and long term one requiring investments in money and efforts. It must be done at each country's own pace as it involves the national court system as a whole. It cannot and should be forced upon States simply by imposing new rules.

Q2. Do you think that the European Small Claims Procedure is a helpful and efficient tool for SMEs doing cross-border transactions?

See Q1. Unless it concerns a matter of unpaid debts in which case the European Payment Order procedure would seem more appropriate, the amount of € 2000 would seem to rule out most SMEs' civil claims. If it can only be used by an SME in very rare cases the chances of SMEs using it seem rather low.

III Specific Issues

Q3. Do you think that the standard forms provided for in the European Small Claims Procedure Regulation are comprehensible and "user friendly"?

Yes. Some of the notes might be clarified to help citizens fill in the forms themselves without legal assistance.

Q4. Does the Member State in which you are domiciled provide free of charge assistance in completing the application form?

The Netherlands offers free legal assistance at legal offices called *Juridisch Loket*. The *Juridisch Loket* is the first desk where a citizen's problem is diagnosed. Is it a legal problem? If so, has the citizen been in contact with the other party? In as far as Regulation 861/2007 so requires in Article 11, practical assistance in filling in the forms is offered.

Q5. There are several Member States that have increased the threshold amount for claims in their national simplified procedures. Should the European Small Claims Procedure follow this trend and be available for claims e.g. up to 10.000 euro?

Yes, increasing the threshold up to € 10.000 would seem appropriate.

Q6. The European Small Claims Procedure sets certain procedural deadlines that aim at speeding up the proceedings; however there is no sanction for the non-observance of such deadlines. Do you think that the Regulation should be strengthened to address the effect of lapse of time provided for under the Regulation?

No, no rules should be imposed at European level.

Q7. The court fees, in particular those paid at the start of the proceedings may have a deterrent effect on the use of the European Small Claims Procedure. Do you think that the issue of court fees should be addressed in the possible revision to tackle such problem?

No, this should be left to each Member State's own policy.

Q8. The European Small Claims Procedure, similarly to other civil procedures entail costs for the parties, relating to e.g. translations, service of documents, travel expenses in case of a hearing, remuneration of witnesses etc. Do you consider that these costs should be addressed in the possible revision?

No, no rules should be imposed at European level.

Q9. Though the European Small Claims Procedure is a written procedure, the court may decide to hold a hearing. In order to increase the efficiency and speed of the European Small Claims Procedure, could the discretion of the court to hold an oral hearing be limited in some circumstances?

No, this should be left to the court's discretion. Exchanges between courts of views and practical experience should be promoted in order to help courts to find best practices in this respect.

Q10. The Member States may accept a transmission of the European Small Claims Procedure application by any means of communication, including email. The use of electronic means could be further improved. Do you think that the sender, or the service provider who communicates

with the customers through electronic means, should legally accept to receive the documents in the framework of the European Small Claims Procedure through the same means?

No, not as a rule. The e-communication between a consumer and his seller or service provider cannot automatically be seen as an acceptance of E-communication when it comes to legal documents. The nature of the information exchanged in relation to the court proceedings is different from commercial information exchanged between seller/service provider and customer. A communication by the court to the seller/service provider is also rather different from an exchange of information between him and his customer. It also raises the question whether this rule should apply vice versa to the consumer who has accepted e-communication for his transaction. Such rule would only seem acceptable if consent for e-communication was given explicitly preferably after the dispute arose.

Q11. The courts competent for the European Small Claims Procedure are mostly the numerous lowest instance courts that may not be appropriately equipped to carry out the procedure. For example the electronic communication and videoconferencing could increase efficiency of the European Small Claims Procedure and reduce its costs. Do you think that there is need for a better organisation and/or for adequate equipment of courts?

No, not at EU-level.

Q13. Whilst a judgment given in the European Small Claims Procedure is to be directly enforced within the European Union, the Commission has received complaints on the lack of information on the national enforcement rules and procedures in situations when the judgement resulting from the European Small Claims Procedure is to be enforced in another Member State. Do you think that the Member States should be required to provide structured and updated information on the national enforcement procedures for the judgements resulting from the European Small Claims Procedure, including the possible costs, addresses etc?

No, certainly not specifically in relation to the European Small Claims procedure. National enforcement proceedings will generally be the same regardless of the amount to be enforced and regardless of the origin of the obligation of the enforcement debtor. The European Order for Payment and the European Enforcement Order both have the same direct enforceability in another Member State. There is no justification for separate rules on providing information on enforcement proceedings in relation to the small claims procedure of Regulation 861/2007 or when it comes to that, for any further European rules in this area.

Q14. Are there other elements of the European Small Claims Procedure than those discussed above that should be reformed/improved? You can

also write here any other comments that you may have concerning the European Small Claims Procedure.

No.