

ARE YOU THINKING ABOUT CLAIMING
LESS THAN 5000€, BUT YOU ARE
AFRAID OF CROSS-BORDER
LITIGATION'S DELAYS AND
COMPLICATIONS?

European small claims procedure

The purpose of the European Small Claims Procedure is to improve access to justice for both consumers and businesses by reducing costs and accelerating civil procedures with regard to claims within its scope. This procedure also ensures that the judgments given within the European Small Claims Procedure are recognized and enforceable in another Member State (i.e. any country member of the European Community) without any intermediate procedure, or without the need for a declaration of enforceability in the Member State of enforcement (abolition of exequatur). The parts may choose to submit this procedure as an alternative to those provided for in the internal laws of the member states.

Scope of the Regulation

This Regulation is applied in cross-border cases to civil and commercial matters where the value of a claim does not exceed €5000 excluding all interest, expenses and disbursements. Claims about the status or legal capacity of persons, rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession, bankruptcy, social security, arbitration, employment law, tenancies of immovable property (with the exception of actions on monetary claims), violations of privacy and of rights relating to personality are not included.

Before 2015, the procedure was applied in cross-border cases to civil and commercial matters where the value of the claim did not exceed 2000€. However, on December 2015, the Regulation (EU) 2015/2421 of the European Parliament and of the Council was published increasing the ceiling as regards the value of the claim to 5000€.

What is the meaning of cross border cases regarding this procedure?

A cross-border case will be 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 seized. For example, the United Kingdom and Spain.

Procedure

The Procedure shall be written but the court or tribunal shall hold an oral hearing if considers this to be necessary or if a party so requests. The enforcement procedures shall be governed by the law of the member state of enforcement, i.e. the country where the defendant resides.

Languages

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 where the claim is filed. Once the judgment is given, if it had to be enforced, for example in Spain, the claimant would have to submit an official translation of the judgment into Spanish or the language of the Autonomous Community, when applicable, where the competent court for enforcement is located.

Costs

The unsuccessful party shall bear the costs of the proceedings. For example, expenses resulting from the other party having been represented by a lawyer or another type of professional or any other disbursement resulting from the notification and translation of documents, which are proportionate to the value of the claim.

Brexit

If the United Kingdom exits the European Union, it is likely that the Regulation will no longer be available for those claiming or receiving claims through the Regulation. We therefore advise to those considering using the Regulation to claim, to do so before the exit takes place.

Written by Ángela Fernández.

SCORNIK GERSTEIN LLP