



The European Small Claims procedure in Belgium

Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure.

❖ Summary of the objectives and principles of the European small claims procedure

The European Small Claims Procedure established by the European Regulation is intended to improve access to justice by simplifying and speeding up cross-border small claims litigation in civil and commercial matters and reducing costs. "Small claims" are cases concerning sums under EUR 2 000, excluding interest, expenses and disbursements (at the time when the claim form is received by the competent court).

It will be applicable from 1 January 2009 in all EU Member States except Denmark.

This procedure is uniformly applicable in the different Member States. It is autonomous, optional and additional to the national procedures. This European procedure does not substitute itself for the existing national procedures and is optional in consideration of the other existing mechanisms. Article 1 of the EC Regulation: « The European Small Claims Procedure shall be available to litigants as an alternative to the procedures existing under the laws of the Member States ».

Judgments delivered under this procedure are recognised and enforceable in the other Member States without the need for a declaration of enforceability. Article 1 of the EC Regulation: « This Regulation also eliminates the intermediate proceedings necessary to enable recognition and enforcement, in other Member States, of judgments given in one Member State in the European Small Claims Procedure ».

This is a contradictory procedure. However, the European Small Claims Procedure is a written procedure, unless an oral hearing is considered necessary by the court or tribunal or a party so requests. The court or tribunal may refuse such a request. Such refusal may not be contested separately.

Article 10 of the Regulation states that « Representation by a lawyer or another legal professional shall not be mandatory ». Nevertheless, article 11 adds that « The Member States shall ensure that the parties can receive practical assistance in filling in the forms ».





This procedure is facilitated by the availability of standard forms, in all EU languages, on the website of the European Judicial Atlas in Civil Matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_fr_fr.htm).

The procedure is also framed, in its various stages, with a schedule established by the Regulation. In this respect, the Regulation states in its preamble that « For the purposes of calculating time limits as provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits [10] should apply ».

The EC Regulation also provides for a article dedicated to the service of documents – Article 13: « Documents shall be served by postal service attested by an acknowledgement of receipt including the date of receipt. 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 ».

Finally, EC Regulation states that: « 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 ».

In Belgium, the EC Regulation 861/2007 has not resulted in the adoption of new legislation into national law.

❖ **Reminder of the scope of the Regulation:**

The regulation applies to civil and commercial matters in accordance with Community law. It does not extend to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority. It excludes matters concerning:

- the status or legal capacity of natural persons;
- rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession;
- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- social security;
- arbitration;
- employment law;
- tenancies of immovable property, with the exception of actions on monetary claims;

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- violations of privacy and of rights relating to personality, including defamation.

The regulation applies to cross-border cases, namely cases 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 seized. The territorial jurisdiction of the court is determined in accordance with the rules of Community law on jurisdiction, in particular the Brussels I regulation.

The relevant moment for determining whether there is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction.

The Regulations apply to monetary claims and non-monetary (as the claim is quantifiable).

This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed **EUR 2000** at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. However, this should affect neither the power of the court or tribunal to award these in its judgment nor the national rules on the calculation of interest.

❖ To apply for an European small claims procedure

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.

Form A is available on the « European judicial atlas in civil matters » website, in the languages of the European Union:

http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_uk_en.htm

Consult the claim form A in English:

http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_form1_en.jsp?countrySession=4&txtPageBack=sc_filling_uk_en.htm





- **Competent jurisdiction**

Member States were invited by the regulation to indicate to the European Commission their national jurisdictions which would be competent to deal with the European small claims procedure.

Concerning the courts or tribunals that have jurisdiction to give a judgment in the European Small Claims Procedure, the Belgium Government has announced that justices of the peace, the Court of First Instance or the Commercial Court with material and territorial jurisdiction under the Belgian Judicial Code will have jurisdiction in this respect.

- **To fill in the claim Form**

The form A, available on the European Judicial Atlas, includes explanations to help the applicant to fill out the form and understand the usefulness of the information requested.

The applicant must provide information including his contact details and those of the defendant, the jurisdiction of the court, the cross border nature of the case, the nature of the claim and its amount. The applicant must also summarily motivate the application. However, the court or tribunal shall not require the parties to make any legal assessment of the claim. The claim form shall also include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.

The applicant may request that an oral hearing be held (However, the claimant is informed that the court/tribunal may decide to hold an oral hearing if it considers it necessary for the fair conduct of the proceedings or it may refuse it, having regard to all the circumstances of the case).

The applicant may also request a certificate concerning the judgment which would be delivered with the judgment (if the applicant intends to ask for recognition and enforcement in a Member State other than that of the court/tribunal – see below).

Finally, the applicant must date and sign the application and declare that the information provided is true to the best of his knowledge and is given in good faith.

Regarding languages, the EC Regulation states that « 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. If any other document received by the court or tribunal is not in the language in

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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 ».

- **Submission of the application**

The regulation states that the claimant shall lodge the Form A 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. Member States shall inform the Commission which means of communication are acceptable to them.

The Belgium Government has indicated that the means of communication that are accepted under Article 4(1) of this Regulation for the purposes of the Procedure and are available to the courts are restricted in Belgium to the direct submission of the standard claim form A, as set out in Annex I, and the relevant supporting documents to the registry of the Court of First Instance with territorial jurisdiction and the posting by registered mail of claim form A and the relevant supporting documents to the Court of First Instance with territorial jurisdiction

- **Examination of the application**

The court must review the application as soon as possible.

Various possibilities are open to the court after this first review:

- 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.
- 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.

The Form B « REQUEST BY THE COURT OR TRIBUNAL TO COMPLETE AND/OR RECTIFY THE CLAIM FORM », which is filled in by the Court, is available on the « European judicial atlas in civil matters » website, in the languages of the European Union :





http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_fr_en.htm

Read the Form B in English:

http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_form2_en.jsp?countrySession=2&txtPageBack=sc_filling_fr_en.htm

In this case the court will use the means of communication available under national procedural law. The objective of cost savings will probably influence the choice of the appropriate means to send the form B to the applicant. The registered letter with acknowledgement of receipt may be appropriate, that the applicant resides in Belgium or in another Member State.

- 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.
- **If any of these incidents occurs or if the applicant has completed or corrected the application form within the time specified, the procedure continues before the court according to the rules laid down by the regulations.**

- **Conduct of the Procedure**

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. This Part I of the standard answer form, which is filled in by the Court, relates to the case – number of the case, court, name of claimant, name of defendant (the Part II of the Form C will then be filled in by the defendant, except if the defendant intends to submit a counterclaim).

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

If the defendant lives in Belgium, the registry of the Court will serve the documents (Form A application with Form C) to the defendant by “court letter” (equivalent to a registered letter with acknowledgment of receipt), within 14 days of receipt of the application form duly completed.

If the defendant lives in another Member State, the registry shall transmit the documents to be

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served by one of the modes of transmission authorized (the registered letter with acknowledgment of receipt directly sent to the defendant) in accordance with the EC Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). The Belgian court registries (including those of Justice of peace, Commercial Court and Court of First instance) competent in the service of documents are transmitting agencies.

Regarding the language in which the documents shall be served, article 6 of the regulation states that:

« 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 ».

- **The answer of the defendant**

- **The Form C**

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.

The form C is available on the European Judicial Atlas Website:

http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_form3_en.jsp?countrySession=2&txtPageBack=sc_filling_fr_en.htm

The form C includes explanations to help the defendant to fill out the form.

In filling in the Form C, the defendant shall indicate if he accepts the claim or not. If he does not accept the claim, he shall indicate the reasons to contest it, describe the evidence he wish to put forward and precise if he wants on oral heading to be held.

The defendant must date and sign the form and declare that the information provided is true to the best of his knowledge and is given in good faith.





Regarding language, the defendant is informed that he should reply to the claim in the language of the court/tribunal which has sent him the form. Regarding the relevant supporting documents, article 6 of the regulation states that the description of relevant supporting documents shall be submitted in the language of the court or tribunal but, if any other document received by the court or tribunal (ie. the relevant supporting document) 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.

Although Belgium has not formally indicated the means of communication available to the defendant to transmit the form C, it is considered that he can use the same means as those indicated for the introduction of Form A: to the direct submission of the standard claim form to the registry of the Court with territorial jurisdiction and the posting by registered letter.

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.

The European Regulation states that the Court “transmits” to the plaintiff a copy of the response of the defendant together with any relevant supporting documents, within fourteen days of the reception of the answer of the defendant. The court is likely to use the court letter (equivalent to a registered letter with acknowledgment of receipt) if the applicant lives in Belgium, Belgian territory) or a means of transmission prescribed by the Regulation 1393/2007: a registered letter with acknowledgment of receipt which is transmitted directly to the defendant, as Belgian court registries competent in the service of documents are transmitting agencies.

- **Particular case of a counterclaim**
 - **In the limit of 2000 euros**

The defendant can make a claim against the claimant – it is a counterclaim. He shall fill in and attach a separate Form A to the Form C and lodge them with the court or tribunal with jurisdiction by any means of communication acceptable to the Member State (see above).

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



If the defendant lives in Belgium, the registry of the Court will serve the documents to the defendant by “court letter” (equivalent to a registered letter with acknowledgment of receipt), within 14 days of receipt of the counterclaim.

If the defendant lives in another Member State, the registry shall transmit the documents to be served by one of the modes of transmission authorized (the registered letter with acknowledgment of receipt directly sent to the defendant) in accordance with the EC Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). The Belgian court registries (including those of Justice of peace, Commercial Court and Court of First instance) competent in the service of documents are transmitting agencies.

The original claimant shall have 30 days from service to respond to any counterclaim (by using the Form C).

- **Beyond 2000 euros**

If the counterclaim exceeds the limit set out by the regulation, 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.

In case of transfer to ordinary civil proceedings, the Court seized with the European Small Claims procedure cannot refuse to instruct the request because the original mode of application (form A) is not in accordance with the relevant procedural law applicable to the case.

It means that the procedure will continue to be instructed in accordance with the rules applying to cases introduced by a contradictory request (summons), even if the case must have normally be brought, pursuant to relevant national rules, by a contradictory request. However this principle knows an exception in cases of abuse.

The court has to deal with the case but has to refer the case to the Belgian court which is competent *ratione materiae* and has to decline jurisdiction if a Belgian court has no jurisdiction in accordance with International and European Law.





- **Conclusion of the Procedure**

Within 30 days of receipt of the response from the defendant or the claimant within the time limits laid down, the court or tribunal shall:

- give a judgment,
- or :
 - demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days;
 - take evidence in accordance with Article 9;
 - summon the parties to an oral hearing to be held within 30 days of the summons.

In these three situations, 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.

If the defendant lives in Belgium, the registry of the Court will serve the documents to the defendant by “court letter” (equivalent to a registered letter with acknowledgment of receipt).

If the defendant lives in another Member State, the registry shall transmit the documents to be served by one of the modes of transmission authorized (the registered letter with acknowledgment of receipt directly sent to the defendant) in accordance with the EC Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). The Belgian court registries (including those of Justice of peace, Commercial Court and Court of First instance) competent in the service of documents are transmitting agencies.

The original claimant shall have 30 days from service to respond to any counterclaim (by using the Form C).

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



- **Review and appeal**

- **Appeal**

Article 17 of the regulation states that « *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* ».

Pursuant to Belgian civil procedural law it is possible to lodge an appeal under Article 17 of this Regulation. This appeal must be lodged with the Court of First Instance, the Commercial Court or the Court of Appeal with material and territorial jurisdiction under the Belgian Judicial Code. Pursuant to Article 1051 of the Belgian Judicial Code, the time limit within which an appeal must be lodged is one month from when the judgment is served or notified in accordance with Article 792(2) and (3) of the Belgian Judicial Code. By analogy with this Article, the time limit within which an appeal must be lodged in the context of the European Small Claims Procedure is one month from when the judgment is served or notified by the competent court in accordance with Article 13 of the Regulation establishing a European Small Claims Procedure.

- **Review of the judgment**

Article 18 – « Minimum standards for review of the judgment » - states that:

“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”.

We can legitimately consider that the hypothesis of a review mechanism of the judgment is accepted under Belgian law, through two ways: the “opposition” proceedings (an application to set aside by the party that was not present at the time of the original proceedings, and this regardless of the reasons for absence) and the civil petition proceedings.

- **Enforcement of the judgment**

A judgment given in a Member State in the European Small Claims Procedure shall be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost.

Regarding the certificate, nothing has been formally stated in Belgium. It is advisable to request the issuing of the certificate to the registry office of the competent court because it is a administrative task.

The enforcement procedures shall be governed by the law of the Member State of enforcement. Any judgment given in the European Small Claims Procedure shall be enforced under the same conditions as a judgment given in the Member State of enforcement.

The judicial officers are the authorities in Belgium which have competence to enforce a judgment given by the court in the context of the European Small Claims Procedure.

The party seeking enforcement shall produce:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- (b) a copy of the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has



indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European Small Claims Procedure. The content of Form D shall be translated by a person qualified to make translations in one of the Member States.

Belgium Government has indicated that, under Article 21(2)(b), Belgium does not accept any language other than the official language or one of the official languages of the place of enforcement in accordance with Belgian national law.

The party seeking the enforcement of a judgment given in the European Small Claims Procedure in another Member State shall not be required to have an authorised representative or a postal address in the Member State of enforcement, other than with agents having competence for the enforcement procedure.

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in the European Small Claims Procedure in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

- **Incidents that may occur in connection with the enforcement of the judgment:**
 - **Refusal of enforcement**

Enforcement shall, upon application by the person against whom enforcement is sought, be refused by the court or tribunal with jurisdiction in the Member State of enforcement if the judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

- (a) the earlier judgment involved the same cause of action and was between the same parties;
- (b) the earlier judgment was given in the Member State of enforcement or fulfills the conditions necessary for its recognition in the Member State of enforcement; and
- (c) the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given.

However, the regulation adds that « Under no circumstances may a judgment given in the European Small Claims Procedure be reviewed as to its substance in the Member State of enforcement ».





- **Stay or limitation of enforcement**

Where a party has challenged a judgment given in the European Small Claims Procedure or where such a challenge is still possible, or where a party has made an application for review within the meaning of Article 18, the court or tribunal with jurisdiction or the competent authority in the Member State of enforcement may, upon application by the party against whom enforcement is sought:

- (a) limit the enforcement proceedings to protective measures;
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) under exceptional circumstances, stay the enforcement proceedings.

The authority with competence to refuse, stay or limit enforcement is first and foremost the attachment judge ("juge des saisies (exécution)" and "beslagrechter (tenhuitvoerlegging)") of the place where the attachment is carried out. Pursuant to Article 1395 of the Belgian Judicial Code, the judge of attachments has competence in respect of all actions for precautionary attachment and the means of enforcement. The territorial jurisdiction is defined in Article 633 of the Belgian Judicial Code. The Court of First Instance, which has territorial jurisdiction under the Belgian Judicial Code, also has competence in this respect. Point 5 of Article 569 of the Belgian Judicial Code stipulates that the Court of First Instance is competent to hear disputes regarding the enforcement of judgments and rulings. And it also has full jurisdiction pursuant to Article 566 of the Belgian Judicial Code.

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