Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure

REGULATION (EU) 2015/2421 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 December 2015

amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EC) No 861/2007 of the European Parliament and of the Council[(3)] established the European Small Claims Procedure. That Regulation applies to both contested and uncontested cross-border civil and commercial claims of a value not exceeding EUR 2 000. It also ensures that the judgments given within this procedure are enforceable without any intermediate procedure, in particular without the need for a declaration of enforceability in the Member State of enforcement (abolition of exequatur). The general aim of Regulation (EC) No 861/2007 has been to improve access to justice for both consumers and businesses by reducing costs and accelerating civil procedures with regard to claims within its scope.

(2) The Commission's report of 19 November 2013 on the application of Regulation (EC) No 861/2007 states that, in general, the European Small Claims Procedure is considered to have facilitated cross-border litigation for small claims in the Union. However, that report also identifies obstacles to realising the full potential of the European Small Claims Procedure to benefit consumers and businesses, in particular small and medium-sized enterprises (SMEs). That report finds, among other things, that the low ceiling set out in Regulation (EC) No 861/2007 as regards the value of the claim deprives many potential claimants in cross-border disputes of the use of a simplified procedure. Furthermore, it states that several elements of the procedure could be further simplified in order to reduce the costs and the duration of litigation. The Commission's

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report concludes that those obstacles could be removed most effectively by amending Regulation (EC) No 861/2007.

(3) Consumers should be able to use the opportunities afforded by the internal market to the fullest extent, and their confidence should not be limited by the lack of effective legal remedies for disputes in which there is a cross-border element. The improvements to the European Small Claims Procedure proposed in this Regulation aim to provide consumers with a means of effective redress, and thus contribute to the practical enforcement of their rights.

(4) Increasing the ceiling as regards the value of a claim to EUR 5 000 would improve access to an effective and cost-efficient judicial remedy for cross-border disputes, in particular for SMEs. Increased access to justice would enhance trust in cross-border transactions and would contribute to the fullest use of the opportunities afforded by the internal market.

(5) This Regulation should apply to cross-border cases only. A cross-border case should be considered to exist when at least one of the parties is domiciled or habitually resident in a Member State bound by this Regulation other than the Member State of the court or tribunal seised.

(6) The European Small Claims Procedure should be further improved by taking advantage of the technological developments in the field of justice and of new tools available to the courts and tribunals, which can help to overcome geographical distance and its consequences in terms of high costs and length of proceedings.

(7) To further reduce the costs of litigation and the length of proceedings, the use of modern communication technology by the parties and the courts and tribunals should be further encouraged.

(8) For documents which need to be served on the parties in the European Small Claims Procedure, electronic service should be on an equal footing with postal service. To that end, this Regulation should set a general framework that allows the use of electronic service whenever the necessary technical means are available and where the use of electronic service is compatible with the national procedural rules of the Member States involved. As regards all other written communications between the parties or other persons involved in the proceedings and the courts or tribunals, electronic means should be used as the preferred means to the extent possible, where such means are available and admissible.

(9) Unless the parties or other addressees are obliged under national law to accept electronic means, they should have the choice as to whether electronic means, where such means are available and admissible, or more traditional means are to be used for the service of documents or for other written communications with the court or tribunal. The acceptance by a party of service by electronic means is without prejudice to his right to refuse to accept a document that is not written in, or accompanied by a translation into, the official language of the Member State in which he is domiciled or habitually resident or, if there are several official languages in that Member State, the official language or

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one of the official languages of the place where that party is domiciled or habitually resident, or in a language which he understands.

(10) Where electronic means are used for the service of documents or for other written communications, existing best practices should be applied by the Member States to ensure that the content of the documents and other written communications received is true and faithful to that of the documents and other written communications sent, and that the method used for the acknowledgement of receipt provides confirmation of the receipt by the addressee and of the date of receipt.

(11) The European Small Claims Procedure is essentially a written procedure. Oral hearings should only be held exceptionally where it is not possible to give the judgment on the basis of the written evidence or where a court or tribunal agrees to hold an oral hearing upon a party's request.

(12) In order to enable persons to be heard without requiring them to travel to the court or tribunal, oral hearings as well as the taking of evidence by hearing witnesses, experts or parties should be carried out using any appropriate means of distance communication available to the court or tribunal, unless, on account of the particular circumstances of the case, the use of such technology would not be appropriate for the fair conduct of the proceedings. As regards persons domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised, oral hearings should be organised by making use of the procedures provided for in Council Regulation (EC) No 1206/2001[(4)].

(13) Member States should promote the use of distance communication technology. For the purpose of carrying out oral hearings, arrangements should be made so that the courts or tribunals that are competent in relation to the European Small Claims Procedure have access to appropriate distance communication technology with a view to ensuring the fairness of proceedings with regard to the particular circumstances of the case. In relation to videoconferencing, the Council Recommendations on cross-border videoconferencing adopted by the Council on 15 and 16 June 2015 and the work undertaken in the framework of European e-Justice should be taken into account.

(14) The potential costs of litigation can play a role in the claimant's decision on whether to commence a court action. Among other costs, court fees may discourage claimants from taking court action. In order to ensure access to justice for cross-border small claims, the court fees charged in a Member State for the European Small Claims Procedure should not be disproportionate to the claim and should not be higher than the court fees charged for national simplified court procedures in that Member State. This should, however, not prevent the levying of reasonable minimum court fees and should be without prejudice to the possibility of levying, under the same conditions, a separate fee for any appeal procedure against a judgment given in the European Small Claims Procedure.

(15) For the purposes of this Regulation, court fees should comprise fees and charges to be paid to the court or tribunal, the amount of which is determined in accordance with national law. They should not include, for example, sums which are transferred to third parties in the course of proceedings, such as lawyers' fees, translation costs, costs of

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service of documents by entities other than a court or tribunal, or costs paid to experts or witnesses.

(16) Effective access to justice across the Union is a major objective. To ensure such effective access in the context of the European Small Claims Procedure, legal aid should be provided in accordance with Council Directive 2003/8/EC[(5)].

(17) The payment of court fees should not require the claimant to travel to the Member State of the court or tribunal seised or to hire a lawyer for that purpose. In order to ensure that effective access to the proceedings is also given to claimants who are situated in a Member State other than the Member State in which the court or tribunal seised is situated, the Member States should, as a minimum, offer at least one of the distance payment methods provided for in this Regulation.

(18) It should be clarified that a court settlement approved by or concluded before a court or tribunal in the course of the European Small Claims Procedure is enforceable in the same way as a judgment given in that procedure.

(19) In order to minimise the need for translation and associated costs, the court or tribunal should, when issuing a certificate for the enforcement of a judgment given in the European Small Claims Procedure, or of a court settlement approved by or concluded before a court or tribunal in the course of that procedure, in a language other than its own, use the relevant language version of the standard form for the certificate available in a dynamic online format on the European e-Justice Portal. In this regard, it should be entitled to rely on the accuracy of the translation available on that Portal. Any costs for necessary translation of the text entered into the free text fields of the certificate are to be allocated as provided for under the law of the Member State of the court or tribunal.

(20) Member States should provide practical assistance to parties in filling in the standard forms provided for in the European Small Claims Procedure. Moreover, they should provide general information on the scope of application of the European Small Claims Procedure and on which courts or tribunals are competent in relation to it. However, that obligation should not entail the provision of legal aid or of legal assistance in the form of a legal assessment of a specific case. Member States should be free to decide on the most appropriate ways and means of providing such practical assistance and general information, and it should be left to the Member States to decide upon which bodies those obligations are imposed. Such general information on the scope of application of the European Small Claims Procedure and on the competent courts or tribunals may also be provided by way of reference to information given in brochures or handbooks, on national websites or on the European e-Justice Portal, or by appropriate support organisations, such as the European Consumer Centres Network.

(21) Information about court fees and methods of payment, as well as about the authorities or organisations competent to give practical assistance in the Member States should be made more transparent and easily available on the internet. To that end, the Member States should provide that information to the Commission, which in turn should ensure that it is made publicly available and widely disseminated by any appropriate means, in particular through the European e-Justice Portal.

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(22) It should be clarified in Regulation (EC) No 1896/2006 of the European Parliament and of the Council[(6)] that, where a dispute falls within the scope of the European Small Claims Procedure, that procedure should also be available to a claimant in a European order for payment procedure in the event that the defendant has lodged a statement of opposition against the European order for payment.

(23) In order to further facilitate access to the European Small Claims Procedure, the standard claim form should not only be made available at the courts and tribunals that are competent in relation to the European Small Claims Procedure, but it should also be made accessible through appropriate national websites. That obligation could be met by providing a link to the European e-Justice Portal on the relevant national websites.
To improve the protection of the defendant, the standard forms provided for in Regulation (EC) No 861/2007 should contain information about the consequences for the defendant if he does not contest the claim or does not attend an oral hearing when summoned, in particular as regards the possibility that a judgment may be given or enforced against him and that liability may be incurred for the costs of the proceedings. The standard forms should also contain information about the fact that the successful party may not be able to recover the costs of the proceedings to the extent that they are unnecessarily incurred or are disproportionate to the value of the claim.

(24) In order for the standard forms of the European Small Claims Procedure and of the European order for payment procedure to be kept up-to-date, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of changes to Annexes I to IV to Regulation (EC) No 861/2007 and in respect of changes to Annexes I to VII to Regulation (EC) No 1896/2006. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(25) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and to the TFEU, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.

(26) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(27) Regulations (EC) No 861/2007 and (EC) No 1896/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 861/2007 is amended as follows:

(1) Article 2 is replaced by the following: