



DECISION

The German Bundestag, at its 54th sitting, held on 25 September 2014,
acting on the basis of Bundestag printed paper 18/2647
and in awareness of the notice listed as item A.48 in Bundestag printed paper 18/419,
has adopted the following resolution on the

**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
(COM(2013) 794 final; Council Document 16749/13):**

Statement of position to the Federal Government under Article 23(3) of the Basic Law

I. The Bundestag notes:

The German Bundestag welcomes the Commission's efforts to simplify court procedures in cross-border small-claims cases for consumers as well as for small and medium-sized enterprises, thereby improving their access to justice and enforcement of their rights. In particular, the Bundestag also recognises the value of an effective procedure of this kind to German exporting companies and to the European internal market. It regards the reduction of translation costs as a desirable objective. The Bundestag notes, however, that the Commission's proposed amendment of the Regulation, taken in its entirety, goes far beyond what is needed to achieve the aforementioned aim.

II. The Bundestag calls on the Federal Government to endeavour, at the negotiations forming part of the legislative process for the amendment of the Small Claims Regulation, to gain acceptance for the following points of view:

1. The existing rules governing the European small-claims procedure should, first and foremost, be applied in full throughout Europe and be more strictly enforced. As one means to this end, lawyers and the judiciary in particular should be made conversant with the procedure. The following step should be a proper evaluation of the procedure before any more changes are made to a set of rules that only came into force on 1 January 2009. Even the Commission acknowledges that lack of familiarity with the current procedure has been the reason for its present limited



practical significance. Accordingly, there is no need for legislative action for the time being but rather for a considerable increase in awareness of the small-claims procedure in order to enhance its appeal in the eyes of consumers and SMEs. In deliberations on the amending regulation, consideration must be given not only to the impact of incoming claims on the German legal system but also to the effects of the planned regulation on German claimants abroad, particularly consumers and small and medium-sized enterprises.

2. An increase in the maximum value of a claim to EUR 10,000 as envisaged in Article 1(1) of the proposed regulation, amending Article 2(1) of Regulation (EC) No 861/2007, would be a step too far. Once the value of a claim exceeds EUR 2,000, it is no longer regarded in German jurisprudence as a small claim. Some 67% of all proceedings before local courts involve claims of up to EUR 2,000 and so are already within the scope of the Regulation. If an increase in the maximum value were enacted and transposed, most civil cases in Germany would be affected. As a result, a considerable number of legal disputes that fall within the jurisdiction of the regional courts and therefore entail compulsory legal representation would be subject to lower procedural standards. Particularly in cases where larger amounts are at stake, compulsory legal representation has proved highly expedient, both for the parties and for the organisational efficiency of the court system. In addition, behind the targeted amendments may lie the risk of covert introduction of a European code of civil procedure. It is therefore imperative that the scope of the Regulation in terms of the maximum claim value of EUR 2,000 be left untouched.
3. The broadening of the definition of cross-border claims under Article 1(1) of the proposed regulation (Article 2(2) of Regulation No 861/2007) also raises considerable concerns. The huge expansion of the definition of cross-border proceedings would bring purely national cases into the scope of the Regulation. The European Union is not even competent to regulate such matters. Besides, from the very start of such proceedings, judges would be confronted with formidable clarification and appraisal problems that would cancel out any supposed time savings. In general terms, there would be a very significant risk of abuse and evasion, which is why the definition of what constitutes a cross-border case must not be extended beyond its present bounds.
4. Increased use of electronic communication, as envisaged in Article 1(4), (5) and (6) of the proposed regulation (Articles 5(1), 8 and 9 of Regulation No 861/2007), is to be welcomed in principle. It would cut costs, particularly travel expenses. The first essential step here would be European standardisation, with due regard to technical and data-protection requirements.



5. The idea of compulsory videoconferences or teleconferences presented in Article 1(5) and (6) of the proposed regulation (Articles 8 and 9 of Regulation No 861/2007) is also to be welcomed, provided that the procedural principles of orality and directness are upheld. In this case too, cost savings in the form of lower travel expenses should be highlighted. It is gratifying that explicit provision is made for a personal oral hearing in cases in which the court deems it expedient or a party so requests. Should such a request be rejected by the court, a right of redress should be available. If there were a sharp rise in the maximum value of a claim, however, it would be necessary to reject the exceptional character of oral hearings. Substantial additional costs might arise, moreover, if the technological requirements were introduced in the federal states.
6. With regard to the proposals to flesh out the advisory obligation in Article 11(1) and to extend the obligation to provide information in Article 11(2), care must be taken to ensure that the proposed provisions are compatible with the principles enshrined in the German Legal Services Act (*Rechtsdienstleistungsgesetz*). To the extent that the planned amendments overstep those principles, they must be rejected.
7. The provision in Article 1(9) of the proposed regulation (Article 15a of Regulation No 861/2007) capping the court fee at 10% of the value of the claim and restricting the minimum fee to EUR 35 is inconsistent with the German system of court costs and throws the door open to abuse. It would make the European small-claims procedure a far more favourable option than the national procedure, particularly in the lowest range of claim values, although it is likely to give rise to higher costs as a rule. A comprehensive approach is needed which focuses on the entire cost of legal proceedings and is not confined to court fees. The proposed introduction of ceilings for court fees must therefore be rejected.