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## EURO-AMERICAN LAWYERS GROUP

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### ***THE NETHERLANDS: SER SUPPORTS PROPOSAL TO ESTABLISH A EUROPEAN SMALL CLAIMS PROCEDURE***

*AN EURO-AMERICAN LAWYERS GROUP BRIEFING ARTICLE*

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*On 15 March 2005 the Commission of the European Communities made a proposal for a regulation to establish a European small claims procedure. The regulation is intended to speed up small claims procedures and reduce costs. The proposed EU regulation is presented as an alternative to national provisions governing both transnational and national small claims disputes. At the request of the Minister of Justice, the Social and Economic Council (SER) has issued an advice on the proposal. In principle the Council is positive towards the proposal, but advocates a limitation of the scope of the regulation to transnational cases. It is the opinion of the SER that the European legislature does not have the power to intervene in national law of procedure.*

The proposal of the European Commission effectively means that parties have the option of using the European procedure as the basis of regulation in both national and transnational cases involving claims of up to €2000. As a result, both the law of procedure for small claims and the ceiling for claims will become the same throughout the EU. Currently there are considerable differences in ceilings. For example, in the Netherlands the sub-district judge (Dutch Kantonrechter) is competent for claims up to €5000. However, in many other EU countries this jurisdictional ceiling is much lower. In addition to that there are differences in the law of procedure. Some countries have a specific procedure for handling small claims dispute; while other countries, such as the Netherlands, have simplified procedures compared to the procedure governing ordinary legal claims.

The SER acknowledges the advisability of a European procedure for small claims, provided that this procedure is limited to transnational disputes. In the opinion of the SER the European legislature does not have the power to intervene in national laws of procedure concerning national affairs. With this the council follows the view of the Legal Service of the Council of Ministers. Such an intervention in the national law of procedure is deemed unjustified on the basis of European law because of the principles of subsidiarity and proportionality. The European Commission bases its proposal on art. 61 sub c EC Treaty. However, this is disputed by the Council of Ministers. There are also concerns about future precedents if the proposed EC procedure would apply to national disputes as well.



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However, the SER acknowledges the many advantages which the proposed procedure for transnational disputes would bring. Firstly, the risk for the consumer is quite limited, since one cannot be ordered to pay the costs of the procedure, which takes away a great deal of risk from initiating a procedure. In addition that the proposed procedure is quite simple; the procedure is initiated by submitting a claims form, after which the court itself will notify the defendant, either by means of service or by registered post. Further, the costs are very limited. Unlike the Dutch procedure, the European procedure is conducted in writing, unless a hearing is considered necessary. Due to the possible geographic distance in the case of transnational disputes even audio, video or e-mail conferences can be made possible.

Thus, the SER does support the proposal of the European Commission, provided that it is limited to transnational disputes. If the proposal is carried, the sub-district court will most likely be the competent judge for the implementation of the regulation, as this judge is most familiar with adjudicating small claims.

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