

EU COUNCIL ~FACTSHEET~

DECISIONS IN CIVIL LAW MATTERS

Justice and Home Affairs Council Luxembourg, 6 June 2008

The Council (JHA) took today important decisions in the field of civil law matters at its meeting in Luxembourg. These decisions relate to a Regulation harmonising conflict of law rules concerning contractual obligations, maintenance obligations, applicable law in matrimonial matters, protection of children (the Hague Convention), recognition and enforcement of judgements in civil and commercial matters (replacement of the Lugano Convention) and the external dimension of civil law.

As a result, the European judicial cooperation will improve and European citizens will have an easier access to justice in the European space of justice, liberty and security.

Contractual obligations in civil and commercial matters

The Council adopted a Regulation aimed at harmonising conflict-of-law rules concerning contractual obligations, accepting all amendments voted by the European Parliament at first reading (3691/07 and 7689/08 ADD 1).

The new Regulation will replace the 1980 Rome Convention on the law applicable to contractual obligations, while modernising some of its rules.

In the context of the European judicial area it is important to improve certainty as to the law applicable, the predictability of the outcome of litigation and the free movement of judgments. The new Regulation will assure that even though the substantive law of the Member States is different, all courts of the Member States will apply the same law – be it their own or that of another EU country – to the contract in question.

PRESS

The Regulation is based on the principle of party autonomy, i.e. in most cases the parties are free to choose the law to govern their contract. However, in the absence of choice, the Regulation sets out clear and predictable rules to determine the law applicable to a contract. Apart from the general regime, it also contains specific conflict-of-law rules for particular cases such as consumer contracts, contracts of carriage and individual employment contracts.

Maintenance obligations

The Council agreed on a set of political guidelines for further work on a proposal for a Regulation on maintenance obligations and in particular on the principal goal of the Regulation: the complete abolition of exequatur on the basis of harmonised applicable law rules.

The ambition of the proposal is to eliminate all obstacles which still today prevent the recovery of maintenance within the European Union, in particular the requirement of the exequatur procedure. By abolishing this procedure all decisions on maintenance obligations would be allowed to circulate freely between the Member States without any form of control in the Member State of enforcement ant this would significantly speed up the recovery of maintenance owed. It will enable the creation of a legal environment adapted to the legitimate expectations of the maintenance creditors. The latter should be able to obtain easily, quickly and, generally, free of charge, an enforcement order capable of circulation without obstacles in the European area of justice and enabling regular payment of the amounts due.

The guidelines agreed contain compromise solutions on six key elements of the proposal: its scope, jurisdiction, applicable law, recognition and enforceability, enforcement and a review clause.

Rome III - Applicable law in matrimonial matters

A large majority of Member States supported the objectives of this proposal for a Council Regulation. Therefore and due to the fact that the unanimity required to adopt the Regulation could not be obtained, the Council established that the objectives of Rome III cannot be attained within a reasonable period by applying the relevant provisions of the Treaties. Work should continue with a view to examining the conditions and implications of possibly establishing enhanced cooperation between Member States.

The purpose of this Regulation is to provide a clear and comprehensive legal framework and allowing the parties a certain degree of autonomy in choosing the competent court and applicable law in case of divorce.

Spouses would be allowed to choose a competent court or the law applicable to divorce. In the absence of a choice of law by the spouses, the text would introduce conflict-of-law rules. According to the proposal, there is a cascade of connecting factors: the divorce is governed by the law of the country of habitual residence of both spouses, failing that, by that of the last habitual residence of the spouses if one of them still resides there; failing that, of the common nationality of the spouses or, failing that, by the law of the forum. The conflict-of-law rules of the proposal aim at ensuring that, wherever the spouses lodge their request for divorce, the courts of any Member State would normally apply the same substantive law (avoiding of "forum shopping").

The Hague Convention - Protection of children

The Council adopted a Decision authorising certain EU member states to ratify, or accede to, the 1996 Hague Convention, and to make a declaration on the application of the relevant internal rules of EU law.

This very important Convention concerns jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children. It constitutes a crucial instrument to protect the interest of a children at worldwide level.

Recognition and enforcement of judgments on civil and commercial matters (Lugano)

Pending the assent of the European Parliament the Council approved the conclusion of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which will replace the Lugano Convention of 16 September 1988 (9196/08).

The text of the Convention is published in OJL 339, 21.12.2007, pp. 3-41.

External dimension

The Council agreed on an update of the external relations strategy in the field of judicial cooperation in civil matters.

The document is not a legal framework but rather an evolving process of defining and achieving policy objectives in full conformity with the provisions of the EC Treaty.

In The Hague Programme¹ the European Council called for the development of a strategy reflecting the Union's special relations with third countries, groups of countries and regions and focusing on the specific needs for JHA cooperation with them.

In April 2006 the Council approved a strategy document outlining aspects of judicial cooperation in civil matters (8140/06). As indicated in this document, the development of an area of freedom, security and justice can only be successful if it is underpinned by a partnership with third countries on these issues which includes strengthening the rule of law and promoting respect for human rights and international obligations.

The external dimension of judicial cooperation in civil matters has growing significance. On the one hand, international agreements with third countries are indispensable for providing legal certainty and foreseability for European citizens on a global scale. On the other hand, it is also important to safeguard the uniform application of Community law in international negotiations.

| ¹ OJ C 53, | 3.3.2005, | р. 1. |
|-----------------------|-----------|-------|

3