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REPORT

on the proposal for a Council regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters
(COM(1999) 348 – C5-0169/1999 – 1999/0154(CNS))

Committee on Legal Affairs and the Internal Market

Rapporteur: Diana Wallis

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

By letter of 30 September 1999 the Council consulted Parliament, pursuant to Article 61(c) of the EC Treaty on the proposal for a Council regulation (EC) on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (COM(1999) 348 - 1999/0154(CNS)).

At the sitting of 7 October 1999 the President of Parliament announced that she had referred this proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs for its opinion (C5-0169/1999).

At its meeting on 23 September 1999, the Committee on Legal Affairs and the Internal Market had appointed Diana Wallis rapporteur.

The committee considered the Commission proposal and draft report at its meetings of 30 November 1999, 10 and 11 January 2000, 21 and 22 February 2000, 27 March 2000, 8 and 9 May 2000, 26 and 27 June 2000 and 4 September 2000.

At the last meeting it adopted the draft legislative resolution by 17 votes in favour , with 13 abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Ward Beysen, Willi Rothley and Rainer Wieland , vice-chairmen; Diana Paulette Wallis, rapporteur; Luis Berenguer Fuster, Maria Berger, Jean-Maurice Dehousse, Carlo Fatuzzo (for H. P. Mayer pursuant to Rule 153(2)), Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, Roger Helmer (for Antonio Tajani pursuant to Rule 153(2)), Anneli Hulthén, The Lord Inglewood, Othmar Karas, Klaus-Heiner Lehne, Donald Neil MacCormick, Toine Manders, Hans-Peter Martin, Arlene McCarthy, Manuel Medina Ortega, Bill Miller, Angelika Niebler, Imelda Mary Read, Francesco Enrico Speroni, Astrid Thors, Theresa Villiers, Joachim Wuermeling, Matti Wuori, Christos Zacharakis, Stefano Zappalà and Jürgen Zimmerling.

The opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs is attached.

The report was tabled on 18 September 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 - C5-0169/1999 - 1999/0154(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1)
Recital 3

This area is within the field of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.

This area is within the field of judicial cooperation in civil matters within the meaning *of paragraph (a)* of Article 65 of the Treaty.

Justification:

Self-explanatory.

(Amendment 2)
Recital 3a (new)

This Regulation must be applied and interpreted in a way which is compatible with Community law and in particular neither hinders nor makes less attractive the exercise of the fundamental principles of free movement of goods and services guaranteed by the Treaty and Directives concerning the application of these principles in certain areas.

Justification:

Self-explanatory.

¹ OJ C 376, 28.12.1999, p.1.

(Amendment 3)
Recital 4a (new)

Allowing consumers to sue in the courts of their domicile is likely to have a deterrent effect on new entrants to the growing electronic-commerce market and judicial proceedings must be regarded as constituting a last resort for the consumer, in view also of the costs and delays involved. However, regard must also be had to the fact that the supplier and/or the credit card company (in the event that a charge-back scheme is adopted) are in a better position, as compared with the principal, to insure against the risk of legislation.

Justification:

See justification for Amendment 10. Furthermore, according to the UK Department of Trade and Industry, in 1998 only 69 individuals in the UK made requests for documents to be served to other Member States pursuant to the Brussels Convention. In contrast, 2547 requests for service were received from abroad, but most of these are likely to have been made by businesses. It must also be borne in mind that consumers are likely to use the courts only for high value claims. Indeed, a 1995 study for the Commission found that the cost of pursuing a cross-border claim for EUR 2000 would be EUR 2500, excluding the cost of having the judgment enforced.

As for legal-expenses insurance, the UK Department of Trade and Industry estimates that insurance against a range of risks and not just those associated with consumer contracts costs between about EUR 86 and EUR 212 per firm. Even if the cost of premiums rises as a result of the new judgments regulation, this is a tiny amount compared with the cost of launching a web site.

(Amendment 4)
Recital 4b (new)

This Regulation does not deal with the issue of applicable law. The provisions relating to jurisdiction of courts in this Regulation have no effect either on the application and the interpretation of the Rome Convention on the law applicable to

contractual obligations or on a possible future revision of this Convention.

Justification:

Self-explanatory.

(Amendment 5)
Recital 4c (new)

Consequently, this Regulation must be regarded as forming part of a package of legislative and non-legislative measures concerning electronic commerce. In particular, the Commission has decided to make proposals as a matter of the utmost urgency for an out-of-court dispute-settlement system and a small-claims procedure which can be applied as between Member States and ultimately internationally.

Justification:

See justification for Amendment 10. The Commission is currently working on several projects including the EEJ-NET ADR scheme and research into an on-line system at the Joint Research Centre. It is also noted that at least one Member State has a pilot on-line small claims court dealing with claims of up to EUR 1270 for a small administrative cost. Consequently, the preparatory work is already being done.

(Amendment 6)

Recital 4d (new)

This Regulation does not pre-empt the possibility to establish at Community level different rules relating to jurisdiction, in particular for small claims or for certain specific subject-matters.

Justification:

Self-explanatory.

(Amendment 7)

Recital 4e (new)

This Regulation is regarded as an urgent measure designed to remove existing legal uncertainties as to the application of the Convention to electronic commerce. Corresponding adjustments must subsequently also be made to the Rome Convention on the law applicable to contractual obligations in order to create a coherent legal framework. In addition, voluntary initiatives on the part of business aimed at establishing out-of-court dispute-settlement systems should be encouraged, as they would provide a useful alternative to legal proceedings, given the many disputes involving very small amounts.

Justification:

The reluctance of consumers to complain is not a valid reason for depriving them of the opportunity to institute proceedings in their country of domicile. Often, the mere threat of legal action has a preventive effect and ensures that businesses are more likely to fulfil their contractual obligations.

Out-of-court settlements do not provide anywhere near the same procedural guarantees as a 'fair trial' in court.

(Amendment 8)
Recital 4f (new)

In addition, the Commission intends to liaise and collaborate with interested parties, especially the banking and credit-card industry and consumer groups, in order to facilitate the development of other extrajudicial dispute-resolution schemes for electronic commerce, where necessary proposing framework legislation.

Justification:

See justification for Amendment 10. Furthermore, it is particularly important to involve the banks and the credit card companies, since a charge-back system whereby the consumer brings his claim against the credit card company could provide a very satisfactory solution to the whole question of consumer claims against Internet traders. Credit cards constitute virtually the universal means of payment on the Internet and it would not be difficult for the credit card companies to arrange such a scheme. Credit card companies often offer their customers “free” travel insurance, they could in effect offer cover for consumer claims as well. The credit card companies could also refuse to deal with traders with a bad trading record, sites trading in hard pornography and illegal gaming sites.

(Amendment 9)
Recital 4g (new)

This Regulation aims to contribute to the establishment of a well-balanced legal framework seeking to promote the growth of electronic commerce in Europe and to ensure the competitiveness of European companies at global level.

Justification:

Self-explanatory.

(Amendment 10)
Recital 4h (new)

As this Regulation constitutes part of this package of legislative and non-legislative initiatives, its entry into force was deferred until such time as the remainder of the package was ready for adoption.

Justification for amendments 3,5, 8 and 10:

The Committee welcomes recent statements by the Commissioner responsible for the Internal Market promising the adoption of a consistent, overall approach to electronic commerce and by the Commissioner responsible for consumer protection in relation to alternative dispute-resolution systems. It also expresses satisfaction at the work now being conducted by the Commission in the fields of ADR and on-line dispute settlement. However, in view of the potential adverse effects of the adoption of this Regulation on online trading and of the legal uncertainty which the Regulation would introduce, it is preferable to allow the Brussels Convention to remain in force as between all the Member States until a complete package of measures relating to electronic-commerce dispute-resolution can be introduced. A delay will also give the industry time to adjust and make the necessary arrangements.

Much concern has rightly been voiced about Article 15 of the proposed regulation, which deals with consumer contracts and purports to extend the existing consumer provisions of the Brussels Convention to cover online trading. Small and medium-sized businesses in particular may be dissuaded from making the considerable investment needed in order to open Internet sites. There is in fact a danger that the prospect of having to deal with litigation in any Member State might be perceived as outweighing the attractions of Internet trading, causing businesses in the European Union to miss out on the potential opportunities for trade and the European Union to lose the chance of providing a lead in this new market whose possibilities appear virtually limitless.

Consumers have at present the right to sue in their own courts. To compel them to sue in foreign courts would be disproportionate and unreasonable in view of the low value of most consumer Internet transactions, the teething troubles of the infant Internet trading industry (Ernst & Young, the management consultancy, estimate that one in six goods bought by US online shoppers last Christmas never arrived) and the cost and inconvenience of bringing proceedings abroad. Moreover, the necessity for consumers to sue in a foreign court might itself prove a strong deterrent to Internet trading. Regard must also be had to the fact that Internet traders are in a stronger position than consumers when it comes to online purchases, since they generally obtain payment in advance by credit card. Traders (and credit card companies) are also better placed to insure against the risk. The figures cited in the justification to Amendment 3 support this argument.

Furthermore, the EC Treaty requires the Community to have regard to consumer protection. Article 3(t) refers to “a contribution to the strengthening of consumer protection” as being among the “activities of the Community” and, under Article 95(3), the Commission is to “take as its base a high level of consumer protection”. Given the connection between Article 65, on which the proposal for a regulation is rightly based, and Article 95 (both being concerned with the functioning of the internal market), it can be considered that the new Regulation must take as its base a high level of consumer protection. Accordingly, if the proposed Regulation were stripped of the existing consumer protection provisions enshrined in the Brussels Convention, it might be successfully attacked in the Court of Justice on these grounds, a fortiori since many commentators consider that Article 13 of the Brussels Convention, which Article 15 of the new Regulation would replace, already covers online transactions. Finally, account must be taken of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which forms part of the law of the European Community. Yet recourse to the courts must be regarded as the last resort. Legal proceedings, especially where foreign law has to be applied, are expensive and slow. The introduction of cheap, straightforward mechanisms to deal with small claims is essential as it is recognised that the protection afforded to consumers by the provisions of Article 15 is largely illusory in view of the small value of most consumer claims and the cost and time consumed by bringing court proceedings (see the figures given in the justification to Amendment 3).

Accordingly, there should be a commitment on the part of the Commission to work out proposals as a matter of the utmost urgency for a system for the out-of-court settlement of consumer disputes and for a European Union-wide small-claims procedure, which might lend themselves to application internationally, allowing the Union to take a lead in this exciting new field. Such initiatives would be consistent with point 30 of the conclusions of the Tampere European Council of 15 and 16 October 1999 and with the fact that the Commission has already done much work in this field¹. The Commission is also committed to assisting industry, particularly credit-card providers and the banks, with the development of extrajudicial dispute-resolution systems, if necessary by proposing framework legislation. The entry into force of the Regulation must be deferred until the Commission has worked out the necessary proposals so that the whole package of measures can be adopted concurrently. The delay which this will entail will have the added advantage of giving the industry time to adapt and make the necessary arrangements. It is further to be hoped that by the time the delay has elapsed, Denmark will have waived its opt-out, Ireland and the United Kingdom having opted in on 7 December 1999, and the new international judgments convention being negotiated at The Hague will have been concluded.

¹ See, for instance, the 1993 Green Paper on access of consumers to justice and the settlement of consumer disputes in the Single Market (COM(1993) 576), the EEJ-Net project and the ongoing research into online systems at the Joint Research Centre.

(Amendment 11)
Recital 4i (new)

The Commission will ensure in future that the area of freedom, security and justice to be established pursuant to Article 61 of the EC Treaty coincides with the Internal Market, thus constituting the home market for citizens of the European Union.

Justification:

It must be borne in mind that, unlike the Brussels Convention, which deals with private international law, the new Regulation will be legislating for the Internal Market.

(Amendment 12)
Recital 4j (new)

This Regulation must be applied and interpreted in a way which is compatible with Community law and in particular neither hinders nor makes less attractive the exercise of the fundamental principles of free movement of goods and services guaranteed by the Treaty and Directives concerning the application of these principles in certain areas.

Justification:

Self-explanatory.

(Amendment 13)
Recital 4k (new)

The Commission undertakes to draw up standard terms and conditions for consumer-to-business electronic commerce ("ecoterms Europe").

Justification:

Self-explanatory.

(Amendment 14)
Recital 5

On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the EC Treaty, concluded the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters ("the Brussels Convention"). ***Work has been undertaken for the revision of that Convention, which is part of the *acquis communautaire* and has been extended to all the new Member States, and the Council has approved the content of the revised text. Continuity in the results achieved in that revision should be ensured.***

On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the EC Treaty, concluded the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters ("the Brussels Convention"). ***Given that that Convention, which is part of the *acquis communautaire* and has been extended to all the new Member States, may continue to apply as between Denmark and as between that State and the other Member States, the present Regulation was adopted only following the amendment of Brussels Convention in line with the provisions of the present Regulation.***

Justification:

Ireland and the United Kingdom will be subject to the proposed Regulation since they have now opted in under the relevant Protocol annexed to the EU and EC Treaties. Denmark has not given notice of any intention to waive its opt-out under the corresponding Protocol. If Denmark does not waive its opt-out, the Brussels Convention will continue to apply as between those Member States bound by the Regulation and Denmark, which is not so bound.

However, it seems that once the Regulation has been adopted, this field will come within the exclusive competence of the Community¹, and it will no longer be possible to amend the Brussels Convention. It is to be hoped that the new Regulation will apply to Denmark, but in case it does not, adoption of the Regulation should be deferred until the Brussels Convention has been revised. Given that work is in hand to amend the Lugano Convention in line with the proposed Regulation, the absurd situation could ensue in which the new Regulation applied as between most Member States, the Brussels Convention applied in unamended form as between Denmark, on the one hand, and the other Member States, on the other, and the amended Lugano Convention applied between the EFTA countries and the EU Member States (presumably including Denmark). This would hardly be conducive to legal certainty and would constitute a step backwards from the efforts made to create a common legal area.

A further factor militating in favour of deferring adoption of the new Regulation is that if it were to be adopted before the negotiations for the Hague international judgments convention were concluded, the adoption of that convention might be delayed.

(Amendment 15)
Recital 13

Account must be taken of the growing development of the new communication technologies, particularly in relation to consumers; ***whereas, in particular, electronic commerce in goods or services by a means accessible in another Member State constitutes an activity directed to that State. Where that other State is the State of the consumer's domicile, the consumer must be able to enjoy the protection available to him when he enters into a consumer contract by electronic means from his domicile.***

Account must be taken of the growing development of the new communication technologies, particularly in relation to consumers; ***whereas the aim of modern consumer protection, that is to say the protection of informed consumers who are capable of deciding for themselves, must be to impose wide-ranging obligations in favour of consumers on persons offering goods and services for sale by electronic means. In the context of this Regulation, this means that consumers must be informed clearly and unambiguously before a contract is concluded which court has jurisdiction in the event of a legal dispute.***

Justification:

Self-explanatory.

¹ See the AETR judgment (Case 22/70 Commission v. Council [1971] ECR 263).

(Amendment 16)
Recital 13a (new)

The regime applicable to consumer contracts concluded by electronic means is fair for the consumer, since the distinction between cases where the consumer is the plaintiff and those where he is the defendant guarantees that the consumer himself can be sued only before the court of his own country and since, in addition, the possibility for the consumer to agree to bring an action only before the courts in the Member State of the other party is subject to strict transparency requirements which avoid any risk of inadvertence; furthermore, as consideration, the consumer obtains from the company the guarantee that he can refer the dispute to a specified extrajudicial dispute settlement system (EJDS) and that the company accepts to abide expeditiously by the outcome of the EJDS.

Justification:

Self-explanatory.

(Amendment 17)
Recital 13b (new)

The possibility for consumers to agree to bring actions only before the courts in the Member State of the other party, provided that certain conditions and transparency requirements are fulfilled, is justified by the specificity of transactions by electronic means, in particular the new possibilities for the consumer to make a free and well-informed choice, and does not put into question possible existing limitations on

choice of jurisdiction which may be applicable to certain off-line consumer contracts.

Justification:

Self-explanatory.

(Amendment 18)

Recital 17

Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.

Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute. ***The same applies (a) to authentic instruments, which, like decisions, are an emanation of public authority and therefore possess equal value as evidence and (b) to settlements reached pursuant to an alternative dispute-resolution system approved by the Commission.***

Justification:

Pursuant to Article 54 of the Regulation, judicial decisions and authentic instruments are – quite rightly – equated. This should be explicitly mentioned in the preamble, in order to clarify matters in the event of any difficulties of interpretation of the Regulation arising during implementation.

(Amendment 19)

Recital 18

By virtue of the same principle of mutual trust, the procedure for enforcement in one Member State of a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable must be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility of automatically raising any of the grounds for non-enforcement

By virtue of the same principle of mutual trust, the procedure for enforcement in one Member State of a judgment given, ***or of an authentic instrument drawn up***, in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable must be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility of automatically raising any of the grounds

provided for by this Regulation.

for non-enforcement provided for by this Regulation.

Justification:

Pursuant to Article 54 of the Regulation, judicial decisions and authentic instruments are – quite rightly – equated. This should be explicitly mentioned in the preamble, in order to clarify matters in the event of any difficulties of interpretation of the Regulation arising during implementation.

(Amendment 20)

Recital 26 (new)

The Commission will consider proposals for the establishment of a Centralised Electronic European Union Causebook and Judgment Registry Database.

Justification:

This innovation, which is in the spirit of point 29 of the Conclusions of the Tampere European Council, would be invaluable for courts and litigants. It would also enable the European Union to take a world lead. A fully worked-out proposal for a centralised electronic causebook and judgment registry database already exists. Under the proposal, key information contained on court files in the Member State would be copied, using a standard form, to a centralised database for on-line access by interested parties. The advantages of such a system in promoting the convergence and co-ordination of the different national legal systems and in enabling parties to check on the status of trading partners and suppliers, especially in the age of online trading, are obvious. Since it would be inappropriate, in terms of legislative technique, to include a substantive provision setting up such a system in this Regulation, the recital merely announces an intention to act on the part of the Commission.

(Amendment 21)

Article 5 (a) (new)

As settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, the courts of the Member State in which the trust is domiciled;

Justification:

Ireland and the United Kingdom have now opted in under the relevant Protocol to the EU and EC Treaties.

(Amendment 22)

Article 9

An insurer domiciled in a Member State may be sued:

- (1) in the courts of the Member State where he is domiciled;
- (2) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary in the in the courts for the place where the plaintiff is domiciled, or

...

An insurer domiciled in a Member State may be sued:

- (1) in the courts of the Member State where he is domiciled;
- (2) in another Member State in the case of actions **regarding individual insurance contracts** brought by the policyholder, the insured or a beneficiary in the courts for the place where the plaintiff is domiciled.

...

Justification:

In the case of group contracts, it would be detrimental to legal certainty to allow the policyholder, the insured or a beneficiary to sue in the courts of his or her domicile. This would be liable to lead to a multiplicity of courts having jurisdiction and open the way to forum shopping and incompatible judgments in disputes concerning a single contract. It might also result in a single insurance contract being subject to different mandatory rules depending on the States in which actions were brought.

(Amendment 23)

Article 15

In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and Article 5(5), if:

- (1) it is a contract for the sale of goods on instalment credit terms; or

In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and Article 5(5), if **the consumer enters into the contract from his domicile and:**

- (1) it is a contract for the sale of goods on instalment credit terms; or

- (2) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (3) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, **by any means, directs such activities to that Member State or to several countries including that Member State, and the contract falls within the scope of such activities.**

Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

This section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

- (2) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (3) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or **the contract has been concluded at a distance with a consumer having his domicile in another Member State.**

Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

This section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Justification:

Self-explanatory.

(Amendment 24)
Article 16

A consumer may bring proceedings against the other party to a contract **either** in the courts of the Member State in which that party is domiciled **or in the courts for the place where the consumer is domiciled.**

Proceedings may be brought against a consumer by the other party to the contract

Subject to Article 17a, a consumer may bring proceedings against the other party to a contract in the courts of the Member State in which that party is domiciled.

Proceedings may be brought against a consumer by the other party to the contract

only in the court of the Member State in which the consumer is domiciled.

The first and second paragraphs shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

only in the court of the Member State in which the consumer is domiciled.

The first and second paragraphs shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Justification:

Self-explanatory.

(Amendment 25)
Article 17

The provisions of this Section may be departed from only by an agreement:

- (1) Which is entered into after the dispute has risen; or
- (2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
- (3) which is entered into by the consumer and the other party to the contract, both whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, provided that such an agreement is not contrary to the law of that Member State.

Subject to Article 17a, the provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has risen; or
- (2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
- (3) which is entered into by the consumer and the other party to the contract, both whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, provided that such an agreement is not contrary to the law of that Member State.

Justification:

Self-explanatory.

(Amendment 26)
Article 17a (new)

By way of derogation from Article 16 and Article 17, a consumer may agree that he will bring proceedings against the other party to the contract only in the courts of the Member State in which that party is domiciled, provided that :

- (a) the proceedings concern a contract concluded at a distance by electronic means, and*
- (b) the consumer, prior to the conclusion of the contract, has been made clearly and unequivocally aware in a specific disclaimer that he cannot bring proceedings against the other party in the courts of the Member State where he is domiciled, and*
- (c) the consumer, prior to the conclusion of the contract, agrees in a specific and separate way that he will bring proceedings against the other party only in the courts of the Member State where the other party is domiciled, and*
- (d) the other party, in consideration for such agreement and prior to the conclusion of the contract :*
 - agrees to submit any possible dispute to a recognised out-of-court dispute-settlement system with binding effects,*
 - agrees to abide expeditiously by the outcome of such a dispute-settlement system, in particular as regards reimbursement,*
 - specifies in the disclaimer referred to in paragraph (b) the out-of-court dispute-settlement system, the languages used by the latter*

and the details, including the electronic mail address, allowing the consumer directly to obtain information about this system.

The agreement shall not be valid if the above conditions are not fulfilled.

Justification:

Self-explanatory.

(Amendment 27)
Article 23

If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise.

Such an agreement conferring jurisdiction shall be either:

- (a) ...
- (b)
- (c)

Any communication by electronic means which can provide a durable record of the agreement shall be deemed to be in writing.

Where an agreement conferring jurisdiction is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise

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- (c)

Any communication by electronic means which can provide a durable record of the agreement shall be deemed to be in writing.

Where an agreement conferring jurisdiction is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

The court or court of a Contracting State on which a trust instrument has conferred

Agreements conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13 and 17 or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

Agreements ***or provisions of a trust instrument*** conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13 and 17 or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

Justification:

See justification for Amendment 21.

(Amendment 28)
Article 35

The application shall be submitted to the court or competent authority appearing in the list in Annex II.

The application shall be submitted to the court, ***competent notary*** or competent authority appearing in the list in Annex II.

The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought or to the place of enforcement.

The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought or to the place of enforcement.

Justification:

Enforceable authentic instruments as referred to in Article 54 of the proposal will mainly be notarial deeds. It would be in the interests of simplicity and efficiency, as well as maximising proximity to the matter in hand, if declarations of enforceability of notarial deeds were made by notaries of the other Member State

(Amendment 29)
Article 54

A document which has been formally drawn up or registered as an authentic instrument in one Member State shall automatically be recognised in the other

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Member State shall, in another Member State, be declared enforceable there, on application made in accordance with the procedure provided for in Article 34 to 49. The court with which an appeal is lodged under Article 39 or 40 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is contrary to public policy in the Member State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin. Section 3 of Title III shall apply as appropriate.

The competent authority of a Member State where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI.

Member States, with due regard for the legal order of the receiving State.

An authentic document which is enforceable in one Member State shall, in another Member State, be declared enforceable there, on application made in accordance with the procedure provided for in Article 34 to 49. The court with which an appeal is lodged under Article 39 or 40 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is contrary to public policy in the Member State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin. Section 3 of Title III shall apply as appropriate.

The competent authority *or competent notary* of a Member State where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI.

Justification:

The purpose of specifying the recognition of notarial instruments is to equate authentic instruments with judicial decisions, authentic instruments being equally conclusive and enforceable.

This amendment also brings the article into line with the provisions of Article 13(3) in the proposal for a regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters.

The final insertion is intended to avoid difficulties of interpretation and make it clear that the notary is also competent, even though he is not an "authority".

(Amendment 30)
Article 57

For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat, central administration, or principal place of business.

For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat, central administration, or principal place of business.

In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.

Justification:

See justification for Amendment 21.

(Amendment 31)
Article 65

No later than ***five years*** after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.

No later than ***two years*** after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation, ***having regard in particular to its impact on small and medium-sized businesses and consumers.*** The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.

Justification:

The sheer pace of change on the Internet warrants a short review period of the type provided for in the Directive on electronic commerce. It will be especially important to ensure that the Regulation is not having an adverse impact on Internet start-ups by small businesses and to examine whether extrajudicial dispute resolution is working satisfactorily.

(Amendment 32)

Article 67

This Regulation shall enter into force ***on the twentieth day following that*** of its publication in the Official Journal of the European Communities.

This Regulation shall enter into force ***six months after the day*** of its publication in the Official Journal of the European Communities.

Justification:

Self-explanatory.

(Amendment 33)

Annex II

The courts or competent authorities to which the applications referred to in Article 35 may be addressed are the following:

The courts, ***notaries*** or competent authorities to which the applications referred to in Article 35 may be addressed are the following:

Justification:

See justification for Amendment 29.

(Amendment 34)

Annex VI

Certificate referred to in Article 54 of Council Regulation (EC) No .../1999

1. Country of origin
 2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel/Fax/E-Mail
 3. Authority which has given authenticity to the instrument
 - 3.1. Authority involved in the drawing up of the authentic instrument (if applicable)
 - 3.1.1. Name and designation of authority
 - 3.1.2. Place of authority
 - 3.2. Authority which has registered the authentic instrument (if applicable)
 - 3.2.1. Type of authority
 - 3.2.2. Place of authority
 4. Authentic instrument
 - 4.1. Description of the instrument
 - 4.2. Date
 - 4.2.1 on which the instrument was drawn up
 - 4.2.2. if different: on which the instrument was registered
 - 4.3. Reference number
 - 4.4. Parties to the instrument
 - 4.4.1. Name of the creditor
 - 4.4.2. Name of the debtor
 5. Text of the enforceable obligation as annexed to this certificate
- The authentic instrument is enforceable against the debtor in the State of origin (Article 54 of the Regulation).

Certificate referred to in Article 54 of Council Regulation (EC) No .../1999

1. Country of origin
 2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel/Fax/E-Mail
 3. **Notary or** authority *who*/which has given authenticity to the instrument
 - 3.1. **Notary or** authority involved in the drawing up of the authentic instrument (if applicable)
 - 3.1.1 Name and designation of **notary or** authority
 - 3.1.2. Place of authority
 - 3.2. Authority which has registered the authentic instrument (if applicable)
 - 3.2.1. Type of authority
 - 3.2.2. Place of **notary or** authority
 4. Authentic instrument
 - 4.1. Description of the instrument
 - 4.2. Date
 - 4.2.1 on which the instrument was drawn up
 - 4.2.2. if different: on which the instrument was registered
 - 4.3. Reference number
 - 4.4. Parties to the instrument
 - 4.4.1. Name of the creditor
 - 4.4.2. Name of the debtor
 5. Text of the enforceable obligation as annexed to this certificate
- The authentic instrument is enforceable against the debtor in the State of origin (Article 54 of the Regulation).

Justification:

See justification for Amendment 29.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (COM(1999) 348 – C5-0169/1999 – 1999/0154(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(1999) 348¹),
 - having regard to Article 61(c) and 67 of the EC Treaty,
 - having been consulted by the Council (C5-0169/1999),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0253/2000),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. If the Council intends to depart from the text approved by Parliament, calls on the Council to notify Parliament;
 4. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;
 5. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 376, 28.12.1999, p.1.

EXPLANATORY STATEMENT

The Brussels Convention on the recognition and enforcement of judgments in civil and commercial matters was originally adopted in 1968 under Article 220 of the EEC Treaty and has been adapted upon each accession. It has been extremely successful in achieving “free movement of judgments”, as testified by the very small number of references for preliminary rulings made to the Court of Justice.

The proposal for a regulation seeks to convert the Convention into a Community instrument based on the new Article 65 of the EC Treaty. Its aim is to secure (a) clear and uniform procedures for the recognition and enforcement of judgments and (b) legal certainty and transparency. The regulation has to be adopted by the Council under Article 67 of the EC Treaty unanimously (since it has not waived its opt-out, Denmark does not count for this purpose) after consulting Parliament.

A regulation has the advantage over a convention in that it will enter into effect in all the Member States bound by it on a common known date. However, although Ireland and the United Kingdom have now opted in under the relevant Protocol, Denmark has not given notice as yet of any intention to waive its opt out. In any event, the Brussels Convention will continue to apply as between Denmark and Member States which are bound by the regulation, but it seems that it would be impossible to amend the Brussels Convention in line with the proposal for a regulation under discussion once the regulation is adopted on account of the exclusive Community competence which it would bring into being. The Council is therefore asked to defer adoption of the regulation until the Brussels Convention has been amended. This will also afford a breathing space to allow the Commission to produce proposals for a small-claims procedure and an out-of-court settlement scheme, industry to make its own arrangements, and the negotiations on the international judgments convention at The Hague to be concluded.

Before Ireland and the United Kingdom indicated that they were opting in, the Commission removed from the Convention provisions introduced at the time of the accession of Denmark, Ireland and United Kingdom, in particular those regarding trusts. These provisions have been reinstated by Amendments 21, 27 and 30.

The regulation introduces a number of innovations by comparison with the Brussels Convention.

First, the general approach has been to replace references to conflict rules by autonomous definitions. In this respect, the draftsmen have drawn heavily on the case-law of the Court of Justice, rendering the new regulation to some extent a restatement of the law, which is welcomed. However, there is a discrepancy in the approach of using autonomous definitions in that Article 57 provides an autonomous definition of the domicile of a legal person or association, yet Article 22, dealing with exclusive jurisdiction, provides that conflict rules are to be applied in order to determine the seat of legal persons and associations. The Commission has explained that this discrepancy is unavoidable and this is accepted.

Secondly, the vexed question of when a court is deemed to be seised of a case for the purposes of litispendency seems to have been resolved satisfactorily by Article 30.

Thirdly, the provisions on insurance now allow the insured and the beneficiary to sue in their own courts as well as the policyholder. This is welcome on account of their relatively weaker position.

Fourthly, the provisions on individual employment contracts have been expanded and set out in a separate section.

Fifthly, Article 15 purports to extend the derogation whereby consumers can sue in their own courts to cover online trading. Given that it is considered that, on a proper construction, the corresponding provision of the Brussels Convention (Article 13) already covered Internet trading, this is hardly the revolution which it has been made out to be. Yet the Commission cannot be commended for its handling of this issue and its failure to adopt an overall approach to the legal problems raised by the Internet is to be deplored. It is hoped that a recent statement by the Commissioner responsible for the Internal Market reflects a genuine, if belated, change of attitude to this key area. In any event, the addition of recitals by Amendments 3, 5 and 8, the changes made to recital 13 [not adopted] and the addition of a paragraph to Article 15 [not adopted] are designed to deal with the industry's justified concerns about the new Article 15 (a) by committing the Commission to proposing alternative, more realistic dispute-resolution procedures to be adopted as a package at the same time as the regulation, (b) by giving the industry time to adjust and adopt such measures as it considers necessary, (c) by making it clear that only "active" Internet sites are affected by the provision and (d) by establishing that the regulation is concerned only with where consumers may sue and not with the law applicable to the contract, which remains that of the supplier's country of origin, subject to the Rome Convention and Community legislation on electronic commerce.

The rapporteur is very concerned that the prospect of small traders being sued from anywhere in the European Union might deter them from making the considerable investment in electronic commerce. However, she has been reassured by the research she has done which suggests (a) that consumers are unlikely to sue because of the high cost of bringing proceedings against defendants abroad and (b) that the cost of legal-expenses insurance is likely to be fairly low. Moreover, catalogue-sale companies have operated quite happily with the Brussels Convention for many years. It is felt that the answer lies in alternative dispute-resolution and in involving the banks and credit card companies. The rapporteur is pleased at the efforts which the Commission is now making in promoting and researching such schemes.

Sixthly, the general provisions on jurisdiction clauses have been improved and a sentence added to the relevant provision to cover jurisdiction clauses contained in a communication made by electronic means.

Seventhly, the first stage in the enforcement procedure is to become virtually automatic in that no grounds for non-recognition may be raised in the State in which recognition is sought (Article 38). However, the party against whom enforcement is sought may now appeal (Article 39). This, together with the introduction of a uniform certificate (Articles 51 and 52) from the requesting court, is designed to expedite and facilitate the procedure and is welcomed.

Finally, provisions have been added to take account of the new rules on recognition and enforcement of judgments in family-law cases ("Brussels II") and service of documents and of the fact that the new instrument will be a regulation and not a convention.

Concluding remarks

For the reasons stated above, it is essential that the Council defer the adoption of the new regulation and that the Commission propose alternative dispute-resolution machinery without delay. It cannot be too strongly stressed that the new regulation and the proposed dispute-resolution initiatives must be adopted concurrently as a package. Moreover, the Commission should take account of the global picture with a view to the models adopted by the European Union providing a lead internationally.

It is further considered that the Commission should liaise with interested parties, especially the banking and credit-card industry and consumer groups, in order to coordinate efforts to design alternative dispute-resolutions schemes for Internet trading. Your rapporteur considers that the solution may lie with the credit card companies. Her reasons for taking this view are as follows. When a consumer purchases goods or services on the Net, he or she bears all the risk. The transaction is concluded by credit card and validated by an Internet certification company. Why, for instance, should the rule not be that the consumer should always be entitled, along the lines of the United Kingdom's Consumer Credit Act, to sue his or her credit card company? This would eliminate the jurisdiction problem altogether. At the same time, provision could be made for credit cards to validate suppliers as well as the consumer. This would make it possible for credit card companies to refuse to validate credit card sales where companies had a bad record of defaulting on transactions. It might also provide a way of making it difficult to trade with purveyors of hard-core pornography and to place bets with unscrupulous gaming sites.

The Commission is urged once again to adopt a coherent approach to the law relating to the Internet. In this sense, establishment of a centralised electronic causebook and judgment registry database (Amendment 20) would be a bold step of great benefit to courts, lawyers, litigants and traders and, in the final analysis, to the goal of greater uniformity of civil law within the European Union.

Lastly, your rapporteur has been at pains not to make any substantive changes to the new regulation other than those deemed absolutely necessary, in view of the fact that negotiations have been already been conducted with the EFTA States with a view to aligning the Lugano Convention with the new regulation.

27 January 2000

OPINION (Rule 162)

for the Committee on Legal Affairs and the Internal Market

on the proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348– C5-0169/1999 – 1999/0154(CNS)) (report by Mrs Diana Paulette Wallis)

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Draftsman: Adeline Hazan

PROCEDURE

At its meeting of 25 October 1999 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Adeline Hazan draftsman.

It considered the draft opinion at its meetings of 29 and 30 November 1999 and 26 and 27 January 2000.

At the latter meeting it adopted the following conclusions unanimously.

The following took part in the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Adeline Hazan, draftsman; Maria Berger (for Olivier Duhamel), Christian von Boetticher, Mogens Camre, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carlos Coelho, Giuseppe Di Lello Finuoli, Pernille Frahm, Evelyne Gebhardt (for Elena Ornella Paciotti), Jorge Salvador Hernandez Mollar, Anna Karamanou, Margot Keßler, Timothy Kirkhope, Ewa Klamt, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Hartmut Nassauer, Hubert Pirker, Gerhard Schmid, Martin Schulz, Anna Terrón i Cusí, Maurizio Turco (for Johan Van Hecke).

I. CONTENT OF THE PROPOSAL

1. Summary of the background

The aim of this proposal for a regulation is to facilitate the recognition and enforcement of judgments delivered in the EU. This matter is currently governed by the Brussels Convention of 27 September 1968, whose rules were extended to the EFTA Member States by the Lugano Convention of 16 September 1988.

The Brussels Convention certainly enabled significant progress to be made in the field of the enforcement of judgments. But it is now thirty years since it was signed, and the Convention needs to be revised to take into account the Court of Justice's case law on its application, as well as developments in economic relations and technological advances made since 1968.

In December 1997 the Council instructed an ad hoc working party to start work on revising the Convention. Once this had been completed, the Commission submitted a proposal for a Convention based on Article K.3(2) of the Maastricht Treaty. In May 1999 the Council stated it was substantially in agreement with the new Convention. However, because legal cooperation now comes within the Community's ambit as a result of Articles 65 and 67 of the TEC, the Commission is submitting this text in the form of a proposal for a regulation.

2. Swifter recognition of judgements

The main aim of the revision was to make the recognition and enforcement of judgments within the EC almost automatic and this is what the regulation achieves (there is only a simple formal check); it also limits the grounds of appeal against a declaration of recognition.

These new rules now also have the advantage of forming part of a regulation (which may be amended in five years' time), thus guaranteeing they will be applied uniformly, whereas the previous Convention permitted the exceptions inherent in an intergovernmental instrument. It would be most welcome if the Member States not bound by the requirements of Articles 61 to 67 of the TEC (United Kingdom, Ireland and Denmark) were to adopt it.

The proposal thus meets the desire for increased legal cooperation between the Member States, called for by the Amsterdam Treaty and needed to bring about a true people's Europe.

3. Increased guarantees for the weaker party to a contract

The regulation first of all confirms that the principle of the defendant's jurisdiction applies, and makes some very useful clarifications to the concept of the domicile of companies. As for the various special jurisdictions that were contained in the Convention, they have been maintained but amended in places to strengthen the protection of the weaker parties to a contract: insured persons, consumers and workers.

Article 5 maintains special jurisdiction, in matters relating to a contract, in the courts for the place of performance of the obligation in question, that is, the *a priori* contractual tribunal. With the aim of simplifying matters and out of concern for legal certainty, Article 5(1)(b) provides that, unless otherwise agreed, in the case of the sale of goods the place of performance of the contract is the place in a Member State where, under the contract, delivery must be made; for the provision of services, the place of performance is the place of provision of services.

With regard to insurance, the regulation takes over the former rules with very few amendments. However, the jurisdiction of the court where the applicant has his domicile is extended to include, as well as the insurance policy-holder, the insured person and the

beneficiary (although these parties are applicants, they are also in a weak position in relation to the insurer).

As for individual contracts of employment, in Article 20 the regulation maintains the application of the principle of the court of the Member State in whose territory the worker is domiciled for the benefit of the worker, as the weaker party to the contract. The courts for the place where the employee habitually carries out his work or, if the employee does not carry out his work in any one country, the courts for the place where the business which engaged the employee is or was situated, may also have jurisdiction.

Finally, in relation to consumer contracts, Articles 15 to 17 of the regulation also confirm the need to protect consumers as the weaker parties to a contract. The consumer may thus sue (Article 16) the defendant in the courts where the former is domiciled, in the case of sale on instalment terms of personal goods or loans repayable by instalments to finance the purchase of such goods.

There are two changes to Article 15. The first is in the general nature of the terms used: ‘all other consumer contracts’. The use of this wording makes it clear that all consumer contracts are covered by the rules on special jurisdiction (such as time-share contracts, even though they have to do with immovable property). Transport contracts for an all-in price covering both travel and accommodation are also included in this rule on jurisdiction.

The second change applies to contracts made by a consumer in a Member State other than his own. It applies to cases where, by ‘any means’, the other party to the contract ‘directs’ his activities to one or more Member States (Article 15). In other words, these provisions are designed to protect the consumer when the consumer contract is concluded on an interactive Internet site, accessible in the consumer’s country of domicile.

4. Electronic transactions

In this area, the entrepreneur creates the contractual link by directing his activities to the consumer’s country. Undertakings which use e-commerce will therefore have to accept the possibility of litigation in all the Member States to which they direct their activities.

E-commerce undertakings are opposed to these provisions, which they say would significantly increase the risks borne by entrepreneurs and seriously damage the development of e-commerce in the EU. These arguments are unconvincing. In fact, denying the consumer the right to sue a provider of goods or services by electronic means in the courts where the former is domiciled would amount to leaving him at the mercy of e-commerce companies (consider, for example, how often pre-payment is required in this type of electronic transaction, and the uncertainty and costs of proceedings abroad).

Far from discouraging e-commerce, arrangements for consumer protection must be made for this kind of transaction, which will become increasingly common. Despite the efforts of providers of goods and services, there will always be inefficient providers and improper or fraudulent transactions which even the best codes of good conduct (‘soft law’) will not prevent.

Although the concept of a ‘digital market’ is already a reality and will become more and more significant, this is not a justification for allowing the market to be in some cases ‘a manipulated market’. There is no reason at all to treat the various types of distance sales contracts (mail order sale, tele-shopping and now electronic commerce) differently. By what right should the ‘active trader’ who offers goods and services by electronic means be exempted from risk connected to legal proceedings, particularly at the consumer’s expense? Besides, it is always open to the entrepreneur to specify that his services are not available to consumers resident in certain Member States and in this way to avoid concluding contracts outside his own Member State.

II. CONCLUSIONS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs therefore calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to take the utmost

account of the following conclusions and not to incorporate any amendments which would conflict with them:

1. considers that the proposal for a regulation, insofar as it substitutes an almost automatic procedure for the recognition and enforcement of judgments in civil and commercial matters in the EU for the cumbersome formalities of exequatur, should be approved in its entirety. It fulfils the desire for legal cooperation between Member States and satisfies the requirements of a real people’s Europe at the legal level,
2. deems that, similarly, all the regulation’s provisions that improve the procedural position of the weaker parties to a contract, insured persons, workers and consumers, should be approved, particularly in view of the fact that for e-commerce prior payment is always required,
3. considers that in this latter case, there are no reasons, ‘soft law’ included, for exempting electronic transactions (a type of commerce set to increase significantly) from consumer protection rules; doing so would conflict with European policy established to date in favour of consumers who, in common with all the weaker parties to a contract and all citizens, must be able to receive a fair legal hearing,
4. deems, in view of the cost and complexity that legal proceedings in any case represent for the consumer, even at his national courts, that it would be desirable for the Commission, in accordance with the conclusions of the Tampere European Council, to submit as quickly as possible a proposal designed to simplify and speed up settlement of trans-border disputes over small claims in civil and commercial matters; the introduction of alternative procedures outside the courts in the Member States would also be highly advisable,

5. hopes, finally, that the regulation can enter into force as soon as possible, without any transition period.