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REPORT

on the proposal for a Council regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters
(COM(2001) 221 – C5-0254/2001 – 2001/0109(CNS))

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

Rapporteur: Christian Ulrik von Boetticher

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)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 13 June 2001 the Council consulted Parliament, pursuant to Article 61(c) of the EC Treaty on the proposal for a Council regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters (COM(2001) 221 - 2001/0109 (CNS)).

At the sitting of 14 June 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Budgets and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0254/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Christian Ulrik von Boetticher rapporteur at its meeting of 10 July 2001.

The committee considered the Commission proposal and draft report at its meetings of 27 August 2001, 12 September 2001 and 10 October 2001.

At the last meeting it adopted the draft legislative resolution by 26 votes to 1, with 1 abstention.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Christian Ulrik von Boetticher, rapporteur; Michael Cashman, Charlotte Cederschiöld, Ozan Ceyhan, Carlos Coelho, Gérard M.J. Deprez, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Ole Krarup, Rodi Kratsa-Tsagaropoulou (for Mary Elizabeth Banotti), Alain Krivine (for Pernille Frahm), Lucio Manisco (for Giuseppe Di Lello Finuoli), Luís Marinho (for Adeline Hazan), Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Martine Roure (for Gianni Vattimo), Gerhard Schmid, Ilka Schröder (for Alima Boumediene-Thiery pursuant to Rule 153(2)), Patsy Sørensen, Sérgio Sousa Pinto, Joke Swiebel, Anna Terrón i Cusí, Astrid Thors (for Baroness Sarah Ludford pursuant to Rule 153(2)) and Jan-Kees Wiebenga.

The opinion of the Committee on Budgets is attached; the Committee on Legal Affairs and the Internal Market decided on 10 July 2001 not to deliver an opinion.

The report was tabled on 11 October 2001.

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

LEGISLATIVE PROPOSAL

Proposal for a Council regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters (COM(2001) 221 – C5-0254/2001 – 2001/0109(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital 6 a (new)

Whereas Council Decision 1496/98/EC of 22 June 1998 established an action programme to improve awareness of Community law within the legal professions (Robert Schuman project) for a period of three years.

Justification

Measures that have hitherto been financed by the Robert Schuman project, which expires this year, should also be incorporated into the new regulation.

Amendment 2
Recital 17 (new)

The financial framework of the activities shall be compatible with the current ceiling under heading 3 of the financial perspective, with no restriction being placed on other currently funded programmes.

Justification

The amount proposed for the framework of activities should be compatible with the ceiling

¹ OJ C 213, 31.7.2001, p. 271.

under the financial perspective. If, in the course of the adoption of the decision, other amounts were to be proposed by the legislative authority, the budgetary authority would need to be consulted again. In this case, the Committee on Budgets would consider the impact on the ceiling under the current financial perspective.

Amendment 3
Recital 18 (new)

The administrative expenditure is covered from allocations under heading 5 within the framework of decisions to be taken during the annual budgetary procedure.

Justification

The rapporteur considers it necessary to present an amendment to ensure that the administrative expenditure related to the proposal is covered from heading 5 with no additional financial implications for the general budget.

Amendment 4
Article 2 paragraph 1a

- | | |
|---|--|
| (a) ensuring legal certainty and improving access to justice, | (a) ensuring legal certainty, <i>in particular the rights of the defence</i> , and improving access to justice, |
|---|--|

Justification

The smooth functioning of judicial cooperation must not be obstructed by measures which are aimed solely at maintaining outdated national prerogatives and, at the same time, the necessary progress in judicial cooperation must go hand-in-hand with the introduction of arrangements to protect fundamental rights that are common to all the Member States.

Amendment 5
Article 5, paragraph 2

they must pursue activities with a European dimension and involve, as a general rule, at least *two thirds* of the Member States;

they must pursue activities with a European dimension and involve, as a general rule, at least *one third* of the Member States;

Justification

Given that the number of Member States will increase by 2006 (duration of the programme) the participation of two-thirds of the Member States is too high a threshold. At the present time an organisation involving five Member States should also be eligible for financial support.

Amendment 6 Article 6, paragraph 5 (new)

For the purposes of this Regulation, "legal practitioners" means: judges, prosecutors, lawyers, academics, ministry officials, judicial officials, bailiffs, court interpreters and others involved in the administration of justice in the area of civil law.

Justification

Against the background of the legal dispute over the term "legal advisers" in the Directive on prevention of the use of the financial system for the purpose of money laundering, there is a need for a definition. Although it may possibly reduce the scope of application of the Regulation, it is essential in the interests of clarity and legal certainty.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters (COM(2001) 221 – C5-0254/2001 – 2001/0109(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2001) 221¹),
 - having been consulted by the Council pursuant to Articles 61(c) of the EC Treaty (C5-0254/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Budgets (A5-0339/2001),
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. Calls on the Council to notify Parliament should it intend to depart from the text approved by 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 213, 31.7.2001, p. 271.

EXPLANATORY STATEMENT

1. The development of judicial cooperation in civil matters

Judicial cooperation in civil matters has already some experience behind it. With the entry into force of the Treaty of Maastricht in 1993 it became a matter of common interest of the Member States, with the Treaty of Amsterdam the free movement of persons was expanded to include judicial cooperation in civil matters and a new Article 65 was added to the EC Treaty; as a result, this matter was transferred from the third to the first pillar.

Finally, at the Intergovernmental Conference in Nice on 11 December 2000 it was decided that with the entry into force of the Treaty of Nice decisions in the area of judicial cooperation in civil matters would be taken under the codecision procedure, with a qualified majority in the Council.

In the Council and Commission action plan, adopted in December 1998 in Vienna, it was stressed that judicial cooperation in the area of civil law must facilitate the day-to-day lives of citizens and that there should be cooperation between the judicial authorities of the Member States. Rules on conflicts of law and competence should be harmonised, in particular in the areas of contractual and non-contractual obligations, divorce, matrimonial property and succession law. In addition, mediation arrangements are to be devised, in particular for family disputes. A judicial network for civil matters will also be developed in order to step up contacts between those involved in this area at European level.

At the Council meeting in Tampere 15 and 16 October 1999 it was decided to establish a common European area of justice, comprising agreements on better access to justice for citizens in the European Union, the mutual recognition of judicial decisions and the harmonisation of procedural provisions of the Member States.

The Member States have sole responsibility for the content and organisation of professional training for those involved in the administration of justice. However, the Community has and will continue to have a duty to support the Member States in this area, eliminate barriers to the application of Community law and step up cooperation between the judicial authorities, be it at police level, in the area of criminal and civil law, or in the sphere of administrative law.

Grotius, the Joint Action on a programme of incentives and exchanges for legal practitioners, and the three-year Robert Schuman action programme to improve awareness of Community law within the legal professions initiated in 1998 are two extremely successful programmes helping to create a European area of justice, in which cooperation between the authorities of the Member States facilitate the day-to-day lives of European citizens rather than making them more difficult.

2. Commission proposal

According to the Commission, the proposed regulation will create the legal basis for financing activities in the area of judicial cooperation in civil matters from the budget of the European Communities. The regulation is regarded as a general, long-term framework for activities and priority objectives. On the basis of this framework regulation, operational programmes and specific projects can be elaborated.

The objectives of the framework regulation (Article 2), which are closely linked to those of the EC Treaty, the Vienna action plan and the conclusions of the Tampere summit, are:

- 1 to promote judicial cooperation, in particular by:
 - (a) ensuring legal certainty and improving access to justice,
 - (b) promoting mutual recognition of judicial decisions and judgments,
 - (c) promoting the necessary approximation of legislation, or
 - (d) eliminating obstacles created by disparities in civil law and civil procedures;
2. to improve mutual knowledge of legal and judicial systems between the Member States;
3. to ensure the sound implementation and application of Community instruments in the area of judicial cooperation in civil matters; and
4. to improve information to the public on access to justice, judicial cooperation and the legal systems of the Member States.

The following activities are eligible for support:

1. actions taken by the Commission; or
2. actions providing financial support for the running costs of European non-governmental organisations, under the conditions set out in Article 5; or
3. actions providing financial support for specific projects of Community interest under the conditions set out in Article 6.

Provision is made for the participation of the candidate countries of central and eastern Europe, Cyprus, Malta and Turkey, and other countries, when agreements and procedures so allow.

Co-financing of projects of Community interest referred to in Article 3(3) of the regulation may be granted only if at least three of the Member States covered by the regulation participate. In the case of actions in the form of financial support for the running costs of non-governmental European organisations, on the other hand, two-thirds of the Member States must be involved.

Under this framework regulation, European Community support may not exceed 50% of the costs either of projects or running costs.

3. Rapporteur's observations

The rapporteur welcomes the Commission's proposal as a key element in ensuring continuity and improvement of the promotion of projects and organisations in the sphere of civil law in Europe.

It should be pointed out that this proposal not only allows support for projects, but also, for the first time, support for organisations and bodies that are active in the area of judicial cooperation in civil matters, without the need for them to implement specific projects.

Reference is made to the Grotius programme, or Grotius civil law. The aim of Grotius is to facilitate judicial cooperation between the Member States through better mutual understanding of legal systems and the administration of justice.

However, the rapporteur considers that there is considerable ground to be made up in the legal practice of the Member States also in the area of Community law and draws attention in this connection to the Robert Schumann action programme to improve awareness of Community law within the legal professions. The Robert Schumann action programme expires this year and in view of the urgency of continuing the objective of the programme, it should be included in the framework regulation alongside Grotius.

Although the rapporteur very much welcomes the contribution from the European Community to the running costs of appropriate organisations, he sees the condition that at least two-thirds of the Member States must be involved in such non-governmental organisations as extremely unrealistic. In view of the forthcoming enlargement of the Community, this condition must be revised to a realistic threshold of one-third, otherwise the regulation itself would virtually rule out this possibility in practice.

A significant criticism is that the Commission - in sharp contrast to its usual approach - omits to describe applicants in detail and to define the term legal practitioners. In the interests of clarity and legal certainty, this is essential. There is no risk that this would restrict the scope of application of the regulation, on the contrary, the rapporteur feels that this risk would be greater in the absence of such definitions.

Hitherto, the Community has covered up to 80% of the costs of Grotius projects. Past experience has shown that Member States are much less willing to provide financial support for projects of this kind where there is a low level of EU support. In the rapporteur's view, because of the urgent need to step up cooperation in this area further, there is no justification for reducing the EU contribution to 30%. The Commission's aim of ensuring greater accuracy in the cost estimates to be submitted by applicants by cutting the rate of co-financing, will not

be served by such an approach but can best be achieved by requiring applications to meet certain specific conditions.

14 September 2001

OPINION OF THE COMMITTEE ON BUDGETS

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

on the proposal for a Council regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters (COM(2001) 221 – C5-0254/2001 – 2001/0109(CNS))

Draftsman: Carlos Costa Neves

PROCEDURE

The Committee on Budgets appointed Carlos Costa Neves draftsman at its meeting of 26 June 2001.

It considered the draft opinion at its meeting of 12-13 September 2001.

At the latter it adopted the following amendments by unanimously.

The following were present for the vote: Terence Wynn chairman; Reimer Böge vice-chairman; Carlos Costa Neves draftsman; Gordon J. Adam (for Joan Colom i Naval pursuant to Rule 153(2)), Ioannis Averoff, Jean-Louis Bourlanges, Kathalijne Maria Buitenweg, Paulo Casaca, Den Dover, James E.M. Elles, Göran Färm, Markus Ferber, Salvador Garriga Polledo, Neena Gill, Catherine Guy-Quint, John Joseph McCartin, Jan Mulder, Juan Andrés Naranjo Escobar, Giovanni Pittella, Bartho Pronk (for Armin Laschet), Encarnación Redondo Jiménez (for Alain Madelin), Esko Olavi Seppänen (for Chantal Cauquil), Per Stenmarck, Francesco Turchi, Kyösti Tapio Virrankoski and Ralf Walter.

SHORT JUSTIFICATION

1. Background

The Council adopted in 1998 an Action Plan on how to implement the provisions of the Amsterdam Treaty on an area of freedom, security and justice.¹ The Action Plan, which was submitted to the European Council in Vienna in December 1998, lists a number of priorities to be achieved within five years after the Treaty of Amsterdam has entered into force. The European Council in Tampere reaffirmed this objective in October 1999 and invited the Commission to make a proposal for "an appropriate scoreboard" to achieve this goal.

Consequently, the Commission presented a Communication,² which was later used as a basis for the current legislative proposal. The proposal continues some of the activities financed under the Grotius-civil and Schuman programmes, which together receive a total of € 1.65 million from the general budget in 2001. Neither of these programmes will be renewed after they expire in 2001.

The proposal would have the following objectives:

- (1) to promote judicial cooperation, aiming in particular at:
 - (a) ensuring legal certainty and improving access to justice,
 - (b) promoting mutual recognition of judicial decisions and judgments,
 - (c) promoting the necessary approximation of legislation, or
 - (d) eliminating obstacles created by disparities in civil law and civil procedures;
- (2) to improve mutual knowledge of legal and judicial systems between the Member States;
- (3) to ensure the sound implementation and application of Community instruments in the area of judicial cooperation in civil matters; and
- (4) to improve information to the public on access to justice, judicial cooperation and the legal systems of the Member States.

All of these activities would be open to the participation of candidate countries as well as third countries, provided they are in line with existing agreements. In addition, the framework would enable financial support to European non-governmental organisations, on condition that they are non-profit organisations which aim to promote judicial cooperation in this field.

2. Financial remarks

The rapporteur considers that the Commission's proposal is in line with the objectives set by the EC Treaty, the Vienna Action Plan as well as the conclusions of the Tampere summit. The current proposal seems also justified in order to achieve better compatibility and greater convergence between the legal systems. The objectives, the economies of scale and the cumulative effects of the actions envisaged could not be achieved by individual Member States, whereby the participation of the Community is deemed necessary.

The new framework would entail an annual increase of € 1.35 million compared to current

¹ OJ C 19 of 23.1.1999, p. 1.

² Communication on the biannual update of the scoreboard to review progress on the creation of an area of "freedom, security and justice" in the European Union, OJ C 12 of 15.1.2001, p. 1.

activities financed under the Grotius-civil and Schuman programmes. The increase is explained by the wider scope of activities compared to the previous programmes, as well as the new policy objectives in this area (see table in annex).

According to the Commission, the proposed expenditure is consistent with the financial perspective and the ceiling set for the title "Area of freedom, security and justice" for 2002-2006. Furthermore, the proposal specifies that the Community's financial support may not exceed 50% of the activities and projects financed under this regulation.

In order to ensure that the proposal is compatible with the current ceiling of heading 3 and other activities financed under the same heading, the rapporteur suggests to incorporate a reference in the legislative text, whereby the budgetary authority would need to be consulted again should new amounts be proposed by the legislative authority.

For the rest, the proposal seems consistent with the traditional approach of the Committee on Budgets. This is also the case with committee, where the Commission suggests to use the advisory procedure.¹ This is the line with what COBU has proposed during the past few years.

ANNEX

Estimated appropriations in € million at current prices

Breakdown of activities	2002	2003	2004	2005	2006	Total
1. To promote judicial cooperation. Examples of activities: Co-financed projects; studies; research; seminars and conferences; dissemination of results from co-financed projects; support to non-governmental organisations.	1.0	1.0	1.0	1.0	1.0	5.0
2. To improve mutual knowledge of legal and judicial systems between the Member States. Examples of activities: Co-financed projects; support to non-governmental organisations.	0.4	0.4	0.4	0.4	0.4	2.0
3. To ensure the sound implementation and application of Community instruments in the area of judicial cooperation in civil matters. Examples of activities: Update of manuals; surveillance instruments for adopted acts; set-up of databases.	1.3	1.0	0.9	1.0	0.8	5.0
4. To improve information to the public on access to justice, judicial cooperation and the legal systems of the Member States. Examples of activities: User-guides for the public; information campaigns.	0.3	0.6	0.7	0.6	0.8	3.0
Total	3.0	3.0	3.0	3.0	3.0	15.0

AMENDMENTS

¹ See Articles 3 and 7 in Council Decision 1999/468/EC, OJ L 184 of 17.7.1999, p. 23-26.

The Committee on Budgets calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital 17 (new)

The financial framework of the activities shall be compatible with the current ceiling under heading 3 of the financial perspective, with no restriction being placed on other currently funded programmes.

Justification

The amount proposed for the framework of activities should be compatible with the ceiling under the financial perspective. If, in the course of the adoption of the decision, other amounts were to be proposed by the legislative authority, the budgetary authority would need to be consulted again. In this case, the Committee on Budgets would consider the impact on the ceiling under the current financial perspective.

Amendment 2
Recital 18 (new)

The administrative expenditure is covered from allocations under heading 5 within the framework of decisions to be taken during the annual budgetary procedure.

Justification

The rapporteur considers it necessary to present an amendment to ensure that the administrative expenditure related to the proposal is covered from heading 5 with no additional financial implications for the general budget.

¹ OJ C 213 of 31.07.2001, p. 271.