Implementation and review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I)

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The Committee on Legal Affairs adopted the own-initiative report drafted by Tadeusz ZWIEFKA (EPP, PL) on the implementation and review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Comprehensive concept for private international law: Members encourage the Commission to review the interrelationship between the different regulations addressing jurisdiction, enforcement and applicable law. They consider that for this purpose, the terminology in all subject-matters and all the concepts and requirements for similar rules in all subject-matters should be unified and harmonised (e.g. lis pendens, jurisdiction clauses, etc.) and the final aim might be a comprehensive **codification of private international law**.

Abolition of *exequatur*: Members call for the requirement for exequatur to be abolished, but consider that this must be balanced by **appropriate safeguards designed to protect the rights of the party against whom enforcement is sought**. They consider that provision must be made for an exceptional procedure available in the Member State in which enforcement is sought. They take the view that the grounds for an application under this exceptional procedure should be respected. These are set out in the report. The report also states that there must be a harmonised procedural time-frame for the exceptional procedure so as to ensure that it is conducted as expeditiously as possible, and that it must be ensured that the steps which may be taken by way of enforcement until the time-limit for applying for the exceptional procedure has expired or the exceptional procedure has been concluded are not irreversible. Members are particularly concerned that a foreign judgment should not be enforced if it has not been properly served on the judgment debtor. They argue that not only must there be a requirement for a certificate of authenticity as a procedural aid so as to guarantee recognition, but also that there should be a standard form for that certificate.

Authentic instruments: Members consider that authentic instruments should not be directly enforceable without any possibility of challenging them before the judicial authorities in the State in which enforcement is sought. They take the view therefore that the exceptional procedure to be introduced should not be limited to cases where enforcement of the instrument is manifestly contrary to public policy in the State addressed since it is possible to conceive of circumstances in which an authentic act could be irreconcilable with an earlier judgment and the validity (as opposed to the authenticity) of an authentic act can be challenged in the courts of the State of origin on grounds of mistake, misrepresentation, etc. even during the course of enforcement.

Scope of the Regulation: Members consider that maintenance obligations within the scope of Regulation No 4/2009/EC should be excluded from the scope of the Regulation, but reiterate that the final aim should be a comprehensive body of law encompassing all subject-matters. **They strongly oppose the (even partial) abolition of the exclusion of arbitration from the scope**.

Choice of court: Members advocate, as a solution to the problem of ‘torpedo actions’, releasing the court designated in a choice-of-court agreement from its obligation to stay proceedings under the lis pendens

rule. They consider that this should be coupled with a requirement for any disputes on jurisdiction to be decided expeditiously as a preliminary issue by the chosen court and backed up by a recital stressing that party autonomy is paramount. A new provision dealing with the **opposability of choice-of-court agreements against third parties** should be added to the Regulation.

Forum non conveniens: the report proposes a solution so as to allow the courts of a Member State having jurisdiction as to the substance to stay proceedings if they consider that a court of another Member State or of a third country would be better placed to hear the case, or a specific part thereof, thus enabling the parties to bring an application before that court or to enable the court seised to transfer the case to that court with the agreement of the parties.

Operation of the Regulation in the international legal order: Members consider, on the one hand, that the question whether the rules of the Regulation should be given reflexive effect has not been sufficiently considered and that it would be premature to take this step without much study, wide-ranging consultations and political debate, in which Parliament should play a leading role, and encourage the Commission to initiate this process. They consider, on the other hand, that, in view of the existence of large numbers of bilateral agreements between Member States and third countries, questions of reciprocity and international comity, the problem is a global one and a solution should also be sought in parallel in the Hague Conference through the resumption of negotiations on an international judgments convention. They urge the Commission to explore the extent to which the 2007 Lugano Convention could serve as a model and inspiration for such an international judgments convention.

Definition of domicile of natural and legal persons: Members take the view that an autonomous European definition (ultimately applicable to all European legal instruments) of the domicile of natural persons would be desirable, in order in particular to avoid situations in which persons may have more than one domicile. They reject a uniform definition of the domicile of companies within the Brussels I Regulation. Members recall to the issue the **interest rates** and **industrial property** in the context of the Regulation.

The report also lays down the following:

- **jurisdiction over individual contracts of employment**: Members call on the Commission to consider, having regard to the case-law of the Court of Justice, whether a solution affording greater legal certainty and suitable protection for the more vulnerable party might not be found for employees who do not carry out their work in a single Member State (e.g. long distance lorry drivers, flight attendants);
- **rights of the personality**: Members consider that, in order to mitigate the alleged tendency of courts in certain jurisdictions to accept territorial jurisdiction where there is only a weak connection with the country in which the action is brought, a recital should be added to clarify that, in principle, the courts of that country should accept jurisdiction only where there is a sufficient, substantial or significant link with that country;
- **provisional measures**: in order to ensure better access to justice, orders aimed at obtaining information and evidence or at preserving evidence should be covered by the notion of provisional and protective measures. Members believe that the Regulation should establish jurisdiction for such measures at the courts of the Member State where the information or evidence sought is located, in addition to the jurisdiction of the courts having jurisdiction with respect to the substance. They reject the Commission's idea that the court seised of the main proceedings should be able to discharge, modify or adapt provisional measures granted by a court from another Member State since this would not be in the spirit of the principle of mutual trust established by the Regulation.

Other questions: Members consider, on account of the special difficulties of private international law, the importance of Union conflicts-of-law legislation for business, citizens and international litigators and the need for a consistent body of case-law, that it is time to **set up a special chamber within the Court of Justice to deal with references for preliminary rulings relating to private international law**.