

29 August 2006

**Informal JHA Ministerial Meeting  
Tampere, 20-22 September 2006**

**Follow-up to the mutual recognition programme:  
Facilitating access to justice and better regulation in civil justice**

The Amsterdam Treaty moved cooperation in civil law matters into the first pillar. Since then, the Community legislator has been active in this area, and several legislative instruments have been adopted since 1999, especially in procedural law.<sup>1</sup> Since 2003, when the Treaty of Nice entered into force, the so-called "community method" in decision-making - qualified majority voting and the co-decision procedure - has been applied to these civil law matters.

The Hague Programme continues along the lines of the Tampere Programme in placing mutual recognition as the cornerstone of judicial cooperation. In calling for continued work on the programme of measures on mutual recognition, it states that the effectiveness of existing instruments on mutual recognition should be increased by standardising procedures and documents and by developing minimum standards for certain aspects of procedural law, such as the service of judicial and extra-judicial documents, the commencement of proceedings, the enforcement of judgments and the transparency of costs.

So far the main focus in EU legislation has been on adopting individual legislative instruments in specialized matters. This approach, even though understandable in areas in which there was no pre-existing Community legislation, leads to unwelcome fragmentation and incoherence of the procedural legislation to be applied by national courts and observed by citizens.

For example, most of the instruments that have been adopted deal with mutual recognition of civil judgments. Many of them contain provisions on the service of documents between Member States. Some of the instruments deal with the jurisdiction of the courts and the taking of evidence. And to the understandable surprise of practitioners and EU citizens, the approaches taken by the different instruments vary.

The differences in the substance of these instruments and their lack of coherence can be explained in part by the relatively narrow subject matter of each of the instruments. However, at least some of the differences stem from the fact that they have been negotiated at different times and by different persons. Since the focus at each time has been on ensuring adoption of each individual instrument, not enough effort has been put into achieving coherence and similarity in these instruments.

Many practical examples can be given of these differences and lack of coherence. Let us assume that someone would like to recover a debt of 2,000 Euros in another Member State with the expectation that the claim will not be contested. The claimant may choose between the European Enforcement

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<sup>1</sup> Brussels I Regulation (EC) 44/2001 of 22 December 2000, European Enforcement Order Regulation (EC) 805/2004 of 21 April 2004, Service of Documents Regulation (EC) 1348/2000 of 29 May 2000, Taking of Evidence Regulation (EC) 1206/2001 of 28 May 2001 and Legal Aid Directive 2003/8/EC of 27 January 2003. Also proposals for a Regulation creating a European Order for Payment Procedure and for a Regulation establishing a European Small Claims Procedure are at the present being finalized in the Council and European Parliament.

Order, the Payment Order, the Small Claims instrument, and the Brussels I Regulation. The procedure that has to be followed will differ depending on his or her choice. From the point of view of the claimant, it would surely be better if there was only one single application form for starting a recovery procedure in another Member State. *De facto*, approximately the same basic information is needed for the commencement of each procedure: the parties, the amount of the claim, the reasons for the claim, etc. It is only when we know the reaction of the defendant that we are in a position to decide which type of procedure should be used to continue. It may also be noted that the methods in the service of documents differ according to which instrument is selected. Why should we accept differences in this regard?

We need to improve the quality of legislation (an important and topical subject in the Union) also in the field of civil justice. Legislation should be coherent and relatively easy for the citizens to understand and apply. This coherence applies also to the provisions on the choice of law: they should be as consistent as possible.

The Commission Communication to the Council and to the European Parliament on implementing the Hague Programme (COM(2006) 331 final) notes that facilitating access to justice for citizens is a real challenge for consolidation of the European area of freedom, security and justice.

The Finnish Presidency is of the view that it is time to consider streamlining existing instruments in the field of civil procedural law. This work should be based on minimum standards and the aim should be to ensure the consistency and user-friendliness of the relevant provisions. Reducing the number of instruments and integrating different approaches would help practitioners and citizens in applying this legislation and thus enhance access to justice. Such benefits would clearly justify the effort that would have to be invested in negotiations aiming at streamlining the already existing substantive provisions.

#### *Questions for discussion*

*1. Do the Ministers agree with the conclusion that there is a lack of coherence and consistency in the instruments already adopted in the field of civil procedural law? Could the extent of fragmentation of the Community legislation be lessened and the degree of user-friendliness be improved by taking a more systematic overview of the cooperation in civil law?*

*2. Do the Ministers agree on the advisability of streamlining the instruments on cross-border litigation in the EU into one single instrument based on consistent/common minimum standards? Should this instrument consist of, in particular, rules covering the provisions on jurisdiction, the service of documents, the taking of evidence, the use of languages and translations, legal aid, special rules on payment and small claims procedures, and in addition, rules covering recognition and enforcement of different types of judgments?*