



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT**

**pursuant to the second subparagraph of Article 251 (2) of the EC Treaty**

**concerning the**

**common position of the Council on the adoption of a Regulation of the European  
Parliament and of the Council creating a European enforcement order for uncontested  
claims**

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**1. BACKGROUND**

Date of transmission of the proposal to the EP and the Council (document COM(2002)159 final – 2002/0090 (COD): 18.04.2002.

Date of the opinion of the European Economic and Social Committee: 11.12.2002.

Date of the opinion of the European Parliament, first reading: 08.04.2003.

Date of transmission of the amended proposal: 12.06.2003

Date of adoption of the common position: 06.02.2004

**2. OBJECTIVE OF THE COMMISSION PROPOSAL**

This proposal is designed to enable creditors who have obtained an enforceable judgment in respect of a pecuniary claim which has not been contested by the debtor to have it enforced directly in another Member State, so as to ensure the free circulation of judgments. In the realm of decisions on uncontested claims it aims at eliminating the intermediate measures that are currently necessary for enforcement in another Member State (the so-called exequatur procedure) and at dispensing with the possibility of opposing recognition. The Commission's proposal thus implements for the first time the principle whereby Member States must treat the judgments of courts in other Member States as if they had been given by their own courts, and offers an additional option of facilitated enforcement to creditors, but without obliging them to utilise it.

The proposal contains minimum standards with regard to the service of documents covering the admissible methods of service and the proper information of the debtor with a view to enabling the preparation of a defence and thus guaranteeing the fairness of the proceedings. Only compliance with these minimum standards, which is verified by the courts of the Member State of origin in the procedure leading to the certification of a judgment as a European enforcement order, justifies the abolition of control of the observance of the rights of the defence in the Member State where the judgment is to be enforced.

### **3. COMMENTS ON THE COMMON POSITION**

#### **3.1. General comment**

The general approach which the Council agreed upon unanimously on 27 November 2003 led to the adoption of a common position by written procedure on 6 February 2004.

The Council's common position preserves the essentials of the Commission's initial proposal as modified by the amended proposal.

The main changes made in the common position concern the following issues:

- the common position no longer requires the final nature of a judgment as a prerequisite for its certification as a European enforcement order but considers the enforceability of a judgment as being sufficient in spite of its being subject to the possibility of an appeal. If an appeal or another challenge materialises the decision following that challenge is enforceable in other Member States under the same conditions, i.e. without exequatur, even though the underlying claim is no longer uncontested since it would be unacceptable to invalidate the European enforcement order and oblige the creditor to start all over again with an exequatur procedure in that situation. Indeed, in the case of such a solution, any debtor against whom a certificate has been issued could delay enforcement of the judgment by lodging an appeal, even an obviously unfounded one, in the country of origin and annulling the beneficial effect of the use of the European enforcement order. This would undermine the very objective of the Regulation, the simplification and the acceleration of cross-border enforcement, to the point of rendering the instrument counter-productive. The debtor's legitimate interests in the event of an appeal subsequent to the issuance of a European enforcement order certificate are adequately safeguarded by Articles 8Y and 23 that relate to the stay or limitation of enforcement;
- the common position retains the principle that no appeal lies against the issuing of the European enforcement order certificate. It newly introduces, however, the possibility for the debtor to apply for the rectification of material errors in the certificate (e.g. a typing error) and for the withdrawal of the certificate where it has been clearly wrongly granted;
- consumers as judgment debtors are accorded special protection going beyond the control of compliance with the jurisdictional rules of Council Regulation (EC) No 44/2001 ("Brussels I"). A judgment delivered against a consumer in the absence of an explicit admission of the claim in question can only be certified as a European enforcement order if the consumer is domiciled in the Member State of origin;
- instead of a hierarchical structure of methods of service which would require an attempt to serve on the debtor in person before resorting to other means of service, the Council has agreed to permit the unrestricted choice of any of the admissible methods of service as exhaustively listed in the proposal and has added the possibility, under certain conditions, of postal service without proof of receipt or delivery;
- on the other hand, all those methods of service that provide a high degree of likelihood but no full proof that the document served has reached its addressee are

admissible only on the condition that under the law of the Member State of origin the debtor is entitled to apply for a full review of the judgment in those exceptional cases where in spite of service in compliance with this Regulation the debtor has not taken cognisance of the document at issue in sufficient time to be able to arrange for his defence.

The Commission can accept the common position which, although modifying some specific features of the Commission's original proposal as amended following Parliament's opinion, remains faithful to the ambitious goal of the abolition of exequatur including any public policy-related control and strikes a fair balance between a major simplification of cross-border enforcement for creditors and the adequate protection of the debtors' rights.

### **3.2. The incorporation of Parliament amendments into the amended proposal and the common position**

#### **3.2.1. Amendments incorporated in full or in part into the amended proposal and into the common position**

##### *3.2.1.1 Recitals*

**Amendment 1 (Recital 3a)**, which takes note of the applicability of the co-decision procedure since the entry into force of the Nice Treaty, has been taken on board with a slightly shortened wording but without any substantive change.

##### *3.2.1.2 Articles*

**Amendment 2 (Article 3 (4) (b) of the original proposal, now Article 2a (1) (b)) combined two modifications** of the definition of one sub-category of the term "*uncontested claims*". The **first one** aimed at clarifying that, in order to constitute a valid grounds for opposition of a claim, the debtor's conduct must be in conformity with the procedural requirements of the Member State of origin. The Commission subscribed to this intention but chose a wording that avoids the reference to a "*formal application*" which may not be suitable for all Member States and all types of procedures and does not cover all the scenarios that should be covered (e.g. that of a debtor who expressly applies for a dismissal himself although representation by a lawyer is mandatory). The reference to "*compliance with the relevant procedural requirements of the Member State of origin*" of the amended proposal was incorporated into the common position. The Council decided, however, to remove the part of the sub-paragraph which stipulates that stating factual difficulties to pay cannot be regarded as an objection.

The **second modification** which would render inadmissible as a valid objection to a claim "*statements of opposition in pre-litigation proceedings if they automatically lead to court litigation proceedings*" was **rejected** by the Commission and not taken on board by the Council either. It is unnecessary and misleading. As far as the pre-trial period is concerned the current wording already clearly sets out that the opposition has to be lodged "*in the course of the court proceedings*". The intention of the amendment appears, however, primarily to address statements of opposition in summary order for payment proceedings (*injonction de payer, Mahnverfahren*) as only those can automatically lead to adversarial proceedings. For those proceedings the terminology "*pre-litigation*" is inappropriate because they already constitute court proceedings. Furthermore, the situation of initial opposition but subsequent abstention from participation is already specifically governed by the following sub-paragraph of the same Article.

**Amendment 5 (Article 4)** rephrased the description of the legal effect of the certification of a judgment as a European Enforcement Order, the abolition of *exequatur*, by explicitly equating it with a “*national enforcement order*”. The Commission considered it preferable to refer more directly to the consequences of that equation by bringing the wording in line with the text that has been agreed upon by the Council in respect of the abolition of *exequatur* for some decisions on parental responsibility and stating that a certified judgment “*shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition*”. The Council has left the amended proposal unchanged in that respect.

**Amendment 9 (Article 11 (1) (b))** was designed to equate the debtor’s refusal to accept the document in question attested by the competent person effecting the service with successful personal service on the debtor. It was accepted by the Commission and integrated into the common position with the additional clarification that the refusal can only be regarded as equivalent to service where the debtor lacks a legal justification for his conduct which may exist under certain conditions such as those set out in Article 8 of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

**Amendment 14 (Article 16 (d) of the proposal)** was intended to clarify that the very brief description of the justification of the claim at issue that is usually sufficient in summary debt collection procedures (*injonction de payer, Mahnverfahren*) also meets the requirements for certification as a European Enforcement Order. Instead of adding additional legal terminology to existing terminology and rendering the provision rather less easily comprehensible, the Commission suggested shortening, simplifying and broadening the wording in a way that would remove any possible doubt in that respect. The amended proposal requiring “*a statement of the reason for the claim*” has been incorporated into the common position without further changes.

### **3.2.2. Amendments included in the amended proposal but not incorporated into the common position**

**Amendment 4** concerned a clarification of the definition of the term “*ordinary appeal*” in **Article 3 (6)**. As a consequence of the elimination of the requirement of the final nature of a judgment, to be characterised by the lack of an ordinary appeal against that decision, the definition has become obsolete. Therefore, Article 3 (6) has been deleted in its entirety.

**Amendment 6 (Article 7 (1))**, on the issuance of the certificate only after the decision on the application has become final), **Amendment 7 (Article 7 (4))**, on the service of the decision on the certificate on the debtor), **Amendment 8 (Article 8)**, on appeal against the European enforcement order certificate) and **Amendment 16** (aimed at reflecting amendments 6, 7 and 8 in the standard form of the certificate) should be dealt with together as they are all aimed at and related to the introduction of a possibility to appeal against the issuing or the refusal of a European Enforcement Order certificate. Short of a right to appeal but with a view to strengthening the rights of the defence in the certification procedure the Commission inserted, in its amended proposal, a new Article 6a pursuant to which the application for a European enforcement order certificate would have to be served on the debtor in order to afford the debtor the opportunity of bringing his point of view with regard to the fulfilment of the requirements for certification to the court of origin’s attention before it decides on the application. The common position takes a different approach which attains the amendments’ objectives, albeit by slightly different means. Article 8 (4) retains the principle of the unavailability of an appeal

against the issuing of a certificate whereas the issue of an appeal against the refusal of the certificate is no longer addressed anywhere and thus left to national law. The newly introduced preceding paragraphs of Article 8 provide the debtor with adequate devices to request the rectification of material errors in the certificate as well as its withdrawal where it was clearly wrongly granted having regard to the requirements laid down in the Regulation. The Commission can lend its support to the Council's position which fully protects the debtor's rights without hampering the enhanced efficiency of cross-border enforcement.

**Amendment 10 (Article 11 (2))** introduced a reference back to national law as regards the admissibility of the service of documents on the debtor's legal representative instead of the debtor himself. The discussions in the Council have revealed the complexity of the determination of the applicable law (law of the Member State of origin or law of the place where service took place) for various aspects related to the representation of the debtor. The common position has, therefore, restored the wording of the original Commission proposal with a minor change in the new Article 12 A and deleted any reference to national law. The Commission can accept this change, particularly in the light of the fact that the Member States' courts will automatically examine compliance with their own national law (including private international law and hence where applicable the law of the place where service was effected) in the proceedings leading to the judgment.

**Amendment 11 (Article 12 (1) of the proposal)** was intended to clarify that one single unsuccessful attempt at personal service on the debtor is sufficient to allow recourse to methods of substitute service. This clarification is no longer appropriate since the common position has dispensed with the hierarchy between Articles 11 and 12.

The same amendment also contained wording according to which substitute service "*in particular*" by one of the following methods shall be admissible. This drafting would turn the subsequent list into a non-exhaustive one. The Article would, in this form, no longer provide any limitations on the admissible methods of service and therefore undermine the objective of setting up reliable minimum standards. That part of the amendment was therefore incorporated neither into the amended proposal nor into the common position.

**Amendment 15 (Article 19 (2) of the proposal)** eliminated the possibility of certifying a judgment as a European Enforcement Order in spite of non-compliance with the minimum standards on service provided it is established that the debtor has received the document at issue personally and in sufficient time to arrange for his defence. The Council took the view that this provision can be of practical value but also responded to the criticism of the risks inherent in its vagueness by imposing the additional concrete condition that it must be debtor himself who explicitly or implicitly through his own conduct in the court proceedings confirmed the fulfilment of these requirements. The Commission can accept this change.

### ***3.2.3. Amendments rejected by the Commission and not incorporated into the common position***

**Amendment 3 (Article 3 (4) (c) of the proposal)** aimed at introducing the requirement of the debtor's fault in order to consider his non-appearance in a court hearing as a case of an uncontested claim. This requirement would, in almost all cases, prevent the delivery of a European Enforcement Order certificate because the court of origin is ordinarily only in a position to assess if the debtor was properly summoned to a hearing. Even if he was and he did not enter an appearance the court will not be able to rule out the possibility that he could not attend the hearing without any fault on his part (e.g. because of a traffic accident on the way to court). Besides, for the problematic cases where it is relevant the criterion of the absence of

fault on the debtor's part constitutes a prerequisite for review in exceptional cases under Article 19 A.

**Amendment 12 (Article 12 (3) of the proposal)** added the compliance with the domestic law of Member State of origin to the requirements for the admissibility of the use of a substitute method of service. The introduction of such a prerequisite would be new and alien to the proposal. The courts of the Member State of origin have to scrutinise compliance with the rules on the service of documents in the main proceedings anyway. Repeating the requirement of compliance with the law of the Member State of origin in the context of the certification would entail a duplication of work for the courts of the Member State of origin. It would also represent a step backwards as compared to Council Regulation (EC) No 44/2001 whose Article 34 (2) dropped that requirement which had existed pursuant to Article 27 (2) of the 1968 Brussels Convention.

**Amendment 13 (new Article 14 a)** would incorporate a new provision according to which every reference to a court hearing in the proposal shall be understood as a reference to the other procedure held in lieu of such hearing with the intention of duly taking into account those procedures that do not include a hearing. Such a new Article is superfluous since the provisions referring to a court hearing simply become irrelevant and inapplicable if no hearing has taken place. In that event there is only a need for those procedural minimum standards that do not presuppose a hearing. It remains unclear what should replace the hearing as a point of reference and what purpose such a modified reference should serve in practice.

### **3.3. New provisions inserted and provisions deleted or changed beyond cosmetic modifications by the Council**

#### *3.3.1 Recitals*

**Recital 5a** has been inserted to better illustrate the two scenarios of lack of participation in court proceedings that are considered as implying a lack of objections, one being the non-appearance in a court hearing and the other the failure to comply with an invitation to give notice of the intention to defend the case in a written procedure.

**Recital 5b** is intended to clarify that, as a corollary of the enforceability of a judgment replacing its final nature as a sufficient condition for certification as a European enforcement order (see point 3.1 above), this Regulation applies not only to judgments on uncontested claims strictly speaking but also to the decisions delivered following challenges to such judgments even though the claim at issue has turned into a contested one.

**Recital 6** now includes an additional explanation of what the abolition of exequatur implies for the United Kingdom and the registration of foreign judgments which will continue to be required without, however, leaving room for a review as to the substance as in the exequatur procedure.

**Recital 11a** sets out the link between the admissibility of the use of the methods of service pursuant to Article 12, which in spite of their high degree of reliability cannot provide full proof that the debtor has personally taken cognisance of the document served on him, and the existence of a review procedure in compliance with Article 19 A in those very few cases in which the minimum standards of Article 12 have been complied with but the document in question has not been brought to the knowledge of the debtor nonetheless.

**Recital 11b** makes clear that, in contrast to Article 11 (1) (b) where this scenario is expressly dealt with, the refusal by the debtor's flatmate or employee to accept a document to be served cannot be regarded as being equivalent to successful service.

**Recital 11c** spells out that the term "representative" as used in Article 12 A covers both the statutory representative of a debtor who cannot represent himself in court and the authorised representative chosen by the debtor.

**Recital 15a** specifies that with regard to the cross-border service of documents this Regulation does not supplant Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. Rather, the two instruments apply in a cumulative fashion. Whilst Regulation No 1348/2000 stipulates how service has to be effected in cross-border litigation, the judgment resulting from those proceedings can only be certified as a European enforcement order if the minimum standards of Chapter III where they are applicable have also been complied with.

### 3.3.2 *Articles*

**Article 2** has been amended to clarify that the liability of the State for acts and omissions in the exercise of State authority ('*acta iure imperii*') does not constitute a civil and commercial matter and does therefore not fall within the scope of this Regulation.

**Article 2 A** has been introduced to highlight the particular importance of the definition of the term "uncontested" formerly dealt with in Article 3 (4) and to spell out clearly, in paragraph 2, that once a judgment has been certified as a European enforcement order due to the uncontested nature of the underlying claim this Regulation continues to apply to subsequent judgments although the claim has become a contested one.

An additional reference to national law has been inserted in paragraph 1 (c) in order to make sure that under the specific circumstances set out a Member State's court does not have to certify a judgment as a European enforcement order where, in spite of the failure of the debtor to appear, the claim continues to be considered contested under its national procedural law.

In **Article 3**, paragraphs 5 and 6 have become obsolete as a consequence of dropping the requirement of a final decision. Paragraph 3 has been modified to allow certification of judgments that relate to claims which have not yet fallen due but whose future due date is indicated in the judgment including recurring periodic payments such as maintenance claims.

**Article 5** reflects a general change running through the whole Regulation. Instead of the court that has jurisdiction for the certification as in the amended Commission proposal, the common position indicates the court to which the application has to be addressed, thus leaving some flexibility for Member States as regards the attribution of jurisdiction.

The new paragraph 1 (c1) embodies the special protection for consumers already set out above (point 3.1). Due to the introduction of a special rule for consumer matters, the requirement of compliance with section 4 of Chapter II of Regulation (EC) No 44/2001 which deals with these matters has been deleted in paragraph 1 (b).

Paragraphs 2 and 3 introduce two new standard forms to attest the loss or limitation of enforceability of a judgment previously certified as a European enforcement order and, in the event of a decision following a challenge to a judgment certified as a European enforcement order, to replace the original certificate by a new one based on the latter decision.



**Article 5 A** stipulates that where a judgment on an uncontested claim that includes an enforceable decision on a specific amount of costs the cost decision is also fully enforceable without exequatur unless the debtor has specifically disputed his liability in that respect.

**Article 6** has been significantly simplified and shortened without substantive modification.

As regards **Article 7**, paragraph 3 (which determined the number of authenticated copies of the European enforcement order to be supplied to the creditor) was considered superfluous and hence removed.

**Article 8** has been amended to create the possibility of rectification and withdrawal of the European enforcement order certificate already described in points 3.1 and 3.2.2 above. The details of those procedures are governed by national law.

**Article 8 Y** articulates the straightforward principle that the abolition of exequatur, intended to put judgments issued abroad on an equal footing in the Member State of enforcement with judgments delivered in that Member State, must not result in the certified judgment being more easily enforceable abroad than in the Member State of origin. A parallel provision with the same wording has also been agreed upon by the Council in respect of the abolition of exequatur for some decisions on parental responsibility. If the judgment is no longer enforceable or enforceable only subject to certain constraints in the Member State of origin the existence of a European enforcement order cannot be misconstrued as entitling the creditor to continued (unrestricted) enforcement in other Member States. Where necessary, the debtor may obtain a certificate attesting the lack or limitation of enforceability pursuant to Article 5 (2).

**Article 9**, which dealt with the specific situation of judgments on uncontested claims that are enforceable but still subject to appeal, has become obsolete in the light of the fact that the final nature of a judgment has been dispensed with as a prerequisite for certification, and has therefore been deleted.

**Article 10** includes a new paragraph 2 which establishes the conditions for the applicability of the minimum standards set out in Chapter III to the certification, pursuant to Article 5 (3), of a decision following a challenge to a judgment certified as a European enforcement order. Where the proceedings subsequent to the challenge have been contentious there is no need for the special protection of the debtor by the requirements laid down in Chapter III. Where, however, the decision following the challenge is itself based on the default of appearance at a court hearing or the lack of participation in the proceedings interpreted as a tacit admission of the claim and the conditions of Article 2A (1) (b) or (c) are fulfilled the provisions of Chapter III have to be applied, *mutatis mutandis*, to the proceedings following the challenge.

**Article 11** is unchanged apart from the modifications already dealt with in points 3.2.1.2 and 3.2.2 above.

**Article 12** is characterised by the simplification and clarification of the description of those admissible methods of service that were already included in the amended Commission proposal without implying significant substantive changes. Two new methods of service, postal service without proof of reception and electronic service with an automatic confirmation of delivery, have been added under conditions which ensure a very high degree of likelihood that the document served has actually reached its addressee. Reference can also be made to the comments on this Article and its relationship with Article 11 in points 3.1 and 3.2.2 above.

**Article 12 A** has already been dealt with in point 3.2.2 (Amendment 10) above.

**Article 13** has been deleted as a separate provision since provisions on the admissible methods of proof of service have been incorporated into Articles 11 and 12.

The same reasoning explains the elimination of **Article 14** due to the decision of the Council to determine the minimum standards on the method of service comprehensively in Articles 11 and 12 for both the document instituting the proceedings and, where applicable, the summons to a court hearing.

**Article 15** was deleted given a general agreement in the Council that there can be full mutual trust that Member States' national legislation allows sufficient time periods for the preparation of defence after service of a document instituting court proceedings or of a summons to a court hearing, which means that a minimum standard governing this particular issue is not required.

**Article 17** and the former **Article 18** have been merged into one to create an all-encompassing rule on due information of the debtor covering both the summons to a court hearing and the reply to the document instituting the proceedings in the written form. The content of the provision has been considerably streamlined and simplified.

**Article 19** paragraph 1 has been amended with a view to streamlining its wording and removing a minimum standard concerning the time period for an appeal or another challenge for the same reasons which led to the deletion of Article 15. The re-introduction of a modified paragraph 2 has already been commented upon (see point 3.2.2 above).

**Article 19 A** replaces **Article 20** of the amended Commission proposal as the provision that deals with two different exceptional situations, the failure of service to put the debtor in a position to properly arrange for his defence in spite of compliance with Article 12 (which, as opposed to Article 11, does not carry full proof that the debtor has taken cognisance of the document in question) on the one hand and the inability to contest the claim due to force majeure or other exceptional circumstances beyond the debtor's control and irrespective of the service of documents on the other. The former Article 20 covered both scenarios but Article 19 A more concretely addresses them in paragraph 1 (a) and (b), respectively. The new provision also more clearly spells out its character as a minimum standard in that it does not establish requirements for exceptional review but makes the eligibility of a judgment for certification as a European enforcement order conditional upon the existence of procedural rules in line with this Article.

**Article 21** has been modified by the common position in several places. Paragraph 1 now includes a sentence that unequivocally establishes the principle that for the purposes of enforcement a judgment that has been certified as a European enforcement order has to be treated exactly like a judgment delivered in the Member State of enforcement as suggested by the European Parliament in its amendment 5, albeit in a different Article. Paragraph 2 (c) explicitly covers, in addition to translation, the transcription from Greek to Roman alphabet and vice versa and foresees a possibility, rather than an obligation, for Member States to indicate a language or languages other than their own official language(s) which they can accept for the completion of the certificate. Paragraph 4 was deleted because of the opposition of the majority of Member States to such a rule.

**Article 22** was moderately reworded and rendered more precise in parts without change as to its substance.

**Article 22 A** was newly inserted taking account of existing obligations of certain Member States under international law not to recognise and enforce judgments against defendants domiciled or habitually resident in certain third countries under the circumstances set out in the provision. It reproduces Article 72 of Regulation (EC) No 44/2001 with textual adaptations.

The wording of **Article 23** had to be brought into line with the amendments relating to the content and the terminology relating, in particular, to extraordinary challenges to the European enforcement order certificate (Article 8) and to the certified judgment (Article 19 A). Moreover, whilst retaining the discretionary nature of the power of the courts of the Member State of enforcement pursuant to this Article in general, the outright stay of enforcement, as opposed to its limitation, is only admissible as an exceptional measure.

**Article 25**, by combining the English (« *approved by a court* ») and French (« *conclues devant le juge* ») language versions of Article 58 of Regulation (EC) No 44/2001, explicitly includes out-of-court settlements that have become enforceable by virtue of a court decision referred to as “*homologation*” in French. A new paragraph 2a had to be added, as in the case of Article 26, due to the conceptual difference between judgments on the one hand and court settlements and authentic instruments on the other which do not allow a reference to a “recognition” of the latter.

**Article 26** no longer establishes, as was the case in the deleted former paragraph 3 of the amended Commission proposal, a specific requirement for the certification of an authentic instrument in the form of the debtor’s information about the direct enforceability throughout all Member States attested by his own signature. This was considered unnecessary and overly cumbersome by the Council.

**Article 26 A** corresponds to Article 24 of the amended Commission proposal with a slightly altered wording but no change as to its substance.

**Article 27** and **Article 28** which comprised the rules relating to the determination of the debtor’s domicile have become obsolete as a result of the replacement of the concept of “domicile” by the notion of the debtor’s “address” or “business premises” throughout the Regulation with the one exception of Article 5 (1) (c1) where, however, a specific reference to Article 59 of Regulation (EC) no 44/2001 which had been reproduced in Article 27 was added.

**Article 29** has been simplified and now ties the applicability of this Regulation to the date of the issuing of the judgment, court settlement or authentic instrument to be certified as a European enforcement order without the need for any further definitions.

**Articles 30** and **Article 31** on the relationship with Regulation (EC) No 44/2001 and Regulation (EC) No 1348/2000 have been simplified and reduced to their essential content, namely that this Regulation does not oblige creditors to choose the European enforcement order but leaves it to their discretion to resort to the exequatur procedure whenever he deems it preferable and that it does not in any way affect the applicability of Regulation (EC) No 1348/2000 where a document has to be served from one Member state to another; where, in the latter case, the creditor wants to obtain a European enforcement order the requirements of this Regulation have to be met as well. The more detailed rules set out in the amended Commission proposal were not considered necessary by the Council.

**Article 31 A** follows the example of Article 22 of Council Regulation (EC) No 1206/2001 in obliging the Member States to communicate information relevant to the proper functioning of this Regulation to the Commission which will then make it publicly available. This method allows enhanced flexibility in the case of changes compared to providing the same information in an annex to the Regulation as it does not require cumbersome amendments to the Regulation itself.

**Articles 32 and 33** have been slightly modified taking account of the applicability of co-decision procedure which necessitated an additional reference to Article 8 of Decision 1999/468/EC.

#### **4- CONCLUSION**

The Commission accepts the common position in the light of the fact that it includes the key elements included in its initial proposal and in Parliament's amendments as incorporated into its amended proposal.

The text represents a fair and balanced compromise and marks a major step ahead in the implementation of the principle of mutual recognition by allowing a considerable proportion of decisions on civil and commercial claims to circulate freely and without any intermediate measures in Member States other than the one where a judgment has been delivered as a prerequisite for enforcement there.