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*Plenary sitting*

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**A8-0396/2018**

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# REPORT

with recommendations to the Commission on expedited settlement of  
commercial disputes  
(2018/2079(INL))

Committee on Legal Affairs

Rapporteur: Tadeusz Zwiefka

(Initiative – Rule 46 of the Rules of Procedure)

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### with recommendations to the Commission on expedited settlement of commercial disputes (2018/2079(INL))

*The European Parliament,*

- having regard to Article 225 of the Treaty on the Functioning of the European Union (TFEU),
  - having regard to Article 67(4) TFEU and 81(2) TFEU,
  - having regard to Article 19(1) of the Treaty on European Union (TEU) and Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’),
  - having regard to the study from the Directorate General for internal policies entitled ‘Building competence in commercial law in the Member States’,
  - having regard to the 2018 EU Justice Scoreboard,
  - having regard to the 2016 European Judicial Training Network (EJTN) ‘Judicial Training Principles’<sup>1</sup>,
  - having regard to the Union acquis in the area of judicial cooperation in civil matters,
  - having regard to Rules 46 and 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A8-0396/2018),
- A. whereas the right to a fair and public hearing within a reasonable time, as enshrined in Article 47 of the Charter and in Article 6 of the European Convention on Human Rights, constitutes one of the fundamental guarantees of the rule of law and of democracy and is an intrinsic part of civil proceedings as a whole;
- B. whereas the introduction of a European Expedited Civil Procedure could contribute to the modernisation of national proceedings, a level playing field for businesses and increased economic growth thanks to effective and efficient judicial systems, while at the same time facilitating access to justice in the Union and helping to uphold the fundamental freedoms of the Union;
- C. Whereas the 2018 Justice Score board showed that the availability of legal aid and the level of court fees have a key impact on access to justice, in particular for citizens in poverty;
- D. whereas judicial cooperation has been promoted, supported and encouraged by several procedural acts of secondary law of the Union, including the Small Claims Regulation, the Legal Aid Directive, the Regulation on taking of evidence, the Regulation on service

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<sup>1</sup> [http://www.ejtn.eu/PageFiles/15756/Judicial%20Training%20Principles\\_EN.pdf](http://www.ejtn.eu/PageFiles/15756/Judicial%20Training%20Principles_EN.pdf)

of documents;

- E. whereas the goals of judicial cooperation between Member States are, inter alia, to ensure the full respect of the right to effective remedy and a fair trial in cross-border cases, to guarantee effective and smooth judicial procedures also in those situations and to establish mutual trust in judiciary systems, which is the basis for further mutual recognition of judgments across the Union;
- F. whereas many issues with regard to procedural law in the area of civil justice are regulated at the national level, thus procedural law in this area differs from one Member State to another, which is in line with principle of subsidiarity and proportionality; whereas an accelerated procedure could lead to the necessary approximation of procedural regimes in the Union;
- G. whereas it is necessary to step up enhanced cooperation between the Member State authorities and judicial systems at Union level, with a view to removing any obstacles that might arise from incompatibilities between different judicial and administrative systems;
- H. whereas the Brussels I Regulation sets basic rules on jurisdiction, recognition and enforcement of civil and commercial cross-border matters in the Union; whereas the recast version, which applies from 2015 (Brussels Ia), introduced a number of key adjustments for the resolution of EU cross-border disputes, saving time and money for businesses and individuals;
- I. whereas the Rome I Regulation lays down rules on law applicable to civil and commercial contractual obligations;
- J. whereas procedural rules should guarantee both protection of the rights of the parties and speedy settlement of disputes;
- K. whereas settlement of commercial matters in public courts in the Member States is, in general, slow and fails to meet the expectations of parties involved in commercial disputes, a fact that is accentuated by the introduction of the European small claims procedure, which has, by contrast, led to substantially faster settlement of consumer disputes; and whereas proper use of Information and Communication Technologies in courts contributes to speeding up proceedings and to reducing costs.
- L. whereas the slow settlement of commercial disputes in the Union might lead commercial parties to seek alternative dispute settlement, or dispute settlement in non-member States and choose to apply the national law of a non-member State to contracts;
- M. whereas high quality settlement of commercial disputes depends on a high level of competence and experience in these matters in courts, among judges and lawyers and legal practitioners;
- N. whereas the availability of a rapid and cost-effective fast-track procedure supported by highly experienced and competent judges and lawyers in the Member States would make a decision to choose the national law of a Member State more likely and as a consequence enrich the competence in civil and commercial matters in the Member

States;

- O. whereas it seems necessary to find a suitable solution as regards the different language regimes which could consist of harmonised forms, available in all the official languages of the Union;
- P. whereas courts and chambers specialised in commercial matters will guarantee a higher level of competence and independence in such matters and thereby attract such cases to the courts of the Member States;

\* \* \*

1. Notes that the settlement of commercial matters is far slower than it could be, taking on average between three and four years and that this leads to substantial losses for business, and not only in economic terms but also as regards time, energy and other resources that could be diverted for other opportunities;
2. Stresses the need to ensure the full respect of the right of the parties to an effective remedy and to a fair trial, as established in the Charter of Fundamental Rights of the European Union, and to guarantee the high quality of judicial proceedings in commercial matters;
3. Highlights the successful implementation of the European small claims procedure (ESCP), which provided a way of solving consumer and other cross-border disputes regarding small amounts within the Union in a swift and cost-effective way while upholding protection for the rights of the parties;
4. Emphasises that mutual trust is a complex notion and that many factors play a role in building that trust, such as judicial education and upskilling, cross-border judicial cooperation and exchange of experience and best practices between judges;
5. Stresses that, with regard to fair trial and access to justice, cooperation networks and databases enhancing judicial cooperation and exchange of information should be maintained and further expanded, including the European Judicial Network and the European e-Justice Portal, which is to become a one-stop-shop in the area of justice in the Union;
6. Contends that the adoption of a regulation similar to the ESCP, the European Expedited Civil Procedure (EECP) applicable to cross-border commercial disputes would be the best way to address the long waiting times for commercial disputes in the Union, possibly making great savings for European businesses and mobilising unused capital;
7. Contends that commercial parties will be better placed to pay for representation and prepare for a court case which means that they have better prospects of protecting their rights, which would allow for a faster procedure;
8. Observes that such a procedure could build on requirements for thorough preparations by the parties before the procedure is launched, strict deadlines, few possibilities to add facts or evidence during the process and no separate appeal to procedural decisions, thus achieving a fast-track procedure;

9. Is of the opinion that such a strict procedural system is compatible with the protection of the rights of the parties on condition that the EECP should be voluntary and should only apply:
  - where the parties have agreed to make use of the procedure after the dispute has arisen, or
  - where the defendant accepts to participate in the procedure after the claimant has brought an action under the EECP, provided that the defendant has enough time to adequately prepare before the start of the procedure;
10. Believes that the EECP should in any case be valid only where the parties have been duly informed in advance of the consequences of consenting to use such a procedure; considers that the costs of the EECP should not be excessive for the parties, in order to guarantee the respect of the right of access to justice;
11. Stresses that parties to a dispute often only reach an amicable resolution when the circumstances and arguments are fully developed, which means that in a procedural system that required the parties to investigate the circumstances and develop their arguments further before going to court, more disputes would be resolved amicably at an earlier stage;
12. Observes that the aim to provide expedited and more cost-effective settlement of commercial disputes in the Union cannot be achieved solely through the introduction of a harmonised fast-track procedural system; to this aim, courts, judges, lawyers and legal practitioners that are highly proficient and experienced in commercial law and private international law would be needed in order to make such a procedural system efficient;
13. Emphasises that the current distribution in choice of law in commercial contracts between the different European jurisdictions is not equal across Member States;
14. Observes that choices of applicable law often are based on complex considerations, but that the combination of a foreign law and court often exposes a party to substantial economic risks, and that such provisions are specifically questionable if agreed as part of standard contracts or in situations where one of the parties has little or no chance of influencing the agreement in that respect;
15. Understands that language barriers could be an additional obstacle and thus another reason for choosing one law over another to be applicable;
16. Underlines that the availability of uniform standard forms, available in all the official languages of the Union, would facilitate access to the EECP;
17. Suggests, that in order to ensure uniform standard forms, implementing powers should be conferred on the Commission, exercised in accordance with the Inter-institutional Agreement of 13 April 2016 on Better Law-Making;
18. Calls on the Commission to assess the need to review the Rome I, Rome II and Brussels Ia Regulations in order to strengthen the connection between the aim and subject matter of contracts and the law chosen while at the same time to ensure that the weaker parties

in business-to-business relations and contracts are protected, and to preserve the autonomy of the parties in relation to the choice of law;

19. Emphasises that legislative measures cannot address these issues alone, practical measures to raise the expertise both of courts and of lawyers are also necessary, such as improved training in commercial matters and better access to Union law and the national law of the Member States, in particular case law;
20. Observes that commercial law and private international law are areas less codified than other areas of law, which means that there is a more important role for academic research, thus one of the measures to strengthen competence in commercial matters in the Member States is to make more resources available for research in this field;
21. Welcomes therefore the EJTN's nine judicial training principles adopted at its 2016 General Assembly, in that they provide a common foundation and framework for Europe's judiciary and judicial training institutions alike;
22. Stresses that also the quality of the law applicable to commercial matters and the degree to which it is well adapted to the practices and developments in the commercial sector is of great importance;
23. Pursuant to Article 225 TFEU, requests therefore the Commission to submit by 1 January 2020, on the basis of Article 81(2) TFEU, a proposal for a legislative act on a European Expedited Civil Procedure and, in accordance with the recommendations set out in the Annex hereto, following the assessment of the Commission of the need for such a review, a possible proposal for amendments to the Rome I and Rome II and Brussels Ia Regulations;
24. Invites the Commission and the Member States to supplement these proposals with other supporting measures aimed at raising the expertise in the Member States in commercial law and international private law.
25. Confirms that the recommendations annexed to this motion for a resolution respect fundamental rights, the principle of national procedural autonomy and the principles of subsidiarity and proportionality;
26. Considers that any financial implications of the proposal, in particular the costs of proceedings brought under the EECP, would be offset by equivalent savings, as the EEPC is likely to be substantially more cost-effective than the ordinary procedures of the Member States and given that the disputes in question would not be brought under the general procedural system of the Member State in question;
27. Emphasises that commercial law is only one of the areas in which further actions at Union level are needed to ensure better access to justice, higher quality of proceedings, stronger safeguards for the parties and quicker settlement of disputes;
28. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council, and to the parliaments and governments of the Member States.

**ANNEX TO THE MOTION FOR A RESOLUTION:  
RECOMMENDATIONS FOR MEASURES TO INTRODUCE AND SUPPORT A  
EUROPEAN EXPEDITED CIVIL PROCEDURE**

**PRINCIPLES AND AIMS OF THE PROPOSALS REQUESTED**

**I. European Expedited Civil Procedure**

The main aim of the following proposal is to introduce a voluntary European Expedited Civil Procedure in order to provide European companies a possibility to reach a settlement of purely commercial business-to-business disputes of a cross-border nature within a reasonable time frame.

A European Expedited Civil Procedure could build on the following principles:

1. It should apply to cross-border commercial disputes to which the European Small Claims Procedure does not apply;
2. It should apply if the parties so agree after the dispute arises or if the claimant launches a claim under the procedure and the defendant accepts it;
3. It should apply only if the parties have been duly informed in advance of the consequences of consenting to use this procedure;
4. It should require the parties to prepare their claims to a high degree before going to court; paired with early preclusion of the possibility to raise new facts or new evidence in court;
5. It should not allow separate appeal against procedural decisions;
6. It could in principle be a written procedure, allowing for oral hearings where at least one of the parties so request;
7. It should, as a starting point, apply very short deadlines to the procedure, allowing the court, in agreement with the parties, to apply longer deadlines in cases of higher complexity;
8. Encourage in- and out-of-court amicable settlement of cross-border commercial disputes, including by way of mediation;
9. Encourage the use of modern technologies for the purpose of oral hearings, taking of evidence and service of documents;
10. The costs of the procedure should be limited, in order to guarantee the respect of the right of access to justice;
11. Allow for recognition and enforcement of the final judgment under the procedure in the simplest and most user-friendly way available under Union law;

**II. Possible changes to Rome I, Rome II and Brussels Ia Regulations**

The proposal on European Expedited Civil Procedure could be supported by a proposal to amend the Rome I and Rome II and Brussels Ia Regulations to achieve a stronger

connection between the purpose and aim of agreements and the law chosen within the Union also to afford the parties to purely commercial contracts further autonomy while ensuring the protection of the weaker parties in business-to-business relations.

Amendments to the Rome I Regulation could include:

1. Consideration of reinforcement of the connection between the law chosen and the content, aim and purpose of the contract and of the parties;
2. Reconsideration of the rules applicable to the validity of a choice of law, this ought to be considered under the default law applicable to the contract.

### **III. Other measures to build competence in commercial matters in Member States**

1. These proposals ought to be further supported by actions by the Commission and the Member States to build competence in commercial matters, such as:
  - a) training of judges and lawyers and legal practitioners in commercial matters;
  - b) simplified and enhanced access to Union and Member States' national law, including jurisprudence;
  - c) further focus on commercial law and international private law in legal education; and
  - d) additional resources to academic research in the fields of commercial law and international private law.
  - e) the mastering of a foreign language and its legal terminology;
2. Furthermore, Member States are invited to ensure that courts applying the European Expedited Civil Procedure possess specific competence in the field of commercial law, for example by designating or reinforcing existing commercial courts or chambers.
3. In addition, the Commission is invited to further study the possibility to establish a European Commercial Court to supplement the courts of the Member States and offer litigants an additional, international forum specialised in settlement of commercial disputes.
4. As a final measure, Member States are invited to consider reviewing their laws applicable to commercial matters in business-to-business situations, as one of the important factors for choice of law is how well the effectiveness and the quality of the commercial law of a country.

## EXPLANATORY STATEMENT

Settlement of commercial disputes is far too slow in the EU. The World Bank estimates that in a number of Member States, it may well take up to 3-4 years to enforce a commercial contract. Many companies are by law obliged to make reservations in their books for amounts under dispute, this applies for instance to banks and insurance companies. But this does not only apply to those that are legally obliged, many other businesses make such reservations. As a result, all over Europe, large amounts of capital are idle.

The civil procedures are in general not harmonised on a European level, though have been successfully harmonised through some measures adopted within the framework of civil justice cooperation.

One example is the Brussels Ia regulation, that lays a basis for jurisdiction, recognition and enforcement of judgment in civil and commercial matters and its recent recast that came into application in 2015 made some crucial adjustments to the cross-border litigation in the EU. With it, the exequatur procedure was abolished, resulting in cutting costs and saving time both for EU businesses and citizens.

Another example is the European Small Claims Procedure (ESCP). It introduces a procedure specifically adapted to consumers' disputes and other disputes relating to smaller value of less than EUR 5 000. It applies in cross-border cases and it was largely modelled on existing rules in some Member States.

In a similar way, a specific procedural order regarding cross-border commercial disputes between businesses (B2B) could be put in place. Such a procedural order - a European Expedited Civil Procedure (EECP)- would provide European business with a cost-saving and fast option to get a settlement of commercial disputes. A European Expedited Civil Procedure could feature tight, pre-determined deadlines, no separate appeal on procedural questions and limited possibilities of raising new circumstances after first submissions.

Such a procedural order could be designed to provide parties with a settlement even of complicated disputes in six months to a year, which would lead to vast savings for European businesses and activate idle capital. The procedure would be voluntary and would require the agreement from both contracting parties. A European Expedited Civil Procedure would require highly skilled legal judges and lawyers. The question arises what measures can be taken to support this proposal?

The choice of law in commercial contracts is not evenly distributed between the different Member States. This has many reasons, but as an effect, judges and legal practitioners in some countries get less experience in commercial matters, and also the development of jurisprudence in those countries is not as rich.

A number of measures could be taken to support a more evenly distribution of choice of law and of development of and competence in commercial law in those Member States. The most obvious measure would be possible changes to the Rome I regulation regarding the rules on the choice of a applicable law aiming at achieving a stronger connection between the purpose and aim of agreements and the law chosen within the EU but also to afford the parties to purely commercial contracts further autonomy

Further measures could include training of judges and lawyers in commercial matters, enhanced access to EU and Member States' national law, including jurisprudence; focus on

commercial law and international private law in legal education; and resources to academic research in the fields of commercial law and international private law.

Furthermore, Member States are invited to ensure that courts applying the European Expedited Civil Procedure possess specific competence in the field of commercial law, for example by establishing specific or reinforcing existing Commercial Courts or Chambers.

In addition, the Commission is invited to further study the establishment of a European Commercial Court to supplement the courts of the Member States and offer litigants an additional, international forum specialized in settlement of commercial disputes.

As a final measure, the Member States are invited to consider reviewing their laws applicable to commercial matters as one of the more important factors for choice of law is how well the commercial law of a country is adapted developments in commercial areas.

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	20.11.2018
<b>Result of final vote</b>	+: 24 -: 0 0: 0
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Jean-Marie Cavada, Kostas Chrysogonos, Mady Delvaux, Laura Ferrara, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Geoffroy Didier, Pascal Durand, Jytte Guteland, Tiemo Wölken, Kosma Złotowski

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

24	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
ECR	Sajjad Karim, Kosma Złotowski
EFDD	Joëlle Bergeron, Laura Ferrara
ENF	Gilles Lebreton
GUE/NGL	Kostas Chrysogonos
PPE	Geoffroy Didier, Emil Radev, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
S&D	Mady Delvaux, Lidia Joanna Geringer de Oedenberg, Jytte Guteland, Sylvia-Yvonne Kaufmann, Evelyn Regner, Virginie Rozière
VERTS/ALE	Max Andersson, Pascal Durand, Julia Reda

0	-

0	0

**Key to symbols:**

+ : in favour

- : against

0 : abstention