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DRAFT REPORT

with recommendations to the Commission on common minimum standards of
civil procedure in the EU
(2015/2084(INL))

Committee on Legal Affairs

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(Initiative – Rule 46 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on common minimum standards of civil procedure in the EU (2015/2084(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 of the European Union (TEU) and Article 47 of the Charter of Fundamental Rights of the European Union (the Charter),
- having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and to the relevant case-law thereof,
- having regard to the working document on ‘Establishing common minimum standards for civil procedure in the European Union – the legal basis’¹,
- having regard to the European Added Value Assessment study from the European Added Value Unit of the European Parliament Research Service (EPRS) entitled ‘Common minimum standards of civil procedure’²,
- having regard to the in-depth analysis from the Members’ Research Service of the EPRS entitled ‘Europeanisation of civil procedure: towards common minimum standards?’³,
- having regard to the in-depth analysis from the Directorate General for internal policies entitled ‘Harmonised rules and minimum standards in the European law of civil procedure’⁴,
- having regard to the European Law Institute (ELI)/ International Institute for the Unification of Private law (UNIDROIT) project on ‘From Transnational Principles to European Rules of Civil Procedure’,
- having regard to the American Law Institute (ALI)/ UNIDROIT ‘Principles of Transnational Civil Procedure’⁵,
- having regard to the ‘Study on the approximation of the laws and rules of the Member States concerning certain aspects of the procedure for civil litigation’, the so-called

¹ PE 572.853, December 2015.

² PE 581.385, June 2016.

³ PE 559.499, June 2015.

⁴ PE 556.971, June 2016.

⁵ *Uniform Law Review*, 2004(4).

‘Storme Report’¹,

- having regard to the preliminary set of provisions for the Rules of Procedure of the Unified Patent Court,
- having regard to the European *acquis* in the area of civil justice co-operation,
- having regard to the case-law of the Court of Justice of the European Union (CJEU) on the principles of national procedural autonomy and effective judicial protection²,
- having regard to the 2016 EU Justice Scoreboard,
- having regard to the 2016 CEPEJ Studies No 23 on ‘European judicial systems: efficiency and quality of justice’,
- having regard to the 2016 EJTN ‘Judicial Training Principles’³,
- having regard to its resolution of 2 April 2014 on the mid-term review of the Stockholm programme⁴,
- having regard to Rules 46 and 52 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs (A8-0000/2017),

CJEU case-law on national procedural autonomy and effective judicial protection

- A. whereas according to the CJEU’s settled case-law on the principle of procedural autonomy, where there are no Union rules on the procedural aspects of a Union law related dispute, Member States are responsible for designating the courts having jurisdiction and for determining the rules of procedure according to which Union rights will be protected;
- B. whereas according to that same case-law, national priority for procedural rules is subject to two important conditions: national procedural rules cannot be less favourable when applied to Union law related disputes than when applied to similar actions of a domestic nature (the principle of equivalence) and should not be framed in such a way that they render the enforcement of Union rights and obligations impossible in practice or excessively difficult (the principle of effectiveness);

¹ M. Storme, *Study on the approximation of the laws and rules of the Member States concerning certain aspects of the procedure for civil litigation* (Final Report, Dordrecht, 1994).

² See *inter alia*: judgment of 16 December 1976, *Comet BV v Produktschap voor Siergewassen*, 45/76, ECLI:EU:C:1976:191 and judgment of 15 May 1986, *Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary*, 222/84, ECLI:EU:C:1986:206.

³ Available online here:

http://www.ejtn.eu/PageFiles/15756/Judicial%20Training%20Principles_EN.pdf

⁴ Texts adopted, P7_TA(2014)0276.

- C. whereas in the absence of Union provisions harmonising procedural rules, Member States' primacy to provide procedural rules for the enforcement of Union rights does not extend to the introduction of new remedies in national legal orders to ensure the applicability of Union law;¹

The Charter

- D. whereas the right to a fair trial, as enshrined in Article 47 of the Charter and in Article 6 ECHR, constitutes one of the fundamental guarantees of the rule of law and of democracy;
- E. whereas despite the fact that Article 47 of the Charter is binding, and Article 6 ECHR constitutes a general principle of Union law, the level of protection of the right to a fair trial in civil procedure, and in particular the balance between the claimant's right of access to justice and the defendant's rights of the defence, is not harmonised across the EU;
- F. whereas nevertheless, as a fundamental right, the right to a fair trial has been supplemented by several procedural secondary legislative measures of the Union, including the Small Claims Regulation², the Legal Aid Directive³, the Collective Redress Recommendation⁴, the Consumer Injunctions Directive⁵ and the Competition Damages Directive⁶;

The Union acquis in civil justice cooperation

- G. whereas increasingly, the Union legislature addresses issues of civil procedure not only horizontally, as with optional instruments,⁷ but also in a sector-specific manner, within

¹ See *inter alia*: judgment of 13 March 2007, *Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern*, C-432/05, ECLI:EU:C:2007:163.

² Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1).

³ Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ L 26, 31.1.2003, p. 41).

⁴ Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law (OJ L 201, 26.7.2013, p. 60).

⁵ Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30).

⁶ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ L 349, 5.12.2014, p. 1).

⁷ See for instance the European Small Claims Regulation (see footnote 2 above) and the European Account Preservation Order Regulation (Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ L 189, 27.6.2014, p. 59)).

various policy fields, such as intellectual property¹, consumer protection² or, recently, competition law³;

- H. whereas the piecemeal nature of the procedural harmonisation at Union level has been repeatedly criticised and the emergence of such sector-specific Union law of civil procedure challenges the coherence of both domestic civil procedure systems as well as of the various Union instruments;
- I. whereas the proposed directive is aimed at introducing a framework for civil justice adjudication by systematising existing Union rules of civil procedure and extending their scope of application to all matters falling within the scope of Union law;

The legal basis of the proposal

- J. whereas within the current Treaty framework, the legal basis for the harmonisation of civil procedure is provided for in Title V TFEU, in the Area of Freedom, Security and Justice;
- K. whereas pursuant to Article 67(4) TFEU the Union should facilitate access to justice, particularly through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters, as exemplified in Article 81 TFEU;

Mutual Trust in the European Judicial Area

- L. whereas the free movement of judicial decisions is intertwined with the need to create a sufficient level of mutual trust between judicial authorities of the various Member States as regards in particular the level of protection of procedural rights;
- M. whereas the principle of mutual trust serves for more legal certainty, providing citizens and businesses of the Union with sufficient stability and predictability;
- N. whereas a system of Union common minimum standards in the form of principles and rules, would serve as a first step for convergence of national regulations concerning civil procedure, establishing a balance between the fundamental rights of litigants in the interest of full mutual trust between the judicial systems of the Member States;
- O. whereas the existence of procedural guarantees for the efficiency and efficacy of civil proceedings and the equal treatment of the parties is desirable to ensure mutual trust;
- P. whereas the enactment of such a system of common minimum standards would also set a minimum level of quality of civil proceedings across the Union, thus contributing not only to the reinforcement of mutual trust between judiciaries, but also to the smoother operation of the internal market, as it is estimated that the procedural differences among Member States may constitute disturbances to trade and can deter businesses or consumers from exercising their internal market rights;

¹ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p.45).

² see footnote 5 to Recital F above.

³ see footnote 6 to Recital F above.

Other considerations

- Q. Whereas the approximation of procedural regimes in the Union is necessary; whereas the proposed Directive is meant to be a first step in the process of further harmonisation and convergence of Member States' civil justice systems and of the creation of a Union Code of Civil Procedure in the longer-term;
- R. whereas the proposed Directive does not affect either the judicial organisation of the Member States or the principal characteristics of the manner in which civil litigation is conducted;
- S. whereas it is therefore of the utmost importance to adopt legislation providing for the adoption of common minimum standards of civil procedure in the Union;

* * *

CJEU case-law on national procedural autonomy and effective judicial protection

- 1. Notes the pivotal role of the Court of Justice in establishing the foundations of the Union civil procedure, having shaped the understanding of what civil procedure means for the Union legal system;
- 2. Underscores however that while some procedural standards which are nowadays accepted as part of the Union procedural system were ascertained in the CJEU jurisprudence, the contribution of the CJEU should ultimately be seen as standard-interpreting rather than standard-setting;
- 3. Stresses therefore that the rich experience of the CJEU in reviewing remedial and procedural rules as well as the compromises and the competing values the CJEU pursues are very instructive and should be taken into account for the purposes of introducing a horizontal umbrella instrument of a legislative nature containing common standards of civil procedure;

The Charter

- 4. 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;
- 5. Warmly welcomes therefore the developments in e-justice, and most notably the creation of the European Judicial Network and of the European e-Justice Portal, which is to become a one-stop-shop in the area of justice in the Union;

The Union acquis in civil justice cooperation

- 6. Calls also on the Commission to assess whether further measures to consolidate and strengthen a horizontal approach to the private enforcement of rights granted under Union law should be proposed and whether the hereby-proposed common minimum standards of civil procedure could be seen as promoting and ensuring such a horizontal paradigm;

7. Reiterates that the systematic collection of statistical data on the application and performance of existing Union instruments in the area of civil justice cooperation is of the utmost importance;
8. Invites in this context the Commission to assess whether additional implementing measures by the Member States could contribute to the effective application of self-standing Union procedures and contends that a robust and systematic supervisory process on the part of the Commission should be established for that purpose;

The legal basis of the proposal

9. Observes that Article 114 TFEU has been used to adopt a number of Union acts with procedural implications; notes, however, that Article 81 TFEU provides for the adoption of measures in the area of judicial cooperation in civil matters having cross-border implications, including measures for the approximation of the laws and regulations of the Member State, particularly when necessary for the proper functioning of the internal market; considers, therefore, that Article 81 TFEU constitutes the appropriate legal basis for the proposed legislative instrument;
10. Contends that the notion of 'cross-border *implications*' in the text of Article 81(2) TFEU regarding the adoption of civil justice cooperation measures should be construed in a broader manner and should thus not be perceived as synonymous with 'cross-border *litigation*';
11. Underlines that the current interpretation of the notion 'matters with cross-border implications' is rather narrow and results in the creation of two sets of rules and two categories of litigants that might lead to further problems and unnecessary complications; stresses that a broader interpretation should therefore be adopted;
12. Stresses in that context that the hereby proposed common minimum standards of civil procedure would lead to further efficiencies if Member States extended their scope of application not only to matters falling within the scope of Union law, but in general to both cross-border and purely internal cases;

Mutual Trust in the European Judicial Area

13. Notes that the main activities of the Union in the European Area of Justice as far as civil justice is concerned, relate to the introduction of instruments on jurisdiction, pendency and the cross-border enforcement of judgments;
14. Underlines that the free circulation of judgments has increased mutual trust between the national judiciaries;
15. Emphasises in that respect that mutual trust is a complex notion and that many factors play a role in building that trust, such as judicial education, cross-border judicial cooperation and exchange of experience and best practices between judges;
16. 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;

17. Contends, nevertheless, that from a strictly legal viewpoint, mutual trust presupposes, at a very fundamental level, that national judiciaries in the Union perceive each other's procedural arrangements – on both the level of law-on-the-books and of law-in-action – as guaranteeing fair civil proceedings;
18. Points out therefore, that the elaboration of systematic, minimum standards of Union civil procedure in the form of an across-the-board horizontal directive, would lead to increasing mutual trust among Union judiciaries and ensure a common, Union-wide balancing of fundamental procedural rights for civil cases;

Common minimum standards of civil procedure

19. Emphasises that effective civil procedure systems play a crucial role for upholding the rule of law and the Union's fundamental values. They are also a prerequisite for sustainable investment and a business- and consumer- friendly environment;
20. Finds that there is a clear need for legislation to provide for a set of procedural standards applicable to civil proceedings and calls on the Commission to proceed with the delivery of its action plan for the implementation of the Stockholm programme;
21. Pursuant to Article 225 TFEU, requests therefore the Commission to submit by 30 June 2018, on the basis of Article 81(2) TFEU, a proposal for a legislative act on common minimum standards of civil procedure, following the recommendations set out in the Annex hereto;
22. Confirms that the recommendations annexed to this motion for a resolution respect fundamental rights and the principles of subsidiarity and proportionality;
23. Considers that the requested proposal does not have financial implications, as the introduction of minimum standards of civil procedure will lead to economies of scale in terms of reduced costs for litigants and their representatives who will not need to familiarise themselves with a different country's civil procedure regime;
24. 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 A DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL ON COMMON MINIMUM STANDARDS OF CIVIL
PROCEDURE IN THE EU**

A. PRINCIPLES AND AIMS OF THE PROPOSAL REQUESTED

1. In the Union, enforcement of law before courts remains largely the matter of national procedural rules and practice. National courts are also Union courts. It is therefore for the proceedings before them to ensure fairness, justice and efficiency as well as effective application of Union law.
2. The implementation of the principle of mutual recognition of judgments in civil matters has increased Member States' trust in each other's civil justice systems. The extent of mutual trust is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of the defendant while guaranteeing access to courts and justice.
3. Although the Member States are party to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), experience has shown that that alone does not always provide a sufficient degree of trust in the civil justice systems of other Member States. National civil procedure rules of the Member States vary considerably, often in terms of some fundamental procedural principles and guarantees, thus risking that mutual trust and confidence between judicial authorities might be hindered.
4. It is therefore necessary, in order to protect the fundamental rights and freedoms of the Union citizens, to adopt a directive further developing the minimum standards set out in the Charter and in the ECHR. The proper legal basis for such a proposal is Article 81(2) TFEU, which concerns measures in the field of civil justice cooperation. The directive is to be adopted via the ordinary legislative procedure.
5. Common minimum standards of civil procedure are deemed necessary to form a sound basis for the approximation and improvement of national laws, in view of the flexibility it gives to Member States in preparing new civil procedure laws while reflecting a general consensus on the principles of civil justice practice.
6. Common minimum standards should lead to increased confidence in the civil justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.
7. The proposed directive is not aimed at substituting national procedural regimes in their entirety, but while respecting national specificities, it is aimed at establishing common minimum standards regarding the function and conduct of civil proceedings for all matters falling within the scope of Union law. It is also aimed at providing a basis for the gradual deepening of the approximation of civil procedural regimes of Member

States.

8. The proposal does not affect Member States' provisions regarding the organisation of their courts and their rules regarding the appointment of the judges.
9. The present proposal complies with the principles of subsidiarity and proportionality, as the Member States cannot act alone to set up a set of minimum standards of civil procedure, and the proposal does not go further than absolutely necessary in ensuring effective access to justice and mutual trust in the Union.

B. TEXT OF THE PROPOSAL REQUESTED

Directive of the European Parliament and the Council on common minimum standards of civil procedure in the EU

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) thereof,

Having regard to the European Parliament's request to the European Commission,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) Pursuant to Article 81(2) of the Treaty on the Functioning of the European Union, those measures should be aimed at ensuring, inter alia, the mutual recognition and enforcement of judgments between Member States, the cross-border service of documents, the cooperation in the taking of evidence, effective access to justice and the elimination of obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.
- (3) According to the Presidency conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point (33) thereof, enhanced mutual recognition of judgments and other judicial decisions and the necessary approximation

of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights. The principle of mutual recognition should therefore become the cornerstone of judicial cooperation in civil matters within the Union.

- (4) According to the action plan for the implementation of the Stockholm programme, the European judicial area and the proper functioning of the single market are built on the cornerstone principle of mutual recognition, which is in turn premised on the idea that Member States trust each other's judicial systems. This principle can only function effectively on the basis of mutual trust among judges, legal professionals, businesses and citizens. The extent of that trust is dependent on a number of parameters, including the existence of mechanisms to safeguard the procedural rights of litigants in civil proceedings. Common minimum standards enhancing the right to fair trial and the efficiency of judicial systems and contributing to an effective enforcement regime are therefore necessary to guarantee the application of that principle.
- (5) By establishing minimum rules on the protection of procedural rights of litigants, this Directive should strengthen the trust of Member States in civil justice systems of other Member States and can thus help promote a fundamental rights culture in the Union.
- (6) The provisions of this Directive should apply to civil disputes having cross-border implications, including those arising from the violation of the rights and freedoms guaranteed by the law of the Union. Where this Directive refers to the violation of rights granted under Union law, it covers all the situations where the breach of rules established at Union level has caused or is likely to cause prejudice to natural and legal persons. Nothing should prevent Member States from applying the provisions of this Directive also to purely internal civil justice cases.
- (7) All Member States are contracting parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. The matters referred to in this Directive shall be dealt with in compliance with that Convention and in particular the rights of fair trial and effective remedy.
- (8) This Directive seeks to promote the application of common minimum standards of civil procedure to secure effective access to justice in the Union. The generally recognised right of access to justice is also reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union (the Charter).
- (9) Civil proceedings should be further improved by taking advantage of the technological developments in the field of justice and of new tools available to the courts and tribunals, which can help to overcome geographical distance and its consequences in terms of high costs and length of proceedings. To further reduce litigation costs and the length of proceedings, the use of modern communication technology by the parties and the courts and tribunals should be further encouraged.
- (10) In order to enable persons to be heard without requiring them to travel to the court or tribunal, Member States should ensure that oral hearings as well as taking of evidence by hearing witnesses, experts or parties can be carried out using any appropriate means of distance communication, unless, on account of the specific circumstances of

the case, the use of such technology would not be appropriate for the fair conduct of the proceedings. This provision is without prejudice to Council Regulation (EC) No 1206/2001¹.

- (11) Member States' courts should be able to rely on experts' opinions for technical, legal or other evidentiary issues. Save where coercive measures are needed and in accordance with the freedom to provide services and the case-law of the Court of Justice, judges in one Member State should be able to appoint experts to conduct investigations in another Member State without any prior authorisation being necessary for their conduct. To facilitate judicial expertise and taking into account limitations in appointing sufficiently qualified experts in one Member State's jurisdiction, for instance due to the technical sophistication of the case or the existence of direct or indirect links between the expert and the parties, a European directory of all national lists of experts should be created and kept up to date as part of the European e-justice portal.
- (12) Provisional and protective measures should strike an appropriate balance between the interests of the applicant in being awarded provisional protection and the interests of the defendant in preventing abuse of such protection. When provisional measures are requested prior to obtaining a judgment, the court with which the application is lodged should be satisfied on the basis of evidence submitted by the applicant that he or she is likely to succeed on the substance of the claim against the defendant. Furthermore, the applicant should be required in all situations to demonstrate to the satisfaction of the court that his claim is in urgent need of judicial protection and that without the provisional measures, the enforcement of the existing or future judgment may be impeded or made substantially more difficult.
- (13) The provisions of this Directive shall be without prejudice to the particular provisions for the enforcement of rights in the domain of intellectual property set out in Union instruments and most notably those found in Directive 2004/48/EC of the European Parliament and of the Council². It shall also be without prejudice to the particular provisions for the recovery of cross-border debt as established in the European Account Preservation Order.³
- (14) A key role should be given to courts in protecting the rights and interests of all parties and in managing the civil proceedings effectively and efficiently.
- (15) The objective of securing better access to justice and mutual trust, as part of the policy of the European Union to establish an area of freedom, security and justice, should encompass access to judicial as well as extrajudicial dispute resolution methods. In

¹ Council Regulation No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p.1).

² Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).

³ Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ L 189, 27.6.2014, p. 59).

order to encourage parties to use mediation, Member States should ensure that their rules on limitation and prescription periods do not prevent the parties from going to court or to arbitration if their mediation attempt fails.

- (16) Due to differences between Member States' rules of civil procedure and especially those governing the service of documents, it is necessary to define the minimum standards that should apply to civil proceedings falling within the scope of Union law. In particular, service methods that ensure prompt and safe receipt of the served documents, confirmed by a proof of delivery, should be prioritised. Modern communication technologies should therefore be widely used. For documents that need to be served on the parties, electronic service should be on an equal footing with postal service. The available electronic means should ensure that the content of the documents and other written communications received is true and faithful to that of the documents and other written communications sent, and that the method used for the acknowledgment of receipt provides confirmation of the receipt by the addressee and of the date of receipt.
- (17) Member States should ensure that the parties to civil proceedings have the right to a lawyer of their choice. In cross-border disputes, the parties should have the right to a lawyer in the Home State for preliminary advice and another one in the Host State to conduct the litigation. Confidentiality of communication between the parties and their lawyer is key to ensuring effective exercise of the right to a fair trial. Member States should therefore respect the confidentiality of meetings and other forms of communication between the lawyer and the parties in the exercise of the right to a lawyer provided for in this Directive. The parties to a case should be able to waive the right granted under this Directive provided that they have been given information about the possible consequences of waiving that right.
- (18) The payment of court fees should not require the claimant to travel to the Member State of the court or tribunal seized or to hire a lawyer for that purpose. In order to ensure claimants' effective access to the proceedings, the Member States should offer at least one of the distance-payment methods provided for in this Directive, as a minimum. Information about court fees and methods of payment, as well as about the authorities or organisations competent to give practical assistance in the Member States should be transparent and easily accessible on the internet through appropriate national websites.

- (19) Member States should ensure the respect of the fundamental right to legal aid as provided for in Article 47(3) of the Charter. All natural or legal persons involved in civil disputes within the scope of this Directive, whether acting as claimants or as defendants, should be able to assert their rights in the courts even if their personal financial situation makes it impossible for them to bear the costs of the proceedings. Legal aid should cover pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings, legal assistance in bringing a case before a court and representation in court and assistance with the cost of proceedings. This provision is without prejudice to Council Directive 2002/8/EC¹.
- (20) The creation of a European judicial culture that fully respects subsidiarity and judicial independence is central to the efficient functioning of a European judicial area. Judicial training is a crucial element in this process as it enhances mutual confidence between Member States, practitioners and citizens.
- (21) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to mutual trust and effective access to justice that those minimum rules are designed to facilitate. The level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of Union law should thereby not be compromised.
- (22) Since the objectives of this Directive, namely setting common minimum standards of civil procedure, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (23) In accordance with [Article 3]/[Articles 1 and 2] of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, [those Member States have notified their wish to take part in the adoption and application of this Directive]/[and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application].

¹ Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ L 26, 31.1.2003, p. 41).

- (24) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I:
SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

The objective of this Directive is to approximate procedural systems so as to ensure full respect of for the right to a fair trial as recognised in Article 47 of the Charter, by laying down minimum standards concerning the commencement, conduct and conclusion of civil proceedings before Member States' courts or tribunals.

Article 2

Scope

1. Without prejudice to standards of civil procedure which are or may be provided in Union or national legislation, insofar as those standards may be more favourable for the litigants, this Directive shall apply, in disputes having cross-border implications, to civil and commercial matters, whatever the nature of the court or tribunal, except as regards rights and obligations, which are not at the parties' disposal under the relevant applicable law. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority ('*acta iure imperii*').
2. In this Directive, the term 'Member State' shall mean Member States with the exception of [the UK, Ireland and] Denmark.

Article 3

Disputes having cross-border implications

1. For the purposes of this Directive, a dispute having cross-border implications shall be one in which:
 - (a) at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seized; or
 - (b) both parties are domiciled in the same Member State as that of the court or tribunal seized, provided that the place of performance of the contract, the place where the harmful event takes place or the place of enforcement of the judgment is situated in another Member State; or
 - (c) both parties are domiciled in the same Member State as that of the court or tribunal seized, provided that the disputed matter falls within the scope of Union law.
2. For the purposes of paragraph 1, domicile shall be determined in accordance with Articles 62 and 63 of Regulation (EU) No 1215/2012 of the European Parliament and of the

CHAPTER II:
MINIMUM STANDARDS FOR CIVIL PROCEEDINGS

Section One:
Fair and effective outcomes

Article 4

General obligation for effective judicial protection

1. Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the rights conferred by Union civil law. Those measures, procedures and remedies shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

Those measures, procedures and remedies shall also be effective and proportionate and shall be applied in such a manner as to avoid the creation of obstacles to effective access to justice and to provide safeguards against their abuse.

Article 5

Oral hearings

1. Member States shall ensure that oral hearings be held by making use of any appropriate distance communication technology, such as videoconference or teleconference, available to the court or tribunal, unless the use of such technology, on account of the particular circumstances of the case, is not appropriate for the fair conduct of the proceedings.
2. Where the person to be heard is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seized, that person's attendance at an oral hearing by way of videoconference, teleconference or other appropriate distance communication technology shall be arranged by making use of the procedures provided for in Regulation (EC) No 1206/2001. In relation to videoconferencing, the Council Recommendations on cross-border videoconferencing adopted by the Council on 15 and 16 June 2015² and the work undertaken in the framework of European e-Justice portal shall be taken into account.

¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

² Council Recommendations 2015/C 250/01 'Promoting the use of and sharing of best practices on cross-border videoconferencing in the area of justice in the Member States and at EU level' (OJ C 250, 31.7.2015, p. 1).

Article 6

Provisional and Protective Measures

1. Member States shall ensure that provisional measures for the preservation of a factual or legal situation are in place so as to secure the full effectiveness of a later judgement on the substance of the matter prior to initiating proceedings on the substance of the matter and at any stage during such proceedings.

These measures shall also include measures for the prevention of any imminent infringement or for the immediate termination of an alleged infringement as well as for the preservation of assets necessary to secure that the subsequent enforcement of a claim will not be impeded or made substantially more difficult.

2. Such measures shall observe the rights of the defence and shall be proportionate to the characteristics and severity of the alleged violation, allowing where appropriate the provision of guarantees for the costs and the injury caused to the defendant by unjustified requests. The courts or tribunals shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the provisional measure requested is needed and is proportionate.
3. Member States shall ensure that in duly justified cases, provisional measures may be taken without the defendant having been heard, where any delay would cause irreparable harm to the applicant, or where there is a demonstrable risk of evidence being destroyed. In such an event, the parties shall be so informed without undue delay after the execution of the measures at the latest.

A review, including the right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked, or confirmed.

Where these measures are revoked or where it is subsequently found that there has been no violation or threat of violation, the Court may order the applicant, at the defendant's request, to provide the defendant with appropriate compensation for any damage suffered as a result of those measures.

4. This Article is without prejudice to Directive 2004/48/EC and Regulation (EU) No 655/2014.

**Section Two:
Efficiency of proceedings**

Article 7

Procedural Efficiency

1. Member States' courts or tribunals shall respect the right to a fair trial and the principle of an adversarial process, in particular when deciding on the necessity of an oral hearing and on the means of taking evidence and the extent to which evidence is to be taken.
2. Member States' courts or tribunals shall act as soon as possible irrespective of the existence of prescription periods for specific actions in the different phases of the procedure.

Article 8

Reasoned Decisions

Member States shall ensure that Courts provide sufficiently detailed reasoned decisions within a reasonable time in order to enable parties to make effective use of any rights to review the decision or lodge an appeal.

Article 9

General principles for direction of proceedings

1. Member States' courts shall ensure that courts actively manage the cases before them in order to ensure fair, efficient and at reasonable speed disposition of disputes, without impairing the freedom of the parties to determine the subject-matter of, and the supporting evidence for, their case.
2. To the extent reasonably practicable, the court shall manage the case in consultation with the parties. Specifically, active case management may include:
 - (a) encouraging the parties to co-operate with each other during the proceedings;
 - (b) identifying the issues at an early stage;
 - (c) deciding promptly which issues need full investigation and disposing summarily of other issues;
 - (d) deciding the order in which issues are to be resolved;
 - (e) helping the parties to settle the whole or part of the action;
 - (f) fixing timetables to control the progress of the action;
 - (g) dealing with as many aspects of the action as the Court can on the same occasion;
 - (h) dealing with the action without the parties needing to attend in person;
 - (i) making use of available technical means.

Article 10

Evidence taking

1. Member States shall ensure that effective means of presenting, obtaining and preserving evidence are available having regard to the rights of defence and the need to protection of confidential information.
2. In the context of the taking of evidence, Member States shall encourage the use of modern communication technology. The court or tribunal seized shall use the simplest and least-costly method of taking evidence.

Article 11

Court experts

1. Without prejudice to the possibility for the parties to produce expert evidence, Member States shall ensure that the court may at any time appoint court experts in order to provide expertise for specific aspects of the case. The court shall provide such expert with all information necessary for the provision of the expert advice.
2. In cross-border disputes, save where coercive measures are needed or where an investigation is carried out in places connected to the exercise of powers of a Member State or in places to which access or other action is, under the law of the Member State in which the investigation is carried out, prohibited or restricted to certain persons, Member States shall ensure that a court may appoint a judicial expert to conduct investigations outside of the court's jurisdiction without the submission of any prior request to that effect to the relevant authority of the other Member State being needed.
3. For the purposes of paragraphs 1 and 2, a European directory of experts shall be drawn up by the Commission by bringing together existing national lists of experts and shall be made available via the European e-justice portal.
4. The court experts shall guarantee independence and impartiality in accordance with provisions applicable to judges provided for in Article 22.
5. Expert advice given to the court by court experts shall be made available to the parties which shall have the possibility to comment on it.

Section Three: Access to courts and justice

Article 12

Settlement of disputes

1. Member States shall ensure that at any stage of the proceedings and having regard to all the

circumstances of the case, if the court is of the opinion that the dispute is suitable for a settlement, it may propose that the parties make use of mediation in order to settle or to explore a settlement of the dispute.

2. This shall not have the effect of depriving parties who choose mediation from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process.

Article 13

Litigation costs

1. Member States shall ensure that the court fees charged in Member States for civil disputes are not disproportionate to the value of the claim and do not render litigation impossible or excessively difficult.
2. The parties shall be able to pay the court fees by means of distance payment methods, including from a Member State other than the Member State in which the court or tribunal is situated, via bank transfer or via credit or debit card payment.
3. Member States shall ensure that information about court fees and methods of payment, as well as about the authorities or organisations competent to give practical assistance in the Member States are made more transparent and easily available on the internet. To that end, Member States shall transmit that information to the Commission, which in turn shall ensure that it is made publicly available and widely disseminated by any appropriate means, in particular through the European e-Justice Portal.

Article 14

‘Loser pays’ principle

1. Member States shall ensure that the unsuccessful party shall bear the costs of the proceedings, including but not limited to any costs resulting from the fact that the other party was represented by a lawyer or another legal professional, or any costs arising from the service or translation of documents, which are proportionate to the value of the claim and which were necessarily incurred.
2. Where a party succeeds only in part or in exceptional circumstances, courts may order that costs be apportioned equitably or that the parties bear their own costs.
3. A party shall bear any unnecessary costs it has caused the court or another party, either by raising unnecessary issues or by being otherwise unreasonably disputatious.
4. The court may adjust its award of costs to reflect unreasonable failure to cooperate or bad-faith participation in settlement endeavours in accordance with Article 20.

Article 15

Legal Aid

1. In order to ensure effective access to justice, Member States shall ensure that courts may grant legal aid to a party.
2. Legal aid may cover, in whole or in part, the following costs:
 - (a) court fees;
 - (b) costs of legal assistance and representation regarding:
 - (i) pre-litigation advice with a view to reaching a settlement prior to commencing legal proceedings in accordance with Article 12(1);
 - (ii) commencing and maintaining proceedings before the court;
 - (iii) all costs relating to proceedings including the application for legal aid;
 - (iv) enforcement of decisions;
 - (c) other necessary costs related to the proceedings to be borne by a party, including costs of witnesses, experts, interpreters and translators and necessary travel, accommodation and subsistence costs of that party and his representative;
 - (d) the costs awarded to the successful party, in the event that the applicant loses the action in accordance with Article 14.
3. Member States shall ensure that any natural person who is a citizen of the European Union or a third country national residing lawfully in a Member State of the European Union is entitled to apply for legal aid where:
 - (a) owing to their economic situation, they are wholly or partly unable to meet the costs referred to in paragraph 2 of this Article; and
 - (b) the action in respect of which the application for legal aid is made has a reasonable prospect of success, considering the applicant's procedural position; and
 - (c) the claimant applying for legal aid is entitled to bring actions under the relevant national provisions.
4. Legal persons shall be entitled to apply for legal aid in the form of dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer. In deciding whether to award such aid, courts may take into consideration, *inter alia*:
 - (a) the form of the legal person in question and whether it is profit-making or non-profit-making;
 - (b) the financial capacity of the partners or shareholders;
 - (c) the ability of those partners or shareholders to obtain the sums necessary to institute legal proceedings.
5. This Article is without prejudice to Directive 2002/8/EC.

Article 16

Funding

1. Member States shall ensure that in cases where a legal action is funded by a private third party, the private third party shall not:
 - (a) seek to influence procedural decisions of the claimant party, including on settlements;
 - (b) provide financing for an action against a defendant who is a competitor of the fund provider or against a defendant on whom the fund provider is dependant;
 - (c) charge excessive interest on the funds provided.
2. Member States shall ensure that for cases of private third party funding of legal actions, remuneration given to or interest charged by the fund provider shall not be based on the amount of the settlement reached or the compensation awarded, unless that funding arrangement is regulated by a public authority guaranteeing the interests of the parties.

Section Four: Fairness of proceedings

Article 17 **Service of Documents**

1. Member States shall ensure that methods guaranteeing receipt of the served documents are used as a matter of principle.
2. Member States shall ensure that the documents instituting the proceedings or equivalent documents and any summons to a court hearing may be served in accordance with the national law by one of the following methods:
 - (a) personal service;
 - (b) postal service;
 - (c) service by electronic means, such as fax or email.

The service shall be attested by an acknowledgment of receipt including the date of receipt, which shall be signed by the addressee.

For the purpose of service by electronic means under point (c) of the first subparagraph of this paragraph, appropriately high technical standards guaranteeing the identity of the sender and the safe transmission of the served documents shall be used.

These documents may also be served in person attested by a document signed by the competent person who effected the service, stating that the addressee has received the documents or refused them without any legal justification, and the date of the service.

3. If service in accordance with paragraph 2 is not possible, and where the defendant's address is known with certainty, service may be effected by one of the following methods:
 - (a) in person at the defendant's personal address, on persons who are living in the

- same household as the defendant or are employed there;
- (b) in the case of a self-employed defendant or a legal person, personal service at the defendant's business premises, on persons who are employed by the defendant;
- (c) deposit of the documents in the defendant's mailbox;
- (d) deposit of the documents at a post office or with competent public authorities and the placing in the defendant's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the documents as being court documents or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits;
- (e) postal service without proof pursuant to paragraph 4 where the defendant's address is in the Member State of origin;
- (f) electronic means attested by an automatic advice of delivery, provided that the defendant has expressly accepted this method of service in advance.

Service pursuant to points (a) to (d) of the first subparagraph of this paragraph shall be attested by:

- (a) a document signed by the competent person who effected the service, indicating:
 - (i) the method of service used; and (ii) the date of service; and (iii) where the served documents have been served on a person other than the defendant, the name of that person and his relation to the defendant; or
 - (b) an acknowledgement of receipt by the person served, for the purposes of points (a) and (b) of the first subparagraph of this paragraph.
4. Service pursuant to paragraphs 2 and 3 of this Article may also be effected on the defendant's legal or authorised representative.
5. Where the documents instituting the proceedings or equivalent documents or any summons are to be served outside the Member States, they may be served by any method provided by:
- (a) Regulation (EC) No 1393/2007 of the European Parliament and of the Council¹ where it applies respecting the rights of the recipient granted by the Regulation; or
 - (b) The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters or any other convention or agreement where it applies.

¹ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

6. This Directive shall not affect the application of Regulation (EC) No 1393/2007 and is without prejudice to Regulation (EC) No 805/2004 of the European Parliament and of the Council¹ and Regulation (EC) No 1896/2006 of the European Parliament and of the Council².

Article 18

The right to a lawyer in civil proceedings

1. Member States shall ensure that the parties to civil proceedings have the right to a lawyer of their choice in such a manner so as to allow them to exercise their rights practically and effectively.

In cross-border disputes, Member States shall ensure that the parties to civil proceedings have the right to a lawyer in their Home State to give preliminary advice, and one in the Host State to conduct the litigation.

2. Member States shall respect the confidentiality of communications between the parties to a case and their lawyer. Such communication shall include meetings, correspondence, telephone conversation and other forms of communication permitted under national law.
3. Without prejudice to national law requiring the mandatory presence or assistance of a lawyer, the parties to civil proceedings may waive a right referred to in paragraph 1 of this Article, where (a) the parties have been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the possible consequences of waiving it; and (b) the waiver is given voluntarily and unequivocally.

Member States shall ensure that the parties may revoke a waiver subsequently at any point during civil proceedings and that they are informed about that possibility.

4. This provision is without prejudice to the specific provisions regarding legal representation provided for in Regulation (EC) No 861/2007 of the European Parliament and of the Council³, Regulation (EC) No 1896/2006 and Regulation (EU) No 655/2014.

¹ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ L 143, 30.4.2004, p. 15).

² Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ L 399, 30.12.2006, p. 1).

³ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1).

Article 19

Access to information

Member States shall endeavour to provide citizens with transparent and easily available information regarding the commencement of various procedures, the competent courts to hear different disputes, and the necessary forms that need to be filled in for that purpose. Nothing in this Article requires the Member States to provide legal assistance in the form of a legal assessment of a specific case.

Article 20

Obligations of the parties and their representatives

Member States shall ensure that the parties to a case and their representatives conduct themselves in good faith and with respect in dealing with the court and other parties and do not misrepresent cases or facts before courts either knowingly or with good reasons to know.

Article 21

Public Proceedings

Member States shall ensure that proceedings are open to the public unless the Court decides to make them confidential, to the extent necessary, in the interest of one of the parties or other affected persons, or in the general interest of justice or public order.

Article 22

Judicial independence and impartiality

1. Member States shall ensure that courts and tribunals and their judges enjoy judicial independence. The composition of the courts and tribunals shall offer sufficient guarantees to exclude any legitimate doubt about impartiality.
2. In the performance of their duties, the judges shall not be bound by any instructions and shall be free from influence or pressure and from any personal prejudice or bias in any given case.

Article 23

Training

1. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall ensure that the judiciary, judicial schools and legal professions boost their judicial training schemes to ensure that Union law and procedures are integrated in national training activities.

2. Training schemes shall be practice oriented, relevant to legal practitioners' everyday work, take place during short periods of time and use active and modern learning techniques and shall encompass initial and continuous training possibilities. Training schemes shall in particular focus on:
 - (a) the acquisition of sufficient knowledge of Union judicial cooperation instruments and the development of built-in reflexes to refer regularly to European-level jurisprudence, to verify national transposition and to use the Court of Justice of the European Union's preliminary ruling procedure;
 - (b) the dissemination of knowledge and experience in Union law and procedures and in other legal systems;
 - (c) the facilitation of short term exchanges of new judges;
 - (d) the mastering of a foreign language and its legal terminology;

CHAPTER III:

FINAL PROVISIONS

Article 24

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [one year after the date of entry into force of this Directive]. They shall immediately inform the Commission thereof.
2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

Article 25

Review

The Commission shall, not later than 31 December 2025, and every five years thereafter, submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive on the basis of both qualitative and quantitative information. In this context, the Commission shall in particular evaluate its impact on access to justice, on the cooperation in civil matters and on the functioning of the single market, on SMEs, the competitiveness of the economy of the European Union and consumer trust. If necessary, the report shall be accompanied by legislative proposals to adapt and strengthen this Directive.

Article 26

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 27

Addresses

This Directive is addressed to the Member States in accordance with the Treaties.

Done at, [date]

For the European Parliament

The President

For the Council

The President

EXPLANATORY STATEMENT

Civil procedure provides the means for the enforcement of the substantive rights and duties of legal subjects in legal proceedings. As such, it is inextricably linked with the fundamental right to a fair trial and effective remedy guaranteed under the Charter of Fundamental Rights of the European Union (Article 47 CFREU) and the European Convention on Human Rights (Article 6 ECHR).

Discussions on civil procedure harmonisation in the EU started over two decades ago with the presentation of the study on the approximation of Member States' rules of civil procedure (the so-called 'Storme Report'). Since then, the EU has adopted several measures with the view of approximating Member States' rules of civil procedure.

The Treaty of Amsterdam confirmed the EU's competence in the area of civil procedure, and this competence was further expanded by the Treaty of Lisbon. The EU has been working for a number of years on common minimum standards in criminal procedure and a certain set of such provisions already exists in the field of criminal justice cooperation in the EU. More importantly, these measures are not limited to cross-border disputes, but rather apply horizontally to all criminal proceedings. However, European citizens, especially those who move across borders, are far more likely to come into contact with the civil procedure systems of another Member State. Your rapporteur believes that although establishing rights is important, these can only become a reality once they are readily accessible to those entitled to them. Individuals need to be empowered to invoke these rights wherever in the Union they happen to be, and should be able to assert them including via approaching courts in other Member States as easily as in their own Member State.

Currently, there is no uniform law of civil procedure in the EU. What does exist instead is a regulatory puzzle consisting of three main types of pieces: a) a considerable thread of case law of the Court of Justice of the European Union (CJEU) on the enforcement of EU law rights in Member States' courts. CJEU has scrutinised diverging national rules on among others, time limits, interim relief, evidential rules, active or passive standing in the courts, and reparation, where national procedural rules could not guarantee the effective protection of EU law rights; b) a set of sector-specific pieces of secondary EU law, introducing detailed rules on various matters of a procedural nature based on Article 114 TFEU. These rules apply to both domestic and cross-border disputes and touch on fundamental procedural themes, such as legal standing, interlocutory injunctions, discovery rules, and interim relief; c) a series of EU legislative measures in the area of civil justice cooperation, limited to cross-border litigation and ranging from private international law uniform measures to autonomous EU procedural mechanisms that apply alongside national ones for domestic disputes.

Despite these instruments, the EU still lacks a clear vision on the functioning of common civil procedural law in the European legal order. The essentially factual approach of the Court of Justice, as well as the incapacity to consider relevant remedial and procedural rules in all Member States inhibit the Court from establishing detailed rules of EU civil procedure. That being as it may, your rapporteur notes with satisfaction the CJEU case law's contribution to the cooperation between the Court and Member States' national courts, which has resulted in the removal of an enforcement burden from the Union Institutions, while also increasing Union citizens' and national courts' understanding of the EU legal order. In addition, despite

the existence of sectoral EU instruments with procedural law implications, your rapporteur believes that regulating core procedural themes anew for every area of EU activity may lead to convoluted national regimes, inherently inconsistent and largely divergent depending on the substantive matter.

Your rapporteur believes that the principle of mutual recognition of judgments and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights. The increased mutual trust between the Member States' judicial systems will also contribute to the better functioning of the Internal Market and the fundamental Union freedoms.

As part of the move towards a European Area of Justice based on mutual trust, common standards of civil procedure now seem indispensable. In the Action Plan implementing the Stockholm Programme, the Commission announced a green paper on minimum standards for civil procedure for 2013.

Common minimum standards do not substitute national procedural systems in their entirety, or even partially, but allow for more protective and effective national procedural rules. More importantly, minimum procedural standards at EU level could contribute to the modernisation of national proceedings, to a level playing field for businesses, and to increased economic growth via effective and efficient judicial systems, while facilitating citizens' access to justice in the EU.

Your rapporteur is of the opinion that with the entry into force of the Lisbon Treaty, the Union has now the tools to help make people's daily lives and everyday business practices easier, reconciling the needs of citizens and the single market with the diversity of legal traditions among Member States. It is therefore submitted that the right way forward consists in the elaboration of systematic, minimum standards of EU civil procedure in the form of an across-the-board horizontal directive. This would lead to increasing mutual trust among EU judiciaries and ensure a common, EU-wide balancing of fundamental procedural rights for civil cases.

Additionally, the introduction of common procedural standards at Union level would arguably contribute to overall greater awareness of EU procedural rules and mechanisms already existing. They would also encourage cross-border trader by both consumers and businesses due to increased trust in the procedural systems of other states as a result of common procedural principles. Finally, such a development would also lead to increased trust between the judiciaries of the states and to a greater general feeling of justice, certainty and predictability across the Union.

In the course of the consultations and research leading up to the release of this report, your rapporteur has come to the conclusion that, for the purpose of fully realising the aims of the policy of judicial cooperation in civil matters with the emphasis on the promotion of mutual trust among the judiciaries and on effective access to justice, a level of coordination, coherence and systematisation that goes beyond the borders, interests and resources of one State would be required. Your rapporteur argues that the EU should promote reforms in the European law of civil procedure and is therefore in favour of a horizontal approach aimed at creating a set of common minimum standards.

This report contains a proposal for a directive which is to be considered as a first step in the process of further harmonisation and convergence of Member States' civil justice systems and of the creation, in the longer-term, of a European Code of Civil Procedure. In this relation, action at EU level is deemed necessary.

For the detailed background to the legislative proposal, the reader is referred to the annex to the resolution above.