

# EUROPEAN PARLIAMENT

2004



2009

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*Session document*

FINAL  
**A6-0452/2006**

7.12.2006

## **\*\*\*I** **REPORT**

on the proposal for a decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Civil justice" as part of the General programme "Fundamental Rights and Justice" (COM(2005)0122 – C6-0096/2005 – 2005/0040(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Inger Segelström

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Civil justice" as part of the General programme "Fundamental Rights and Justice" (COM(2005)0122 – C6-0096/2005 – 2005/0040(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0122)<sup>1</sup>,
  - having regard to Article 251(2) and Articles 61(c) and 67(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0096/2005),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Budgets (A6-0452/2006),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> Not yet published in OJ.

Amendments by Parliament<sup>1</sup> to the

Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**Establishing for the period 2007-2013 the specific programme “Civil Justice”**

**as part of the**

**General programme “Fundamental Rights and Justice”**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and **Article 67(5)** thereof,

Having regard to the proposal from the Commission<sup>2</sup>,

(...)

**Acting in accordance with the procedure laid down in Article 251 of the Treaty,**

Whereas:

- (1) The European Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. To that end, the Community must adopt, among others, measures in the field of judicial cooperation in civil matters necessary for the proper functioning of the internal market.

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<sup>1</sup> This text has been provided by Council services and is subject to legal linguistic verification.

<sup>2</sup> OJ C , , p.

- (2) Following previous programmes, such as Grotius<sup>1</sup> and the Robert Schuman<sup>2</sup> project, Council Regulation (EC) No 743/2002<sup>3</sup> established, for the period 2002 to 2006, a general Community framework of activities to facilitate the implementation of judicial cooperation in civil matters.
- (3) The European Council meeting in Brussels on 4 and 5 November 2004 adopted The Hague Programme “Strengthening freedom, security and justice in the European Union”.
- (3a) The Council and the Commission adopted in June 2005 an Action Plan implementing the Hague Programme strengthening freedom, security and justice in the European Union.**
- (4) The ambitious objectives set by the Treaty and The Hague Programme should be realised through the establishment of a flexible and effective programme that will facilitate planning and implementation.
- (5) The Civil Justice Programme should provide for initiatives taken by the Commission, in compliance with the principle of subsidiarity, for actions in support of organisations promoting and facilitating judicial cooperation in civil matters, and for actions in support of specific projects.
- (6) A general Civil Justice Programme to improve mutual understanding of the legal and judicial systems of the Member States will contribute to lowering the barriers to judicial cooperation in civil matters, which will improve the functioning of the internal market.
- (6a) According to The Hague Programme strengthening mutual cooperation requires an explicit effort to improve mutual understanding among judicial authorities and different legal systems; European networks of national public authorities should deserve special attention and support in this respect;**

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<sup>1</sup> OJ L 287, 8.11.1996, p. 3.

<sup>2</sup> OJ L 196, 14.7.1998, p. 24.

<sup>3</sup> OJ L 115, 1.5.2002, p. 1.

- (6b) The Regulation provides for a possibility to co-finance the activities of certain European networks to the extent that the expenditure is incurred in pursuing an objective of general European interest. However, such co-financing should not imply that a future program would cover such networks, nor should it prejudice other European networks from benefiting from support to their activities in accordance with the Regulation.**
- (7) (...)
- (8) (...)
- (8a) Whereas any institution, association or network receiving a grant from this programme should acknowledge the Community support received in accordance with the visibility guidelines to be laid down by the Commission.
- (9) This Decision establishes a financial **envelop** for the entire duration of the programme, which is to be the **prime** reference for the budgetary authority within the meaning of point **37** of the Interinstitutional Agreement of **17 May 2006** between the European Parliament, the Council and the Commission **on budgetary discipline and sound financial management**.<sup>1</sup>
- (10) Since the objectives of the Civil Justice Programme cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the initiative, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (10a) Appropriate measures should also be taken to prevent irregularities and fraud and the necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulations (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the Communities' financial interests,<sup>2</sup> (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot**

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<sup>1</sup> OJ C 139, 14.6.2006, p. 1.

<sup>2</sup> OJ L 312, 23.12.1995, p. 1.



**checks and inspections carried out by the Commission<sup>1</sup> and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>2</sup>.**

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<sup>1</sup> OJ L 292, 15.11.1996, p. 2.

<sup>2</sup> OJ L 136, 31/05/1999 P. 0001 - 0007.

- (11) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>1</sup> hereinafter “the Financial Regulation”, and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002<sup>2</sup>, which safeguard the Community’s financial interests, have to be applied taking into account the principles of simplicity and consistency in the choice of budgetary instruments, a limitation on the number of cases where the Commission retains direct responsibility for their implementation and management, and the required proportionality between the amount of resources and the administrative burden related to their use.
- (12) The Financial Regulation requires a basic act to be provided to cover operating grants.
- (13) The measures necessary for the implementation of this **Decision** should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>3</sup> (...), **with a distinction being made between those measures which are subject to the management committee procedure and those which are subject to the advisory committee procedure, the advisory committee procedure being in certain cases, with a view to increased efficiency, the more appropriate.**
- (13a) deleted**
- (14) In accordance with Article 3 of the Protocol of the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and the Treaty establishing the European Community, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Decision.**

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<sup>1</sup> OJ L 248, 16.9.2002, p. 1.

<sup>2</sup> OJ L 357, 31.12.2002, p. 1.

<sup>3</sup> OJ L 184, 17.7.1999, p. 23.

**(15) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision, and is not bound by it or subject to its application.**

**(16) The European Economic and Social Committee has delivered an opinion on this Decision.<sup>1</sup>**

HAVE DECIDED AS FOLLOWS:

*Article 1*

**Creation of the programme**

1. This Decision establishes the specific programme “Civil Justice”, hereinafter referred to as “the programme” as part of the general programme “Fundamental Rights and Justice”, in order to contribute to the **progressive establishment** of the area of Freedom, Security and Justice.
2. The programme shall cover the period from 1 January 2007 to 31 December 2013.
3. **In this Decision the term "Member State" shall mean Member States with the exception of Denmark.**

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<sup>1</sup> OJ.....

## *Article 2*

### **General objectives**

1. This programme shall have the following general objectives:
  - (a) To promote judicial cooperation with the aim of contributing to the creation of a genuine European area of justice in civil matters based on mutual recognition and mutual confidence.
  - (b) To promote **the elimination of obstacles to the good functioning of cross-border (...) civil (...) proceedings in the Member States (...)**.
  - (c) To improve the daily life of individuals and businesses by enabling them to assert their rights throughout the European Union, notably by fostering access to justice.
  - (d) To improve the contacts, exchange of information and networking between legal, judicial and administrative authorities and the legal professions, including by way of support of judicial training, with the aim of better mutual understanding among such authorities and professionals.
2. Without prejudice to the objectives and powers of the European Community, the general objectives of the programme contribute to the development of the community policies, and more specifically to the creation of a judicial area.

*Article 3*  
**Specific objectives**

The programme shall have the following specific objectives:

- 1 To foster judicial cooperation in civil matters aiming at:
  - a) ensuring legal certainty and improving access to justice;
  - b) promoting mutual recognition of (...)decisions (...) **in civil and commercial cases**;
  - c) eliminating obstacles **to cross-border litigation** created by disparities in civil law and civil procedures and promoting the necessary **compatibility** of legislation **for that purpose**;
  - d) guaranteeing a proper administration of justice by avoiding conflicts of jurisdiction.
2. To improve mutual knowledge of Member States' legal and judicial systems in civil matters and to promote and strengthen networking, mutual cooperation, exchange and dissemination of information, experience and best practices.
3. To ensure the sound implementation, the correct and concrete application and the evaluation of Community instruments in the areas of judicial cooperation in civil and commercial matters.
4. To improve information on the legal systems in the Member States and access to justice.

5. To promote the training **of legal practitioners** in Union and Community law (...).
6. To evaluate the general conditions necessary to **reinforce** mutual confidence, **while fully respecting the independence of judiciary**<sup>1</sup>.
7. To **facilitate** the operation of the European judicial network in civil and commercial matters created by Council Decision No 2001/470/CE of 28 May 2001, establishing a European Judicial Network in civil and commercial matters<sup>2</sup>.

*Article 4*  
**Actions**

With a view to pursuing the general and specific objectives set out in Articles 2 and 3, this programme will support the following types of actions **under the conditions set out in the annual Work Programmes** :

1. specific actions **initiated** by the Commission, such as, studies and research, opinion polls and surveys, formulation of indicators and common methodologies, collection, development and dissemination of data and statistics, seminars, conferences and expert meetings, organisation of public campaigns and events, development and maintenance of websites, preparation and dissemination of information material, support for and management of networks of national experts, analytical, monitoring and evaluation activities; or
2. specific transnational projects of Community interest presented by **an authority or any other body of a Member State, an international or non-governmental organisation, and involving in any case at least two Member States, or at least one Member State and one other state which may either be an acceding or a candidate country(...)** ;  
or

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<sup>1</sup> See Action Plan implementing the Hague Programme (9778/2/05 JAI 207 REV 2 , item 4.1(a).

<sup>2</sup> OJ L 174, 27.6.2001, p. 25.

3. support to the activities of non-governmental organisations or other entities, pursuing an aim of general European interest in accordance with the general objectives of the programme under the conditions set out in the annual work programmes; or
4. operating grants to co-finance expenditure associated with the permanent work programme of the European Network of Councils for the Judiciary and the Network of the Presidents of the Supreme Judicial Courts of the European Union, insofar as it is incurred in pursuing an objective of general European interest by promoting exchanges of views and experience on matters concerning the jurisprudence, organisation and functioning of its members in the performance of their judicial and/or advisory functions with regard to Community Law.

#### *Article 5*

#### **Participation**

1. The following countries, hereinafter referred to as «participating countries», may participate in the actions of the programme: **the acceding countries**, the candidate countries, as well as the western Balkan countries included in the stabilisation and association process in accordance with the conditions laid down in the association agreements or their additional protocols relating to participation in Community programmes concluded or to be concluded with those countries;
2. Projects may associate practitioners from Denmark, from the candidate countries not participating in this programme where this would contribute to their preparation for accession, or from other third countries not participating in this programme where this serves the aim of the projects.

#### *Article 6*

#### **Target Groups**

1. The programme is targeted at inter alia, legal practitioners, the national authorities and the citizens of the Union in general.
2. “Legal practitioners” means, inter alia, judges, prosecutors, advocates, solicitors, notaries, academic and scientific personnel, ministry officials, court officers, bailiffs, court interpreters and other professionals associated with the judiciary in the area of civil law.





## *Article 7*

### **Access to the programme**

Access to this programme shall be open to institutions and public or private organisations, including professional organisations, universities, research institutes and legal and judicial training institutes for legal practitioners, **international organisations and non-governmental organisations** of the Member States.

(...)

## *Article 8*

### **Types of intervention**

1. Community funding may take the following legal forms:
  - grants,
  - public procurement contracts.
  
2. Community grants shall be awarded further to calls for proposals (...) and shall be provided through operating grants and grants to actions. The maximum rate of co-financing will be specified in the annual work programmes.<sup>1</sup>
  
3. Furthermore, expenditure is foreseen for accompanying measures, through public procurement contracts, in which case Community funds will cover the purchase of services and goods. This will cover, inter alia, expenditure on information and communication, preparation, implementation, monitoring, checking and evaluation of projects, policies, programmes and legislation.

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<sup>1</sup> At the meeting of the Committee on Civil Law Matters on 9 January 2006 some delegations suggested that the text should specify rates of co-financing and ceilings for Commission actions. The Presidency suggests that these questions are solved in the annual work programme that should be adopted by a management committee (see OJ L 184 17.7.1999, p. 23).

*Article 9*

**Implementing measures**

1. **The Commission shall implement the Community financial support in accordance with Council Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002, hereinafter referred to as the "Financial Regulation".**
2. To implement the programme, the Commission shall, within the limits of the general objectives set out in Article 2, adopt an annual work programme specifying its specific objectives, thematic priorities, a description of accompanying measures envisaged in Article 8 and if necessary a list of other actions.
3. The annual work programme will be adopted in accordance with the procedure set out in Article 10 A(2).
4. The evaluation and award procedures relating to grants to actions shall take into account, inter alia, the following criteria:
  - (a) conformity with the annual work programme, the general objectives as specified in article 2 and measures taken in the different domains as specified in Articles 3 and 4;
  - (b) quality of the proposed action regarding its conception, organisation, presentation and expected results ;
  - (c) amount requested for community financing and its appropriateness as to expected results;
  - (d) impact of the expected results on the general objectives defined in Article 2 and on measures taken in the different domains as specified in Articles 3 and 4.

5. The applications for operating grants, referred to in Article 4(3), shall be assessed in the light of:
  - a) consistency with the programme objectives;
  - b) quality of the planned activities;
  - c) likely multiplier effect on the public of these activities;
  - d) geographic impact of the activities carried out;
  - e) citizen involvement in the organisation of the bodies concerned;
  - f) cost/benefit ratio of the activity proposed.
  
6. **The Commission shall examine each of the draft actions submitted to it under Article 4 (2) and (3). Decisions related to these actions shall be adopted in accordance with the procedure referred to in Article 10 (2).**

#### *Article 10*

##### **Advisory Committee**

1. The Commission shall be assisted by a Committee (**further referred to as "the Article 10 Committee"**).
  
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
  
3. The Committee shall adopt its Rules of Procedure.

*Article 10 A*

**Management Committee**

1. The Commission shall be assisted by a Committee (**further referred to as "the Article 10 A Committee"**).
2. **Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period provided for in Article 4(3) of Decision 1999/468/EC shall be set at three months.**
3. **The Committee shall adopt its Rules of Procedure.**

*Article 11*

**Complementarity**

1. Synergies and complementarity will be sought with other Community instruments, particularly the criminal justice specific programme of the general programme "Fundamental rights and Justice", and the general programmes "Security and Safeguarding Liberties" and "Solidarity and Management of Migration Flows". The statistical element of information on civil justice will be developed in collaboration with Member States, using as necessary the Community Statistical Programme.
2. The programme may **exceptionally** share resources with other Community instruments, in particular the criminal justice specific programme of the general programme "Fundamental Rights and Justice", in order to implement actions meeting the objectives of both programmes (...).

3. **Operations financed under this Decision shall not receive financial support for the same purpose from other Union/Community financial instruments. It shall be ensured that the beneficiaries of the programme shall provide the Commission with information about funding received from the Community budget and from other sources, as well as information about ongoing applications for funding.**

#### *Article 12*

#### **Budgetary Resources**

1. The **financial envelop** for the implementation of this instrument is set at EUR [109.3 million] for the period set out in Article 1.
2. The budgetary resources allocated to the actions provided for in this programme shall be entered in the annual appropriations of the general budget of the European Union. The available annual appropriations shall be authorised by the budgetary authority within the limits of the financial **framework**.

#### *Article 13*

#### **Monitoring**

1. **The Commission shall ensure that** for any action financed by the programme, the beneficiary shall submit, technical and financial reports on the progress of work. A final report shall also be submitted within three months of the completion of the action. **The Commission will make the reports available to Member States.** The Commission shall determine the form and content of the reports.
2. Without prejudice to the audits carried out by the Court of Auditors in liaison with the competent national audit bodies or departments pursuant to Article 248 of the Treaty, or any inspection carried out pursuant to Article 279(c) of the Treaty, officials and other staff of the Commission may carry out on-the-spot checks, including sample checks, on actions financed under the programme.

3. Contracts and agreements resulting from this Decision shall provide in particular for supervision and financial control by the Commission (or any representative authorized by it), if necessary on-the-spot, and audits by the Court of Auditors.
4. **The Commission shall ensure that** for a period of five years following the last payment in respect of any action, the beneficiary of financial assistance shall keep available for the Commission all the supporting documents regarding expenditure on the action.
5. On the basis of the results of the reports and sample checks referred to in paragraphs 1 and 2, the Commission shall **ensure that**, if necessary, the scale or the conditions of allocation of the financial assistance originally approved and also the timetable for payments **will be adjusted**.
6. The Commission shall **ensure that** every other step necessary to verify that the actions financed are carried out properly and in compliance with the provisions of this Decision and the Financial Regulation, **will be taken**.

#### *Article 14*

#### **Protection of Community financial interests**

1. The Commission shall ensure that, when actions financed under the present Decision are implemented, the financial interests of the Community are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and by the recovery of the amounts unduly paid and, if irregularities are detected, by effective, proportional and dissuasive penalties, in accordance with Council Regulations (EC, Euratom) No 2988/95 and (Euratom, EC) No 2185/96, and with Regulation (EC) No 1073/1999 of the European Parliament and of the Council.

2. For the Community actions financed under this programme, Regulation (EC, Euratom) No 2988/95 and Regulation (Euratom, EC) No 2185/96 shall apply to any infringement of a provision of Community law, including infringements of a contractual obligation stipulated on the basis of the programme, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by them, by an unjustified item of expenditure.
3. The Commission shall **ensure that** the amount of financial assistance granted for an action **will be reduced, suspended or recovered** if it finds irregularities, including non-compliance with the provisions of this Decision or the individual decision or the contract or agreement granting the financial support in question, or if it transpires that, without Commission approval having been sought, the action has been subjected to a change which conflicts with the nature or implementing conditions of the project.
4. If the time limits have not been observed or if only part of the allocated financial assistance is justified by the progress made with implementing an action, the Commission **ensure that** the beneficiary **is requested** to submit observations within a specified period. If the beneficiary does not give a satisfactory answer, the Commission **shall ensure that** the remaining financial assistance **might be cancelled** and sums already paid **are demanded to be repaid**.
5. **The Commission shall ensure that** any undue payment shall be repaid to the Commission. Interest shall be added to any sums not repaid in good time under the conditions laid down by the Financial Regulation.

*Article 15*

**Evaluation**

1. The programme will be monitored regularly in order to follow the implementation of activities carried out under this programme.
2. The Commission shall ensure the regular, independent, external evaluation of the programme.
3. The Commission shall submit to the European Parliament and the Council:
  - (a) **an interim evaluation report on the results obtained and the qualitative and quantitative aspects of the implementation of this programme, including on the work carried out by the beneficiaries of operating grants referred to in Article 4(4), no later than 31 March 2011;**
  - (aa) **an annual presentation on the implementation of the programme;**
  - (b) a Communication on the continuation of this programme no later than 30 August 2012;
  - (c) an ex post evaluation report no later than 31 December 2014.

**Article 15 a**

**Publication of actions**

**Each year the Commission shall publish the list of actions financed under this programme with a short description of each project.**

**Article 15b  
Visibility**

**The Commission shall lay down guidelines to ensure the visibility of the funding granted under this Decision.**

*Article 16*

**Entry into force**



This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. It shall apply from 1 January 2007.

Done at Brussels,

*For the European Parliament*

*For the Council*

The President

The President

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## LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

21.11.2006

Mr Jean-Marie Cavada  
Chairman  
Committee on Civil Liberties, Justice and Home Affairs  
BRUSSELS

Subject: Opinion on the legal basis of the Proposal for decision of the European Parliament and the Council establishing for the period 2007-2013 the specific programme "Civil justice" (COM(2005)0122 – 2005/0040(COD))<sup>1</sup>

Dear Mr Chairman,

By letter of 10 November 2006, you requested the Committee on Legal Affairs pursuant to Rule 35(2) of the Rules of Procedure to give an opinion on the legal basis of the proposal establishing the civil justice programme for 2007-2013. The Commission proposed to adopt Article 61(c) of the EC Treaty jointly with Article 67(2) as the legal basis for the decision, whilst the Council suggests that Article 67(2) should be replaced by Article 67(5).

The proposal concerned seeks to establish for 2007-2013 the specific programme "Civil justice" within the general programme "Fundamental Rights and Justice" with a view to helping to reinforce the area of freedom, security and justice.

The creation of such an area would enable judicial authorities to cooperate effectively and ensure that citizens have a better access to justice without being prevented or discouraged from exercising their rights by incompatibilities and complexities in legal systems. Furthermore, it also would enable the principle of mutual recognition of judicial decisions to be established, and the good functioning of the judiciary to be continuously improved.

It is clear from settled case-law of the Court of Justice that the choice of legal basis is not in the discretion of the Community legislator but must be determined by objective factors amenable to judicial review<sup>2</sup>, such as the aim and content of the measure in question<sup>3</sup>. Furthermore, the decisive factor should be the main object of a measure<sup>4</sup>.

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<sup>1</sup> Not yet published in OJ.

<sup>2</sup> Case 45/86, *Commission v. Council* [1987] ECR 1439, para. 5.

<sup>3</sup> Case C-300/89, *Commission v. Council* [1991] ECR I-287, para. 10, and Case C-42/97, *European Parliament v. Council* [1999] ECR I-869, para. 36.

<sup>4</sup> Case C-377/98, *Netherlands v. European Parliament and Council* [2001] ECR I-7079, para. 27.

It seems evident from the objectives mentioned in Article 2 of the proposal, that is to say, "*to promote judicial cooperation with the aim of contributing to the creation of a genuine European area of justice in civil matters based on mutual recognition and mutual confidence; to promote the adjustment of the existing judicial systems in Member States to the European Union ...*", that the **main object** of the programme is in fact to establish judicial cooperation in civil matters.

Furthermore, the **content** of the proposal mainly consists of a variety of actions intended to make such judicial cooperation in civil matters possible, having regard also to its relevance for the creation of an area of freedom, security and justice.

It follows from the above considerations that the proposal for a decision should be based on Article 61(c) jointly with Article 67(5), given that the measures provided for in the latter provision correspond to the type of measures provided for in the proposed programme. Moreover, it is possible that the Commission erred in choosing Article 67(2) as the legal basis of the act, given that it is clear from its object and the content that it should be based on Article 67(5).

To conclude, there is no problem with regard to the compatibility between Article 67(5) and Article 61(c) - which remains the joint legal basis for the proposal. Article 61(c) defines the type of measures to be adopted "*in order to establish progressively an area of freedom, security and justice*", all of which may be adopted under the codecision procedure, whilst Article 67(5) establishes the procedure to be used for the adoption of such measures, namely codecision.

At its meeting of 20 November 2006, the Committee on Legal Affairs examined this question and decided that Article 61 (c) jointly with Article 67 (5) should be regarded as the lawful legal basis for the proposal in question<sup>1</sup>.

Yours sincerely,

Giuseppe Gargani

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<sup>1</sup> Those present for the final vote: Giuseppe Gargani (chairman), Maria Berger, Carlo Casini, Rosa Díez González, Jean-Paul Gauzès, Manuel Medina Ortega, Gabriele Stauner, Jaroslav Zvěřina

27.2.2006

## **OPINION OF THE COMMITTEE ON BUDGETS**

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Civil Justice" as part of the General programme "Fundamental Rights and Justice".  
(COM(2005)0122 – C6-0096/2005 – 2005/0040(COD))

Draftsman: Neena Gill

### **SHORT JUSTIFICATION**

The Commission proposed a new Heading 3 "Citizenship, Freedom, Security and Justice in its proposal for the next financial framework of the Union (2007-2013) presented to Parliament and Council<sup>1</sup> with a total allocation of EUR 24,705 billion out of which 65% were proposed to be addressed to the completion of an Area of Freedom, Security and Justice.

In its resolution of 8 June 2005 "Policy Challenges and Budgetary Means of the Enlarged Union 2007-2013"<sup>2</sup> the European Parliament proposed an increase of EUR 1 billion (2004 prices) specifying that it should be dedicated to fundamental rights and the fight against crime.

### **COMMISSION PROPOSAL**

This proposal is one of the four draft decisions which comprise the framework programme "Fundamental Rights and Justice"<sup>3</sup> presented by the Commission on April 2005 and proposed for a period from January 2007 to December 2013 with a global allocation of EUR 543 million in commitment appropriations. Four specific programmes are set up as part of the framework programme: The fight against violence and drugs prevention programme, the fundamental rights and citizenship programme, the criminal justice programme and the civil justice programme.

The present proposal for a civil justice programme is mainly focused on the promotion of judicial cooperation with the aim of contributing to the creation of a genuine European area of justice in civil and commercial matters based on mutual recognition and mutual confidence.

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<sup>1</sup> COM(2004)0101.

<sup>2</sup> P6\_TA(2005)0224.

<sup>3</sup> COM(2005)0122.

Other priorities of the programme are:

- To promote the adjustment of the existing judicial system in Member States to the European Union being a territory without border controls, with a single currency, and with free movement of persons, services, goods and capital;
- To foster access to justice;
- To improve the contacts and exchange of information between the legal professions, and to foster the training of the members of the judiciary.

The financial allocation for the specific programme "Civil Justice" for the period 2007-2013 is EUR 106,5 million which breaks down as follows:

	2007	2008	2009	2010	2011	2012	2013	2014...	TOTAL
<b>Commitments</b>	14,1	14,3	14,6	15,5	15,7	16	16,3		<b>106,5</b>
<b>Payments</b>	7,05	12,81	14,41	14,99	15,42	15,81	16,09	9,92	<b>106,5</b>

Within the overall reference amount for the framework programme EUR 11,1 million are foreseen for administrative expenditure.

## **RAPPORTEUR'S PROPOSALS**

The Commission proposal can be welcomed, since it means a more and better cooperation based on the principal of mutual recognition and confidence-building, in order to avoid borders between countries from being an obstacle to the settlement of civil and commercial law matters or to the bringing of court proceedings and the enforcement of decisions. The draftsman notes that the drafting of the proposal, nonetheless, is not of the highest quality, especially in as far as a clear explanation of the rationalisation was concerned, where a breakdown of the budget lines to be merged, the estimated saving and where this money will be used would have been useful.

The proposal raises a number of comments:

1. It should be pointed out that the amount for the financial framework mentioned in Article 12 can only be considered indicative at this stage, since there has been no decision on the financial perspective yet. A further amendment has therefore been tabled to the legislative resolution.
2. In order to assure coherence and simplification, a new paragraph specifying the implementing measures for the programme to be discussed within the advisory committee is proposed. This article includes the annual work programme, the guidelines and the proposals for project selection among other measures to be adopted within the advisory committee in order to assure transparency. An amendment is thus proposed to change Article 9, paragraph 3.

3. In order to avoid the risk of overlapping of the actions of the present proposal with the actions of the general programme on "Security and Safeguarding Liberties" and the corresponding specific programmes of the general programme "Fundamental Rights and Justice" and "Solidarity and Management of Migration Flows, an amendment to Article 11 is proposed.
4. It is important to ensure democratic scrutiny by means of suitable arrangements for fund monitoring and evaluation. Three amendments have been tabled in this respect to Articles 13 and 15.

## **AMENDMENTS**

The Committee on Budgets calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

### **Draft legislative resolution**

Amendment 1  
Paragraph 1 a (new)

- 1a. Points out that the appropriations indicated in the legislative proposal beyond 2006 are subject to the decision on the next multiannual financial framework;*

Amendment 2  
Paragraph 1 b (new)

- 1b. Calls on the Commission, once the next multiannual financial framework is adopted, to present, if appropriate, a proposal to adjust the financial reference amount of the programme;*

### *Justification*

*The reference amount for the financial framework cannot be set until such time as a decision has been reached on the Financial Perspective. Once a decision is reached, the Commission shall present a legislative proposal to set the reference amount with the respect to the appropriate ceiling of the financial framework concerned.*

### **Proposal for a decision**

Text proposed by the Commission<sup>1</sup>

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Amendments by Parliament

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<sup>1</sup> OJ C 000, 12.12.2005, p. 000

Amendment 3  
Article 8, paragraph 2 a (new)

***2a. Access to funding shall be facilitated by the application of the principle of proportionality as regards the documents to be supplied and by the creation of a database for the submission of applications.***

*Justification*

*The methods and the procedures need to be simplified in order to speeding up the transparency of the selection procedure and facilitate access to the programme.*

Amendment 4  
Article 9, paragraph 3

***3. The annual work programme will be adopted in accordance with the procedure set out in Article 10(2).***

***3. The measures necessary for the implementation of the programme relating to the following matters shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 10(2):***

***(a) the annual work programme;***

***(b) the annual budget and distribution of funds between the various actions of the programme;***

***(c) the general guidelines for implementing the programme and the selection criteria procedures;***

***(e) the arrangements for monitoring and evaluating the actions and for the dissemination and transfer of results;***

***(f) the proposals for project selection.***

*Justification*

*The annual work plan, the annual budget and distribution of funds among actions, the general guidelines and the proposals for project selection may be submitted to the Committee for transparency reasons.*



Amendment 5  
Article 11, paragraph 2 a (new)

***2a. The Commission shall ensure that the actions covered by this Decision are complementary to those covered by the programmes mentioned in paragraph 1 and that they do not overlap.***

*Justification*

*The legislative act should be more specific and clear in order to avoid the risk of overlapping and double financing of the actions of the present proposal with the actions of: the "Security and Safeguarding Liberties framework programme; the other specific programmes under the general programmes on "Fundamental Rights and Justice" and " Solidarity and Management of Migration Flows framework programme. The present specific programme will also coordinate its actions with those related to the European Judicial Network in Civil and Commercial Matters*

Amendment 6  
Article 12, paragraph 1

1. The budget for the implementation of this instrument is set at EUR 109.3 million for the period set out in Article 1.

1. The ***indicative*** budget for the implementation of this instrument is set at EUR 109.3 million for the period ***of 7 years starting on 1 January 2007*** set out in Article 1.

*Justification*

*The reference amount for the financial framework cannot be set until such time as a decision has been reached on the Financial Perspective. Once a decision is reached, the Commission shall present a legislative proposal to set the reference amount with the respect to the appropriate ceiling of the financial framework concerned (see amendment to the legislative resolution).*

Amendment 7  
Article 13, paragraph 1, subparagraph 1 a (new)

***The Commission shall ensure that the actions covered by this Decision are subject to prior evaluation, monitoring and ex-post evaluation. It shall ensure that the programme is accessible and is***

*implemented in a transparent manner.*

*Justification*

*The programme needs to be monitored and evaluated at the appropriate times, so as to ensure democratic scrutiny.*

Amendment 8

Article 13, paragraph 1, subparagraph 1 b (new)

***The Commission shall give the European Parliament and the Council regular and timely notice of the implementation of the programme, in particular the use of the available resources.***

*Justification*

*The two arms of the budgetary authority should receive regular and timely information in order to ensure that the programme is monitored and assessed in an effective manner*

Amendment 9

Article 15, paragraph 3

3. The Commission shall submit to the European Parliament and the Council:

(a) ***an*** interim evaluation report on the results obtained and the qualitative and quantitative aspects of the implementation of this programme ***no later than 31 March 2011***;

(b) a Communication on the continuation of this programme ***no later than 31 December 2012***;

(c) an ex-post evaluation report no later than 31 March 2014.

3. The Commission shall submit to the European Parliament and the Council:

(a) ***a detailed*** interim evaluation report on the results obtained and the qualitative and quantitative aspects of the implementation of this programme ***three years after the adoption of this Decision***;

(b) a Communication on the continuation of this programme, ***having regard to its objectives, three years after the adoption of this Decision. Moreover the Commission shall present annually a short report monitoring the situation of the implementation of the programme***;

(c) an ex-post evaluation report no later than 31 March 2014 ***covering the implementation and results of the programme, on completion of its implementation.***

*Justification*

*The fund needs to be monitored and evaluated at the appropriate times, so as to ensure democratic scrutiny*

## PROCEDURE

<b>Title</b>	Proposal for a decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Civil Justice" as part of the General programme "Fundamental Rights and Justice".
<b>References</b>	COM(2005)0122 – C6-0096/2005 – 2005/0040(COD)
<b>Committee responsible</b>	LIBE
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	BUDG 22.6.2005
<b>Enhanced cooperation</b> Date announced in plenary	
<b>Draftswoman</b> Date appointed	Neena Gill 9.6.2005
<b>Previous draftswoman</b>	
<b>Discussed in committee</b>	25.1.2006      21.2.2006
<b>Date adopted</b>	21.2.2006
<b>Result of final vote</b>	+:            23 -: 0:
<b>Members present for the final vote</b>	Reimer Böge, Herbert Bösch, Simon Busuttil, Bárbara Dührkop Dührkop, James Elles, Salvador Garriga Polledo, Ingeborg Gräßle, Louis Grech, Nathalie Griesbeck, Catherine Guy-Quint, Jutta D. Haug, Anne E. Jensen, Wiesław Stefan Kuc, Alain Lamassoure, Janusz Lewandowski, Vladimír Maňka, Mario Mauro, Jan Mulder, Gérard Onesta, Esko Seppänen, László Surján, Kyösti Virrankoski, Ralf Walter
<b>Substitute(s) present for the final vote</b>	
<b>Substitutes under Rule 178(2) present for the final vote</b>	
<b>Observations (information available in only one language)</b>	...

## PROCEDURE

<b>Title</b>	Proposal for a decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Civil Justice" as part of the General programme "Fundamental Rights and Justice"				
<b>References</b>	COM(2005)0122 - C6-0096/2005 - 2005/0040(COD)				
<b>Date submitted to Parliament</b>	6.4.2005				
<b>Committee responsible</b> Date announced in plenary	LIBE 22.6.2005				
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	JURI 22.6.2005	BUDG 22.6.2005			
<b>Not delivering opinion(s)</b> Date of decision	JURI 24.10.2005				
<b>Enhanced cooperation</b> Date announced in plenary					
<b>Rapporteur(s)</b> Date appointed	Inger Segelström 6.6.2005				
<b>Previous rapporteur(s)</b>					
<b>Simplified procedure – date of decision</b>					
<b>Legal basis disputed</b> Date of JURI opinion	LLIBE 10.11.2006	JURI 21.11.2006			
<b>Financial endowment amended</b> Date of BUDG opinion					
<b>European Economic and Social Committee consulted – date of decision in plenary</b>					
<b>Committee of the Regions consulted – date of decision in plenary</b>					
<b>Discussed in committee</b>	4.10.2005 1.6.2006	1.12.2005 23.10.2006	6.3.2006 22.11.2006	3.4.2006	18.4.2006
<b>Date adopted</b>	22.11.2006				
<b>Result of final vote</b>	+	40			
	–	0			
	0	0			
<b>Members present for the final vote</b>	Alexander Alvaro, Roberta Angelilli, Edit Bauer, Johannes Blokland, Mihael Brejc, Giusto Catania, Carlos Coelho, Fausto Correia, Panayiotis Demetriou, Agustín Díaz de Mera García Consuegra, Elly de Groen-Kouwenhoven, Lilli Gruber, Livia Járóka, Timothy Kirkhope, Ewa Klamt, Magda Kósáné Kovács, Barbara Kudrycka, Stavros Lambrinidis, Romano Maria La Russa, Claude Moraes, Inger Segelström, Ioannis Varvitsiotis, Donato Tommaso Veraldi, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka				
<b>Substitute(s) present for the final vote</b>	Frieda Brepoels, Bárbara Dührkop Dührkop, Ignasi Guardans Cambó, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Vincent Peillon, Marie-Line Reynaud				
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Pilar Ayuso, Iratxe García Pérez, Esther Herranz García, Mary Honeyball, Ana Mato Adrover, Manolis Mavrommatis, María Isabel				

	Salinas García, Alejo Vidal-Quadras
<b>Date tabled</b>	7.12.2006
<b>Comments (available in one language only)</b>	