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REPORT

on improving private international law: jurisdiction rules applicable to employment
(2013/2023(INI))

Committee on Legal Affairs

Rapporteur: Evelyn Regner

PR_INI

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on improving private international law: jurisdiction rules applicable to employment (2013/2023(INI))

The European Parliament,

– having regard to Articles 12, 15, 16, 27, 28, 30, 31 and 33 of the Charter of Fundamental Rights of the European Union,

– having regard to Article 3(3) of the Treaty on European Union,

– having regard to Articles 45, 81 and 146 of the Treaty on the Functioning of the European Union,

– having regard to the judgments of the Court of Justice of the European Union in Cases C-18/02[1], C-341/05[2] and C-438/05[3],

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Employment and Social Affairs (A7-0291/2013),

A. whereas the review of the Brussels I Regulation[4] was a great success, as it introduced considerable improvements to the rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters within the European Union;

B. whereas the scope of that recast procedure did not include certain employment law issues;

C. whereas the Interinstitutional Agreement of 28 November 2001[5] provides that the recast technique is to be used for acts which are frequently amended;

D. whereas it is important to ensure coherence between the rules governing jurisdiction over a dispute and the rules governing the law to be applied to a dispute;

E. whereas it is also a major concern of private international law at European level to prevent

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[1] Judgment of the Court (Sixth Chamber) of 5 February 2004 in Case C-18/02, Danmarks Rederiforening, acting on behalf of DFDS Torline A/S v LO Landsorganisationen i Sverige, acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation, ECR 2004 p. I-01417.

[2] Judgment of the Court (Grand Chamber) of 18 December 2007 in Case C-341/05, *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet*, ECR 2007 p. I-11767.

[3] Judgment of the Court (Grand Chamber) of 11 December 2007 in Case C-438/05, *International Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti*, ECR 2007 p. I-10779.

[4] 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 (recast), OJ L 351, 20.12.2012, p. 1.

[5] Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, OJ C 077, 28.3.2002, p. 1.

forum shopping – particularly when this might occur to the detriment of the weaker party, such as employees in particular – and to ensure the greatest possible level of predictability as to jurisdiction;

F. whereas, as a general principle, the court having the closest connection to a case should have jurisdiction;

G. whereas a number of high-profile European court cases on jurisdiction and applicable law in relation to individual employment contracts and industrial action have led to fears that national provisions on employment law could be undermined by European rules which can lead, in certain cases, to the law of one Member State being applied by the court of another Member State[1];

H. whereas, in view of the major importance of employment law for the constitutional and political identities of the Member States, it is important that European law should respect national traditions in this field;

I. whereas it is also in the interest of the proper administration of justice to align the rules on jurisdiction with the rules on applicable law to the extent possible;

J. whereas it seems appropriate to evaluate whether there is a need for changes to be made to the rules on jurisdiction in the field of employment law;

K. whereas, in particular, with regard to industrial action, the courts of the Member State where the industrial action is to be or has been taken should have jurisdiction;

L. whereas, with regard to individual employment contracts, it should be ensured, to the extent desirable, that the courts of the Member State which has the closest connection with the employment relationship should have jurisdiction;

1. Congratulates the institutions on the successful review of the Brussels I Regulation;

2. Considers that employment law issues should be further addressed by the Commission with a view to a possible future revision;

3. Notes that one of the main principles of private international law relating to jurisdiction is the protection of the weaker party and that the objective of employee protection is spelt out in the current jurisdiction rules;

4. Notes that employees are generally well protected by jurisdiction rules in employment matters when they are defendants in cases brought by their employers through the exclusive grounds of jurisdiction laid down in the Brussels I Regulation;

5. Urges the Commission to assess whether the current legal framework under the Brussels I Regulation sufficiently takes into account the specificities of actions in the employment sector;

[1] See, in particular, the circumstances surrounding Case C-438/05, *International Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti*, ECR 2007 p. I-10779.

6. Calls on the Commission to pay particular regard to the following questions:

   (a) whether, concerning the liability of a worker or an employer or of an organisation representing the professional interests of workers or employers for damages caused by industrial action, any steps need to be taken to clarify that Article 7(2) of the recast Brussels I Regulation refers to the place where the industrial action is to be or has been taken, and whether alignment with Article 9 of the Rome II Regulation is necessary;

   (b) whether, in cases where an employee sues an employer, the fall-back clause which applies where there is no habitual place of work should be reworded so as to refer to the place of business from which the employee receives or received day-to-day instructions rather than to the engaging place of business;

7. Instructs its President to forward this resolution to the Council and the Commission, and to the European Economic and Social Committee.

EXPLANATORY STATEMENT

On 12 December 2012, the recast of the Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[1] was signed. The recast of the regulation introduced a number of major improvements, in particular the abolition of the *exequatur* procedure, meaning that enforcing a judgment in another Member State will in future be a lot easier.

However, the scope of the recast procedure did not cover certain aspects of the rules on jurisdiction which apply to employment law, even though many scholars believe that there is a need for adjustments in this area.

That is the reason why the Committee on Legal Affairs has decided to issue an own-initiative report on the question of jurisdiction in the field of employment law, with a view to the next amendment of the Brussels I Regulation.

A number of decisions of the Court of Justice of the European Union in the field of private international law and employment have raised fears that the European Union's rules could affect the rules which protect workers' rights in the Member States. Your rapporteur believes that these fears are exaggerated, but that some improvements are called for in order to ensure that national legislation is not undermined in the internal market.

Employment law is an area in which the European Union only has a relatively minor influence. Different Member States have struck the balance between workers' rights, trade union activity and the freedom to do business differently. It is not for the European Union, at this point in time, to attempt to interfere with national legislation in this field – the fate of the proposed Monti II Regulation on the right to strike showed that this is an extremely sensitive field.

Nevertheless, in view of the freedom of movement for workers and capital in the European Union, the Union has laid down rules which regulate, in cross-border situations, which Member State's jurisdictions have the right to adjudicate disputes, including in the field of employment law.

As explained above, employment law is a particularly sensitive field, and the existing specific rules in the Brussels I Regulation for individual employment contracts reflect this. As your rapporteur's objective is to protect individual Member States' rules on employment from being undermined by the jurisdictions of other Member States, she believes that it is important to ensure that, as far as possible, a Member State should have jurisdiction over disputes in which its own employment law is applicable. Jurisdiction and applicable law should be that of the same Member State, in so far as possible.

This principle should be applied to two different areas: industrial action (I.) and individual

[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 (recast), OJ L 351, 20.12.2012, p. 1.

employment contracts (II.)

I. Industrial action

The rights and obligations, as well as the statutory role, of trade unions and similar organisations vary from Member State to Member State. Collective action which is legally protected by the constitution in some Member States may be illegal in others, for example if a specific procedure is not followed.

In recognition of this, Article 9 of the Rome II Regulation on the law applicable to non-contractual obligations[1] specifies that 'the law applicable to a non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken'.

This provision ensures that, in the event of industrial action, the law which is applied is the law of the Member State in question. In the *Torline* case[2], the Court of Justice decided in 2004 that, under the rules in force at the time, it was for the Danish courts to rule on the legality of industrial action taking place in Sweden, and award damages. The Rome II Regulation now clarifies that Swedish law would be applicable, but the jurisdiction rules have not changed with the recast Brussels I Regulation, meaning that the Danish court would now still be deciding on the legality of the action, but applying Swedish law.

This is potentially disadvantageous to workers and trade union officials who are exercising their constitutional rights, but it also means that, in some cases, the courts taking decisions on industrial action will have to apply foreign law, thus necessarily reducing the quality of justice as they will be less familiar with foreign rules on industrial action.

Your rapporteur therefore believes that the rules on jurisdiction for labour relations disputes need to be aligned with the relevant rules on applicable law. The court of the Member State where industrial action is to be, or has been, taken should therefore have jurisdiction to rule on disputes relating thereto.

II. Individual employment contracts

Concerning individual employment contracts, the current Brussels I Regulation already recognises the specific situation by providing for special, protective rules for employees, in the same way as it contains special rules to protect consumers and insured persons.

However, your rapporteur feels that the current rules could be significantly improved upon. Some improvement has already been made in recent changes to the Brussels I Regulation, but insufficient consideration has been given to the important link between jurisdiction over employment disputes and the legal system applicable to the employment contract.

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[1] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199 , 31.7.2007, p. 40.

[2] Judgment of the Court (Sixth Chamber) of 5 February 2004 in Case C-18/02, *Danmarks Rederiforening, acting on behalf of DFDS Torline A/S v LO Landsorganisationen i Sverige, acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation,* ECR 2004 p. I-01417.

In cases where the employer is the defendant, a case may be brought, in accordance with Article 21 of the recast Brussels I Regulation, either at the employer's domicile or at the place where or from where the employee habitually carries out his work (or the last place where he did so if he is no longer in the pay of that employer). If no habitual place of work (or place from where work was habitually carried out) can be identified, that criterion is replaced by the place where the business which engaged the employee is situated.

The fall-back criterion of the engaging place of business is rarely relevant, as even in cases where there is no stable place of work, there is normally a stable base from which the employee carried out his work; however, problems can arise in the international transport sector: airline staff, truck drivers, maritime transport, etc. In these cases, it is often difficult to determine from where the employee worked, as the company and means of transport may be registered in different Member States, the relevant management may be located in a third Member State and the employee's home in a fourth.

In this respect, the engaging place of business is, as a criterion, generally neither logical nor in the interest of the employee, as there will often be no real connection between that engaging place of business and the day-to-day work[1].

Your rapporteur therefore proposes abolishing the fall-back criterion of the engaging place of business. Adopting the catch-all criterion of the Rome II Regulation (the place with a closer connection in view of the circumstances[2]) is insufficiently precise for the clear prior determination of jurisdiction.

The rapporteur therefore proposes a fall-back criterion of the place of business which gives the employee day-to-day instructions on the work to be carried out. The link between the courts which have jurisdiction and the actual employment relationship is thus likely to be stronger in those cases where a fall-back criterion is needed owing to the absence of a habitual place of work.

III. Conclusion

In view of the above, your rapporteur therefore proposes the following changes to the Brussels I rules on jurisdiction in the field of employment law:

1. a forum for disputes concerning industrial action, in line with the Rome II Regulation, in the place where the industrial action is to be or has been taken;

2. in cases where the employee sues the employer, a rewording of the fall-back clause where there is no habitual place of work so as to refer to the place of business from which the employee received day-to-day instructions rather than to the engaging place of business.

The purpose of these changes is to collectively and individually protect employees, who are generally the weaker party in employment relations, and also ensure legal consistency and prevent the undermining of national legal traditions in the field of labour law by ensuring, to

[1] Ugljesa Grusic, *Jurisdiction in employment matters under Brussels I: a reassessment,* I.C.L.Q. 2012, 61(1), 91-126.
[2] Article 8(4).

the extent that this is possible, that jurisdiction and applicable law overlap.

5.9.2013

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Legal Affairs

on improving private international law: jurisdiction rules applicable to employment (2013/2023(INI))

Rapporteur: Ria Oomen-Ruijten

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

A. whereas the recasting of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (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 (recast)) did not address jurisdiction rules applicable to employment disputes;

B. whereas the Interinstitutional Agreement of 28 November 2001[1] provides that the recasting technique is to be used for acts that are frequently amended, which was not the case for Council Regulation (EC) No 44/2001 of 22 December 2000; whereas, in such cases the use of the recasting technique is an unjustified limitation of the Parliament's codecision rights;

C. whereas, in principle, the court of the Member State with the closest connection to the case should have jurisdiction; whereas, in the specific case of industrial action, the courts of the Member State where the industrial action is to be or has been taken should have jurisdiction;

1. Notes that one of the main principles of private international law relating to jurisdiction is the protection of the weaker party and that the objective of employee protection is spelt out in the current jurisdiction rules;

[1] Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, OJ C 77, 28.3.2002, p. 1.

2. Notes that employees are generally well protected by jurisdiction rules in employment matters when they are defendants in cases brought by their employers through the exclusive grounds of jurisdiction laid down in the Brussels I Regulation;

3. Calls for steps to be taken to improve the jurisdiction rules applicable to proceedings relating to individual employment contracts;

4. Calls on the Commission to propose an amendment to the Brussels I Regulation providing for an exclusive forum for disputes concerning industrial action, in the place where the industrial action is to be or has been taken;

5. Calls on the Commission to propose an amendment to Article 19 of the Brussels I Regulation to ensure that the employee may sue his employer in the courts of the Member State where the employee is domiciled.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	5.9.2013
Result of final vote	+: 30 –: 2 0: 4
Members present for the final vote	Regina Bastos, Edit Bauer, Heinz K. Becker, Jean-Luc Bennahmias, Phil Bennion, Pervenche Berès, Vilija Blinkevičiūtė, David Casa, Alejandro Cercas, Ole Christensen, Minodora Cliveti, Marije Cornelissen, Emer Costello, Frédéric Daerden, Sari Essayah, Richard Falbr, Marian Harkin, Stephen Hughes, Jean Lambert, Verónica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Elisabeth Morin-Chartier, Siiri Oviir, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Ruža Tomašić, Traian Ungureanu, Inês Cristina Zuber
Substitute(s) present for the final vote	Malika Benarab-Attou, Richard Howitt, Anthea McIntyre, Ria Oomen-Ruijten, Antigoni Papadopoulou, Csaba Sógor

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	17.9.2013
Result of final vote	+: 24 –: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Eva Lichtenberger, Angelika Niebler, József Szájer, Axel Voss
Substitute(s) under Rule 187(2) present for the final vote	Olle Schmidt