



2018/2079(INL)

21.9.2018

DRAFT REPORT

with recommendations to the Commission on expedited settlement of
commercial disputes
(2018/2079(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 for measures to introduce and support a European Expedited Civil Procedure (2018/2079(INL))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to Article 67(4) TFEU and 81(2) TFEU,
 - having regard to Article 19(1) of the Treaty on European Union (TEU) and Article 47 of the Charter of Fundamental Rights of the European Union (the Charter),
 - having regard to the study from the Directorate General for internal policies entitled ‘Building competence in commercial law in the Member States’,
 - having regard to the 2018 EU Justice Scoreboard,
 - having regard to the 2016 European Judicial Training Network (EJTN) ‘Judicial Training Principles’¹,
 - having regard to Rules 46 and 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A8-0000/2018),
- A. whereas the right to a fair trial, as enshrined in Article 47 of the Charter and in Article 6 of the European Convention on Human Rights, constitutes one of the fundamental guarantees of the rule of law and of democracy;
- B. whereas judicial cooperation has been supported by several procedural acts of secondary law of the Union, including the Small Claims Regulation², the Legal Aid Directive³, the Regulation on taking of evidence, the Regulation on service of documents;
- C. whereas the main goal of judicial cooperation between Member States is to establish mutual trust in judiciary systems, which is the basis for further mutual recognition of judgments across the Union;
- D. whereas many issues with regard to procedural law in the area of civil justice are regulated at the national level, thus procedural law in this area differs from one Member State to another;

¹ http://www.ejtn.eu/PageFiles/15756/Judicial%20Training%20Principles_EN.pdf

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).

- E. whereas the Brussels I Regulation sets basic rules on jurisdiction, recognition and enforcement of civil and commercial cross border matters in the European Union;
- F. whereas the Rome I Regulation lays down rules on law applicable to the contractual obligation.
- G. whereas the question of formulation of procedural rules often involves striking a balance between protection of the rights of the parties and speedy settlement of disputes;
- H. whereas settlement of commercial matters in public courts is, in general, slow in the Union, a fact that is accentuated by the introduction of the European small claims procedure, which has, by contrast, led to substantially faster settlement of consumer disputes;
- I. whereas the slow settlement of commercial disputes in the Union might lead the commercial parties to seek alternative dispute settlement, or dispute settlement in non-member States and choose to apply to contracts national law of a non-member State;
- J. whereas high quality settlement of commercial disputes depends on a high level of competence in these matters in courts, among judges and lawyers;
- K. whereas the availability of a fast-track procedure supported by highly competent judges and lawyers in the Member States would make a choice of national law of a Member State more likely and as a consequence enrich the competence in civil and commercial matters in the Member States;
- L. whereas courts and chambers specialised in commercial matters will guarantee a higher level of competence in such matters and thereby attract such cases to the courts of the Member States;

* * *

1. Notes that the settlement of commercial matters is far slower than it could be and that this leads to substantial losses for business, and not only in economic terms but also as regards time and energy that could be diverted for other opportunities;
2. Highlights the successful implementation of the European small claims procedure (ESCP), which provided a way of solving consumer and other disputes regarding small amounts within the Union in a swift and cost-effective way while upholding protection for the rights of the parties;
3. Stresses that, with regard to fair trial and access to justice, cooperation networks and databases enhancing judicial cooperation and exchange of information should be maintained and further expanded, including the European Judicial Network and of the European e-Justice Portal, which is to become a one-stop-shop in the area of justice in the Union;

4. Contends that the adoption of a regulation similar to the ESCP, the European Expedited Civil Procedure (EECP) applicable to cross border commercial disputes would be the best way to address the long waiting times for commercial disputes in the Union;
5. Contends that commercial parties will have better opportunities to pay for representation and prepare for a court case which means that they have better possibilities to protect their rights which would allow for a faster procedure;
6. Observes that such a procedure could build on requirements for thorough preparations by the parties before the procedure is launched, strict deadlines, few possibilities to add facts or evidence during the process and no separate appeal to procedural decisions, thus achieving a fast-track procedure;
7. Is of the opinion that such a strict procedural system is compatible with the protection of the rights of the parties on condition that the EECP should be voluntary and should only apply either where the parties have so agreed or where the defendant accepts the procedure after the claimant has brought action under the EECP;
8. Stresses that parties to a dispute often only reach an amicable resolution when the circumstances and arguments are fully developed, which means that in a procedural system that required the parties to investigate the circumstances and develop their arguments further before going to court, more disputes would be resolved amicably at an earlier stage;
9. Observes that the aim to provide expedited settlement of commercial disputes in the Union cannot just be achieved by the introduction of a fast-track procedural system; to this aim, courts, judges and lawyers highly proficient in commercial law and private international law would be needed in order to make such a procedural system efficient;
10. Emphasises that the current distribution in choice of law in commercial contracts between the different European jurisdictions shows a slower build-up of competence in commercial matters in some Member States and in addition a less complete development of commercial law in those countries;
11. Observes that choices of applicable law often are based on complex considerations, but that the combination of a foreign law and court often exposes a party to substantial economic risks, and that such provisions are specifically questionable if agreed as part of standard contracts or in situations where one of the parties has no or little possibilities to influence the agreement in this respect;
12. Contends that in this respect there might be a need to review the Rome I Regulation in order to strengthen the connection between the aim and object of contracts and the law chosen, while at the same time allowing, where appropriate, for more party autonomy in relation to the choice of law;
13. Emphasises that legislative measures cannot address these issues alone, practical measures to raise the competence both of courts and of lawyers are also necessary;
14. Observes that commercial law and private international law are areas less codified than other areas of law, which means a more important role for academic research, thus one

of the measures to strengthen competence in commercial matters in the Member States is to make more resources available for research in this field;

15. 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;
16. Stresses that also the quality of the law applicable to commercial matters and how well it is adapted to the practices and development in the commercial area is of great importance;
17. Pursuant to Article 225 TFEU, requests therefore the Commission to submit by 1 January 2020, on the basis of Article 81(2) TFEU, a proposal for a legislative act on a European Expedited Civil Procedure and a proposal for amendments to the Rome I Regulation according to recommendations set out in the Annex hereto;
18. Invites the Commission and the Member States to supplement these proposals with other supporting measures aimed at raising the competence in the Member States in commercial law and international private law.
19. Confirms that the recommendations annexed to this motion for a resolution respect fundamental rights and the principles of subsidiarity and proportionality;
20. Considers that any financial implications of the proposal, costs for procedures brought under the EECP, would be offset by equivalent savings as the EEPC is likely to be substantially more cost-effective than the ordinary procedures of the Member States and as the disputes in question would not be brought under the general procedural system of the Member State in question;
21. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council, and to the Parliaments and Governments of the Member States.

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

PRINCIPLES AND AIMS OF THE PROPOSALS REQUESTED

I. European Expedited Civil Procedure

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

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

1. It should apply to cross-border commercial disputes to which the European Small Claims Procedure does not apply;
2. It should apply if the parties so agree either before the dispute arises or if the claimant launches a claim under the procedure and the defendant accepts it;
3. It should require the parties to prepare their claims to a high degree before going to court; paired with early preclusion of raising new facts or new evidence;
4. It should not allow separate appeal against procedural decisions;
5. It could in principle be a written procedure, allowing for oral hearings where the parties so request;
6. It should, as a starting point, apply very short deadlines to the procedure, allowing the parties to opt for longer deadlines in cases of higher complexity;
7. Encourage in- and out-of-court amicable settlement of disputes, including by way of mediation;
8. Encourage the use of modern technologies for the purpose of oral hearings, taking of evidence and service of documents;
9. Allow for recognition and enforcement of the final judgment under the procedure in the simplest and most user-friendly way available under Union law;

II. Possible changes to Rome I Regulation

The proposal on European Expedited Civil Procedure could be supported by a proposal to amend the Rome I Regulation to achieve a stronger connection between the purpose and aim of agreements and the law chosen within the Union but also to afford the parties to purely commercial contracts further autonomy.

Amendments to the Rome I Regulation could include:

1. The possibility for parties to apply not only existing law of a Member State, but international conventions, model laws and principles or similar adopted by an intergovernmental organisation;
2. Consideration of reinforcement of the connection between the law chosen and the content, aim and purpose of the contract and of the parties;

3. Reconsideration of the rules applicable to the validity of a choice of law, this ought to be considered under the default law applicable to the contract.

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

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

EXPLANATORY STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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