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## **WORKING DOCUMENT**

on the mid-term review of the Stockholm Programme in the field of judicial cooperation in civil matters

Committee on Legal Affairs

Rapporteur: Luigi Berlinguer

The Stockholm Programme<sup>1</sup> was adopted in 2010 by the European Council, and aimed to set a series of objectives to be reached by the end of the programme, in 2014, in order to enhance the Area of Freedom, Security and Justice (AFSJ). This is because, following the entry into force of the Lisbon Treaty, it is increasingly important to ensure that European citizens see the practical benefit of the European Union in their daily lives, and the AFSJ is particularly important in this regard.

Parliament stated its initial position on the Stockholm Programme in its resolutions of 25 November 2009<sup>2</sup> on the programme in general and of 23 November 2010<sup>3</sup> on the programme's civil law, commercial law, family law and private international law aspects. The Commission drew up an Action Plan implementing the Stockholm Programme on 20 April 2010<sup>4</sup>.

Now that the Stockholm Programme, which covers the 2010-2014 period, has passed the half-way mark, the Committees on Legal Affairs, on Civil Liberties, Justice and Home Affairs and on Constitutional Affairs have decided to evaluate the progress which has been made so far, with a view to identifying steps that remain to be taken as well as possible priorities for the successor of the Stockholm Programme.

The aim of this working document is to focus on the implementation of the programme in those areas which come under the remit of the Committee on Legal Affairs, for which Luigi Berlinguer is the rapporteur. Following debate within the committee and with the other committees involved, the three co-rapporteurs in the three committees will then submit a overall draft report on the mid-term review of the Stockholm Programme.

As identified by the resolution of 23 November 2010, Stockholm Programme measures in the field of judicial cooperation in civil matters can be divided into four main areas: civil law, commercial law, family law and private international law.

## 1. Civil law

In the field of civil law, proposed initiatives have covered aspects of both substantive civil law and procedural civil law.

### 1.1. Substantive civil law

One of the major successes in the field of substantive civil law has been the adoption of the **Successions Regulation**<sup>5</sup>. Pursuant to a Commission proposal in 2009, and after several years of debate, a satisfactory solution was found in 2012 under the rapporteurship of Kurt Lechner. This is a very important piece of legislation for European citizens, as it means that someone

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<sup>1</sup> OJ C 115, 4.5.2010, p. 1.

<sup>2</sup> P7\_TA(2009)0090.

<sup>3</sup> P7\_TA(2010)0426.

<sup>4</sup> COM(2010)0171.

<sup>5</sup> Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012, p. 107.

with property in several Member States will be subject to only one set of national rules which will apply to the succession, and will even be able to choose the law of their nationality if they live in another Member State.

In the field of contract law, the Commission proposed in its Action Plan a set of rules to constitute an optional 28th regime of contract law, with a view to facilitating cross-border commerce, especially for SMEs. The legislative proposal for the **Common European Sales Law** was made in 2011, and is currently being debated in committee, with Klaus-Heiner Lehne and Luigi Berlinguer as co-rapporteurs. It is not clear when the proposal will become law, as a lot of open questions remain.

Of more immediate relevance to common citizens are the proposed measures to facilitate the recognition of public and civil status documents in another Member State, as the lack of such automatic recognition is one of the major practical obstacles to free movement quoted by citizens. Two proposals are currently underway: one on **dispensing with formalities for public documents** (apostilles, legalisation, certified translations, etc.), published in April 2013, and another on the **mutual recognition of the effects of civil status documents**, due at the end of 2013 (covering a limited list of civil status situations, such as marriage, name changes, etc.). Parliament considers that both initiatives are extremely important.

Lastly, in the field of the **protection of vulnerable adults**, which is a question which has preoccupied the committee for some time<sup>1</sup>, the Commission announced in its Action Plan that it would not take any action, as it was for the Member States to decide whether to accede to the 2000 Hague Convention on the International Protection of Adults. The Hague Conference indicates that this convention has entered into force only with regard to 6 Member States, and that it has been signed but not ratified by a further 7 Member States<sup>2</sup>. It is particularly disappointing in this regard that the Commission has still not taken any steps toward European legislation on the question, despite the conclusions of the 2008 resolution.

## 1.2. Procedural civil law

As far as civil procedure is concerned, it has been a major concern of the committee to introduce **common minimum standards for civil procedure**, reflecting the ambition of providing a high level of guarantees to citizens having recourse to the justice system as expressed by the Justice Scoreboard<sup>3</sup>. The Commission has announced a proposal for 2014, but it is not yet clear whether the proposal will be legislative or not.

Furthermore, with a view to enhancing the protection of consumers' rights in particular, Parliament has called for a European initiative to allow for **collective redress** proceedings<sup>4</sup>. The Commission promised in its follow-up document of 18 April 2012<sup>5</sup> to make a legislative or non-legislative initiative on a European framework for collective redress in 2012, but this has not yet been forthcoming.

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<sup>1</sup> See Paragraph 95 of the resolution of 25 November 2009 and the resolution of 18 December 2008 (P6\_TA(2008)0638).

<sup>2</sup> [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=71](http://www.hcch.net/index_en.php?act=conventions.status&cid=71).

<sup>3</sup> Commission Communication 'The EU Justice Scoreboard: A Tool to Promote Effective Justice and Growth', 27 March 2013.

<sup>4</sup> Resolution of 2 February 2012 (P7\_TA(2012)0021), and Paragraph 95 of the resolution of 25 November 2009.

<sup>5</sup> SP(2012)160.

## 2. Commercial law

In the field of commercial law, the Commission has made a proposal for a regulation on the **European Account Preservation Order**<sup>1</sup>, which would prevent a debtor from evading enforcement of his debts by benefiting from the delays in the cross-border attachment of bank accounts. The aim of rapporteur Raffaele Baldassarre is to ensure that the procedure for the temporary freezing of such bank accounts pending enforcement is as speedy as possible whilst respecting the right of defence. Conclusion of the file is taking longer than expected owing to the complexity of the subject matter, but adopted legislation is expected soon.

As far as company law is concerned, the Commission has still not complied with Parliament's request<sup>2</sup> for a **14th Company Law Directive** covering the unresolved question of the transfer of company seats. The Commission considers that the case for such legislation has not been made, subject to the outcome of a public consultation in 2012<sup>3</sup>.

With regard to the **European Private Company**, also requested by Parliament in the resolution of 23 November 2010<sup>4</sup>, this important proposal was *de facto* abandoned in 2009 in view of the impossibility of reaching unanimity in the Council. The Commission has not taken steps to revive the proposal.

Finally, the Commission has submitted a proposal<sup>5</sup> for the amendment of the **Insolvency Regulation**. The aim of the amendment, for which Klaus-Heiner Lehne is rapporteur, is to increase the scope of the regulation by re-defining 'insolvency proceedings' to cover a greater number of cases as well as to improve the operation of the regulation by making changes to the rules on jurisdiction, the opening of secondary proceedings and the insolvency of several companies belonging to the same group.

## 3. Family law

The **Rome III Regulation**<sup>6</sup> on the law applicable to divorce and separation (rapporteur Tadeusz Zwiefka) was adopted in 2010 under the enhanced cooperation procedure, with 15 Member States now taking part. It is the only piece of legislation in the field of civil justice cooperation which is already applicable, and lays down clear rules on the law which applies to the dissolution of marriages.

The Stockholm Programme also provided for the adoption of legislation on **matrimonial property regimes**<sup>7</sup> and the **property consequences of registered partnerships**<sup>8</sup>, containing provisions on jurisdiction, applicable law and recognition and enforcement of decisions.

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<sup>1</sup> COM(2011)0445.

<sup>2</sup> Resolution of 2 February 2012 (P7\_TA(2012)0019), Paragraphs 33 and 34 of the resolution of 23 November 2010.

<sup>3</sup> Follow-up document of 18 April 2012, SP(2012)260/2.

<sup>4</sup> Paragraphs 33 and 34.

<sup>5</sup> COM(2012)0744.

<sup>6</sup> Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ L 343, 29.12.2010, p. 10.

<sup>7</sup> COM(2011)0126.

<sup>8</sup> COM(2011)0127.

Under the rapporteurship of Alexandra Thein, the two files are currently being considered by Parliament and are expected to be approved this year. Under the consultation procedure, the Council will take the final decision.

Parliament has also called for European legislation on cross-border **adoptions**<sup>1</sup>, as this is an area where many families report problems with the recognition of decisions taken in another Member State. No initiative has been taken by the Commission in this regard.

The Stockholm Programme proposed a review of the **Brussels II Regulation**<sup>2</sup>, in particular to cover the question of the recognition of decisions on parental responsibility. The Commission has announced a legislative initiative for 2013 to replace the proposal<sup>3</sup> which it had to withdraw in 2002.

#### 4. Private international law in general

The main project in the field of general private international law under the Stockholm Programme was the review of the **Brussels I Regulation**<sup>4</sup> with a view to simplifying procedures for the enforcement of judgments in another Member State and, in particular, abolishing the *exequatur* procedure. Under the guidance of the rapporteur Tadeusz Zwiefka, the recast of the Brussels I Regulation has been led to a satisfactory conclusion<sup>5</sup>, streamlining and clarifying certain aspects of the cross-border enforcement of judgments.

The project of an **International Judgments Convention**, which would pursue similar aims to the Brussels I Regulation at international level<sup>6</sup>, under the auspices of the Hague Conference of Private International Law, has not been as successful as was hoped. Negotiations are still ongoing and have not led to any significant progress in recent years.

Parliament had also called for the insertion of a provision to govern the law applicable to a non-contractual obligation arising out of **violations of privacy and rights relating to personality**, including defamation, in the **Rome II Regulation**<sup>7</sup>. This request was re-affirmed in greater detail in the resolution of 10 May 2012 with recommendations to the Commission on the amendment of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II)<sup>8</sup>, to which the Commission has so far failed to respond in breach of Paragraph 16 of the Framework Agreement on relations between the European Parliament and the European Commission<sup>9</sup>.

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<sup>1</sup> Paragraph 95 of the resolution of 25 November 2009.

<sup>2</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, 23.12.2003, p. 1.

<sup>3</sup> COM(2001)0505.

<sup>4</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p. 1.

<sup>5</sup> 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, 30.12.2012, p. 1.

<sup>6</sup> See Paragraph 35 of the resolution of 23 November 2010.

<sup>7</sup> See Paragraph 95 of the resolution of 25 November 2009.

<sup>8</sup> P7\_TA(2012)0200.

<sup>9</sup> OJ L 304, 20.11.2010, p. 47.

A further important piece of legislation which is outstanding is a regulation governing **limitation periods for cross-border road traffic accidents**. Owing to the disparity between rules in different Member States, it is often very difficult to ensure that justice is done in these cases. The Commission intended to make the proposal in 2011, but it is not yet on the table.

Finally, in view of the fact that EU legislation in the field of private international law has become very fragmented, with a relatively large number of sector-specific instruments covering different aspects, Parliament has called for the adoption of a **European Code of Private International Law**<sup>1</sup>. The aim would be to harmonise the provisions of private international law in the different areas and, at the same time, ensure that there are no gaps in the body of rules.

#### 5. Overarching objectives in the field of judicial cooperation in civil matters

In order to achieve the various specific objectives of the Stockholm Programme, in addition to the individual pieces of legislation, it is important to ensure that all stakeholders have sufficient access to justice and EU law.

One important step is the further development of **e-Justice** projects<sup>2</sup>, allowing citizens to have direct access to legal information and justice, by providing essential information online and allowing for certain applications to be made remotely by computer. Some progress has been made in this regard, but more needs to be done.

**European legal training** is also very important if a European judicial culture is to be created which will allow mutual recognition procedures to prosper<sup>3</sup>. The work being done in the framework of the European Judicial Training Network and the Academy of European Law is very important in this respect. Furthermore, the Commission's **pilot programme** on training for judges and legal professionals has now finally got underway<sup>4</sup>.

#### 6. Conclusion

This brief overview of the progress made on the Stockholm Programme in the area of judicial cooperation in civil matters shows that some very promising legislation has been adopted, but that, owing to the length of legislative and implementation periods, very little of it is already being applied. A considerable number of legislative proposals are still being considered by the co-legislators. However, one year from the 2014 elections and the planned end of the Stockholm Programme, it has to be noted that, in a significant number of cases, the Commission proposal is still outstanding. Furthermore, the lack of take-up of Parliament's ideas for proposals by the Commission is frankly disappointing.

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<sup>1</sup> See Paragraph 95 of the resolution of 25 November 2009.

<sup>2</sup> See Paragraphs 107, 108, 109 and 110 of the resolution of 25 November 2009.

<sup>3</sup> See Paragraphs 105 and 106 of the resolution of 25 November 2009 and Paragraphs 5 to 13 of the resolution of 23 November 2010.

<sup>4</sup> OJ S 132, 12.7.2012, 218282.