Civil law, commercial law, family law and private international law aspects of the action plan implementing the Stockholm programme

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The Committee on Legal Affairs unanimously adopted the own-initiative report by Luigi BERLINGUER (S&D, IT) on civil law, commercial law, family law and private international law aspects of the Action Plan implementing the Stockholm Programme.

Although Members congratulate the Commission on its proposed Action Plan, they consider, nonetheless, that the time is ripe for reflection on the future development of the AFSJ.

They call on the Commission to take stock of the measures which have already been adopted in the field of civil and family law, with a view to appraising their effectiveness and ascertaining to what extent they have proved successful in achieving their aims and determine, with the legal profession, in what areas new measures in the field of judicial cooperation in civil matters are necessary and desirable.

Training to underpin the European judicial culture: Members stress the need to use every possible means to nurture a European judicial culture, particularly through legal education and training. To achieve this, they recommend the following measures:

- going beyond the Erasmus-type programmes proposed in the Action Plan, in order to foster vertical and horizontal communication between national and European courts;
- beefing up existing education and training networks and establish new ones;
- creating a regular forum where judges of all levels of seniority in areas of law where cross-border issues frequently arise in order to encourage discussion, build contacts, create channels of communication and collaboration and build mutual confidence and understanding;
- encouraging dialogue and communication between European legal professional bodies with a view to further cross-border training initiatives in partnership with organisations such as the Academy of European Law (ERA);
- strengthening and facilitating all possible forms of funding for transnational projects in legal and judicial education and training in the area of civil justice;
- encouraging students to participate in Erasmus-type programmes as part of their legal studies.

A European Judicial Academy: as far as funding is concerned, and bearing in mind the Stockholm programme's ambitious goal of offering European training schemes to half of the judges, prosecutors, judicial staff and other professionals involved in European cooperation before 2014, Members point out that various European legal organisations (e.g. the Network of the Presidents of the Supreme Judicial Courts, the European Network of the Councils for the Judiciary, etc.) have a huge amount to offer by coordinating and promoting professional training for the judiciary and mutual understanding of other Member States' legal systems and that their activities must be facilitated and receive sufficient funding. In Members' view, any European judicial training plan must include these various networks, thus avoiding duplication and preparing the ground for the **creation of a European Judicial Academy** composed of the European Judicial Training Network and the Academy of European Law.

Settling the question of procedural law: Members consider that the Commission should give priority to tackling the difficulties brought about by divergences in national procedural law (e.g. in limitation periods and the treatment of foreign law by the courts). In particular, they suggest that the date for the

Commission's report on the functioning of the present EU regime on civil procedural law across borders should be brought forward from 2013 to the end of 2011 and they urge it to present a proposal for a common limitation period in cross-border disputes involving personal injuries and fatal accidents as a matter of urgency.

Strengthened cooperation for the taking of evidence: recalling the main points of Parliament's resolution of 10 March 2009 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, Members urge the Commission to take action to improve cooperation between the Member States' courts for the purposes of taking evidence and enhancing the efficiency of Regulation (EC) No 1206/2001, in particular by ensuring that courts and practitioners are better informed about it and that they promote the extensive use of information technology and video-conferencing.

Transparency of debtors' assets: although Members welcome the fact that the Action Plan proposes a legislative initiative for a regulation on improving the efficiency of the enforcement of judgments concerning the transparency of debtors' assets and a similar regulation concerning the attachment of bank accounts, they call on the Commission to move forward with those initiatives as quickly as possible, focusing on the possibility of a self-standing European remedy to disclose and/or freeze assets in cross-border cases.

Towards more uniformity and less bureaucracy: Members call on the Commission and the Member States to ensure the more uniform application of EU legislation (in its procedural aspects), with the focus on standardised rules and administrative procedures which should apply in areas of Union competence such as taxation, customs, trade and consumer protection, subject to the limits of the EU Treaties, with a view to the proper functioning of the single market and freedom of competition. Members strongly support the Commission in its goal of enacting legislation that reduces business and transaction costs, particularly for SMEs, as well as all initiatives taken to reduce administrative, financial and regulatory burdens.

Strengthening consumers' rights: Members point out that in accordance with the Lisbon Treaty, consumer protection should be taken into account in defining and implementing other Union policies and activities. They also emphasise the importance of the proposed new Consumer Rights Directive, as well as of the upcoming modernisation of the directive on package travel, the Unfair Commercial Practices Directive and the directive concerning misleading and comparative advertising. They also call for:

- the removal of all barriers to the development of e-commerce by both legislative and non-legislative means;
- a solution to be found to cross-border trade problems for online consumer purchases, inter alia by stepping up the fight against cyber-crime and counterfeiting;
- the development of an EU charter of consumers' rights in the area of online services and e-commerce;
- the European Parliament to be kept immediately and fully informed of the advancement of ACTA at all stages of the negotiations.

Settlement of disputes: Members draw particular attention to the problems relating to the legal uncertainty of commercial exchanges from and to non-EU countries, and to the issue of which jurisdiction is competent for the **settlement of a given dispute**. Noting that while principles of private international law do exist, their implementation raises a number of problems primarily affecting consumers and small businesses. They therefore emphasise the need for a coherent approach to be adopted on an international level in this regard.

Company law: recalling Parliament's recommendations to the Commission on the cross-border transfer of the registered office of a company, as well as certain basic provisions of European legislation in that

area, Members note the dictum in the *Cartesio* case to the effect that, in the absence of a uniform Union law definition of the companies which may enjoy the right of establishment on the basis of a single connecting factor determining the national law applicable to a company, the question whether Article 49 TFEU applies to a company which seeks to rely on the fundamental freedom enshrined in that article is a preliminary matter which, as Union law now stands, can only be resolved by the applicable national law. They observe that this evidences a lacuna in Union law and reiterate their call for this lacuna to be remedied.

Involvement of the European parliament in discussion on the international judgments convention: Members call on the Commission to use its best endeavours to revive the project for an international judgments convention, by involving the European Parliament and by calling on other countries, in particular the United States, to resume negotiations on the question. They call, in particular, upon the Commissioner for Justice to ensure that, in future, Parliament is more closely involved with the activities of the Commission and the Council at the Hague Conference through Parliament's observer. In the meantime, they propose the settling up of an interparliamentary forum on the work of the Hague Conference. They observe that the Commission has set up a working group on arbitration. They caution the Commission against adopting any legislative initiative in this area without involving the European Parliament to the full. They consider that the European Parliament should have the right to nominate a member or members of such working groups in order to ensure that they are truly representative.

Recognition of official documents: Members stress the need to **ensure mutual recognition of official documents issued by national administrations**. They welcome the Commission's efforts to empower citizens to exercise their free movement rights and strongly support plans to enable the mutual recognition of the effects of civil status documents. They call for further efforts to reduce barriers for citizens who exercise their rights of free movement, particularly with regard to access to the social benefits to which they are entitled and their right to vote in municipal elections.