Jurisdiction, recognition and enforcement of judgments in civil and commercial matters. Recast

2010/0383(COD) - 15/10/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Tadeusz ZWIEFKA (EPP, PL) on the proposal for a regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

The parliamentary committee recommends that the European Parliament's position at first reading under the ordinary legislative procedure should be to amend the Commission proposal as follows:

Scope: the Regulation should not apply to the liability of the State for acts and omissions in the exercise of State authority ("*acta iure imperii*"). Also excluded would be rights in property arising out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage, wills and succession, including maintenance obligations arising by reason of death.

Arbitration agreements: the Regulation should not apply to arbitration. Nothing in this Regulation should prevent a court of a Member State, when seised of a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration or from staying or dismissing the proceedings and from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with its national law.

Common rules of jurisdiction: there must be a connection between proceedings to which this Regulation applies and the territory of the Member States. Accordingly, common rules of jurisdiction should, in principle, apply **when the defendant is domiciled in a Member State** .

A defendant not domiciled in a Member State should in general be subject to the national rules of jurisdiction applicable in the territory of the Member State of the court seised.

However, in order to ensure the protection of consumers and employees, to safeguard the jurisdiction of the courts of the Member States in situations where they have exclusive jurisdiction and to respect party autonomy, certain rules of jurisdiction in this Regulation should apply regardless of the defendant's domicile.

Restitution of cultural objects: the owner of cultural objects as defined in Council Directive 93/7/EEC should be able to initiate civil proceedings for the recovery, based on ownership, of a cultural object in one of the courts for the place where the cultural object is situated at the time the court is seised.

Choice-of-court agreement: where a question arises as to whether a choice-of-court agreement in favour of a court or the courts of a Member State is null and void as to its substantive validity, that question should be decided in accordance with the law of the Member State of the court or courts designated in the agreement. The reference to the law of the Member State of the designated court or courts should include the conflict-of-laws rules of that State.

In order to enhance the effectiveness of exclusive choice-of-court agreements and to avoid abusive litigation tactics, it is necessary to provide for an exception to the general ***lis pendens*** mechanism in order to deal satisfactorily with a particular situation in which concurrent proceedings may arise. In this regard,

the text stipulates that the court chosen by the parties to resolve their dispute should always have priority, regardless of whether it was first or second seised seems to be a viable solution.

Recognition and enforcement: a judgment given in a Member State shall be recognised in the other Member States **without any special procedure being required**. For the purposes of the free circulation of judgments, a judgment given in a Member State should be recognised and enforced in another Member State even if it is given against a person not domiciled in a Member State . The amended text stipulates that a judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States **without any declaration of enforceability being required.**

Where enforcement is sought of a judgment given in another Member State, the **certificate concerning a judgment in civil and commercial matters** issued pursuant to the Regulation, accompanied, if necessary by the judgment, shall be served on the person against whom enforcement is sought prior to the first enforcement measure. Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, he may request a **translation of the judgment** in order to contest the enforcement if the judgment is not written in or accompanied by a translation into either of the following languages: (a) a language which he understands, or (b) the official language(s) of the Member State in which he is domiciled.

The person against whom the enforcement of a decision is sought should be able to apply for **refusal of the recognition and/or enforcement of a judgment** if he considers one of the grounds for non-recognition to be present. This should include the ground that he had not had the opportunity to arrange for his defence where the judgment was given in default of appearance in a civil action linked to criminal proceedings.

The recognition of a judgment should, however, be refused only if one or more of the grounds provided for in this Regulation are present.

Report: no later than seven years after the date of application of the Regulation, the Commission shall present a report on the application of this Regulation. The report shall include an evaluation of the possible need for a further extension of the rules on jurisdiction to defendants not domiciled in a Member State, taking into account the operation of this Regulation and possible developments at international level. Where appropriate, the report shall be accompanied by a proposal for amendments to the Regulation.