Civil judicial cooperation: European enforcement order for uncontested claims

2002/0090(COD) - 06/02/2004 - Council position

The common position, adopted unanimously, remains largely faithful to the Commission's original proposal as modified by the amended proposal. The Council considers that the text of the common position on the creation of an enforcement order for uncontested claims achieves the balance desired between protection of the rights of the debtor on the one hand, and, on the other, the establishment of an efficient certification system so as to permit the free movement of judgements by removing obstacles to recognition and enforcement in the Member State of enforcement. It should be noted that the United Kingdom and Swedish delegations lifted their parliamentary scrutiny reservation on this common position. The main changes made in the common position concern the following issues: - the common position no longer requires the final nature of a judgement as a prerequisite for its certification as a European enforcement order but considers the enforceability of a judgement as being sufficient in spite of its being subject to the possibility of an appeal. If an appeal or another challenge materialises the decision following that challenge is enforceable in other Member States under the same conditions, i.e. without exequatur, even though the underlying claim is no longer uncontested since it would be unacceptable to invalidate the European enforcement order and oblige the creditor to start all over again with an exequatur procedure in that situation. Indeed, in the case of such a solution, any debtor against whom a certificate has been issued could delay enforcement of the judgement by lodging an appeal, even an obviously unfounded one, in the country of origin and annulling the beneficial effect of the use of the European enforcement order. This would undermine the very objective of the Regulation, the simplification and the acceleration of cross-border enforcement, to the point of rendering the instrument counter-productive. The debtor's legitimate interests in the event of an appeal subsequent to the issuance of a European enforcement order certificate are adequately safeguarded by Articles 8Y and 23 that relate to the stay or limitation of enforcement; - the common position retains the principle that no appeal lies against the issuing of the European enforcement order certificate. It newly introduces, however, the possibility for the debtor to apply for the rectification of material errors in the certificate (e.g. a typing error) and for the withdrawal of the certificate where it has been clearly wrongly granted; - consumers as judgement debtors are accorded special protection going beyond the control of compliance with the jurisdictional rules of Council Regulation 44/2001/EC ("Brussels I"). A judgement delivered against a consumer in the absence of an explicit admission of the claim in question can only be certified as a European enforcement order if the consumer is domiciled in the Member State of origin; - instead of a hierarchical structure of methods of service which would require an attempt to serve on the debtor in person before resorting to other means of service, the Councilhas agreed to permit the unrestricted choice of any of the admissible methods of service as exhaustively listed in the proposal and has added the possibility, under certain conditions, of postal service without proof of receipt or delivery; - on the other hand, all those methods of service that provide a high degree of likelihood but no full proof that the document served has reached its addressee are admissible only on the condition that under the law of the Member State of origin the debtor is entitled to apply for a full review of the judgement in those exceptional cases where in spite of service in compliance with this Regulation the debtor has not taken cognisance of the document at issue in sufficient time to be able to arrange for his defence. The amendments accepted by the Parliament and the Commission and which were incorporated into the common position : - take note of the applicability of the co-decision procedure since the entry into force of the Nice Treaty, has been taken on board with a slightly shortened wording but without any substantive change; - combine two modification of the definition of one sub-category of the term "uncontested claims". The first one aimed at clarifying that, in order to constitute a valid grounds for opposition of a claim, the debtor's conduct must be in conformity with the procedural requirements of the Member State of origin. The second modification which would render inadmissible as a valid objection to a claim "statements of opposition in pre-litigation proceedings if they automatically lead to court litigation proceedings" was rejected by the Commission and not taken

on board by the Council either; - rephrase the description of the legal effect of the certification of a judgement as a European Enforcement Order, the abolition of exequatur, by explicitly equating it with a "national enforcement order"; - to equate the debtor's refusal to accept the document in question attested by the competent person effecting the service with successful personal service on the debtor; - clarify that the very brief description of the justification of the claim at issue that is usually sufficient in summary debt collection procedures (injonction de payer, Mahnverfahren) also meets the requirements for certification as a European Enforcement Order. As regards the amendments rejected by the Commission and not incorporated in the common position, they concern the following issues: - introducing the requirement of the debtor's fault in order to consider his non-appearance in a court hearing as a case of an uncontested claim; - adding the compliance with the domestic law of Member State of origin to the requirements for the admissibility of the use of a substitute method of service. The introduction of such a prerequisite would be new and alien to the proposal. The courts of the Member State of origin have to scrutinise compliance with the rules on the service of documents in the main proceedings anyway. Repeating the requirement of compliance with the law of the Member State of origin in thecontext of the certification would entail a duplication of work for the courts of the Member State of origin; - incorporating a new provision according to which every reference to a court hearing in the proposal shall be understood as a reference to the other procedure held in lieu of such hearing with the intention of duly taking into account those procedures that do not include a hearing. Such a new Article is superfluous since the provisions referring to a court hearing simply become irrelevant and inapplicable if no hearing has taken place. In that event there is only a need for those procedural minimum standards that do not presuppose a hearing. It remains unclear what should replace the hearing as a point of reference and what purpose such a modified reference should serve in practice.