Civil judicial cooperation: European enforcement order for uncontested claims

2002/0090(COD) - 18/04/2002 - Legislative proposal

PURPOSE: to establish a European Enforcement Order (EEO) for uncontested claims. CONTENT: judicial co-operation in civil matters was transferred from the third pillar of the TEU to the first pillar following the ratification of the Treaty of Amsterdam. This transfer from the third to the first pillar allows the European Commission the right of initiative in all civil matters relating to judicial affairs with cross border implications. As part of the on-going work into judicial co-operation in civil matters the Community is seeking to develop measures which improve and simplify the enforcement of decisions in civil and commercial cases - this within the context of mutual recognition. In March 2002 Council Regulation 44/2001 on jurisdiction and the recognition of judgements in civil and commercial matters came into force. Its purpose being to streamline procedures for obtaining a declaration of enforceability (exequatur) and replaces the previously used 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters. In spite of the improvements brought about by the Regulation there are nevertheless a number of shortcomings in the existing legislative structure, notably that not all the obstacles to the unhindered movement of judgements within the European Union have been removed. Further, the current legislative landscape allows for the continuation of restrictive intermediate measures. Consequently joint Commission/Council working committees have concluded that the complete withdrawal of the exequatur - in the case of uncontested claims - should become a Community priority and be replaced by the European Enforcement Order. As a first step it has been decided to apply the abolition of exequatur in cases where judgements have not been challenged by a debtor. The Commission is therefore proposing a Council Regulation for a European Enforcement Order - in the case of uncontested pecuniary claims. The aim is to eliminate all checks on judgements handed down in one Member State as a prerequisite for enforcement in another Member State. In the area of uncontested claims the Commission seeks to present a proposal which: - Eliminates all intermediate measures for the enforcement of decision attained in the absence of any dispute by the debtor over the nature or extent of the debt. (At the same time the Commission is preparing a Green Paper examining the creation of uniform or harmonised procedures for a European order for payment). - Establishes minimum standards with regard to the service of documents covering the admissible methods of service, the time of service enabling the preparation of defence and the proper information of the debtor. - Control for the compliance with the requirements of the proposal should be vested in the courts of the Member State where the judgement was given. - The creditor may decide to choose between either the EEO or for a declaration of enforceability under Council Regulation 44/2001.