



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

2009/2140(INI)

15.06.2010

NEW COMPROMISE AMENDMENTS A - I

Draft report
Tadeusz Zwiefka
(PE439.997v01-00)

on the implementation and review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
(2009/2140(INI))

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PE441.266v01-00

EN

United in diversity

EN

Compromise amendment A
Tadeusz ZWIEFKA

Motion for a resolution
Recital F

Motion for a resolution

F. whereas abolition of exequatur **will necessitate the introduction of a special review** procedure so as to guarantee judgment debtors an adequate right of recourse to the courts of the State of enforcement in the event that **they wish** to contest enforcement; whereas it will be necessary to ensure that steps taken for enforcement before the expiry of the time-limit for applying for review are not irreversible,

Amendment

F. whereas abolition of exequatur **should be effected by providing that a judicial decision qualifying for recognition and enforcement under the Regulation which is enforceable in the Member State in which it was given is enforceable throughout the EU, this should be coupled with an exceptional procedure available to the party against whom enforcement is sought** so as to guarantee an adequate right of recourse to the courts of the State of enforcement in the event that **that party wishes** to contest enforcement **on the grounds set out in the Regulation**, whereas it will be necessary to ensure that steps taken for enforcement before the expiry of the time-limit for applying for review are not irreversible,

Compromise amendment B
Tadeusz ZWIEFKA

Motion for a resolution
Recital L

Motion for a resolution

L. whereas, as regards rights of the personality, **the media complain that the internet, in particular, and the readiness of the courts in certain Member States to accept jurisdiction, creates problems for the media because of the ruling in Shevill**; whereas this problem will be considered

Amendment

L. whereas, as regards rights of the personality, **there is a need to restrict the possibility for forum shopping by emphasising that, in principle, courts should accept jurisdiction only where a sufficient, substantial or significant link exists with the country in which the action**

specifically in a legislative initiative on the Rome II Regulation; whereas, nevertheless, some guidance may be given to national courts in the amended regulation,

is brought, since this would help strike a better balance between the interests at stake, in particular, between the right to freedom of expression and the rights to reputation and private life; whereas the problem of the applicable law will be considered specifically in a legislative initiative on the Rome II Regulation; whereas, nevertheless, some guidance should be given to national courts in the amended regulation,

Or. en

Compromise amendment **C**
Tadeusz ZWIEFKA

Motion for a resolution
Paragraph 1

Motion for a resolution

Amendment

1. Calls for the requirement for exequatur to be abolished, but considers that this must be balanced by **stringent** safeguards designed to protect the rights of the **judgment debtor**; takes the view that provision **will have to** be made for **a special review procedure conducted a posteriori on the judgment debtor's application**;

1. Calls for the requirement for exequatur to be abolished, but considers that this must be balanced by **appropriate** safeguards designed to protect the rights of the **party against whom enforcement is sought**; takes the view **therefore** that provision **must** be made for **an exceptional procedure available in the Member State in which enforcement is sought; considers that this procedure should be available on the application of the party against whom enforcement is sought to the court indicated in the list in Annex III to the Regulation; takes the view that the grounds for an application under this exceptional procedure should be the following: (a) that recognition is manifestly contrary to public policy in the Member State in which recognition is sought; (b) where the judgment was given in default of appearance, that**

the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so; (c) that the judgment is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought; and (d) that the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; further considers that an application should be able to be made to a judge even before any steps are taken by way of enforcement and that if that judge rules that the application is based on serious grounds, he or she should refer the matter to the court indicated in the list in Annex III for examination on the basis of the grounds set out above; advocates the addition of a recital in the preamble to the effect that a national court may penalise a vexatious or unreasonable application, inter alia, in the order for costs;

Or. en

Compromise amendment **D**
Tadeusz ZWIEFKA

Motion for a resolution
Paragraph 4

Motion for a resolution

4. Argues not only that *the* requirement for a certificate of authenticity *must* be maintained, *but also that* there should be a standard form for that certificate;

Amendment

4. Argues not only that *there must be a* requirement for a certificate of authenticity *as a procedural aid so as to guarantee recognition, but also that* there should be a standard form for that certificate; *to this end, the certificate provided for in Annex V should be refined, while obviating as far as possible any need for translation;*

Or. en

Compromise amendment **E**
Tadeusz ZWIEFKA

Motion for a resolution
Paragraph 6

Motion for a resolution

6. Considers that authentic instruments should not be directly enforceable without the possibility of review by the judicial authorities in the State in which enforcement is sought; takes the view that the *special review* procedure to be introduced should not be limited to cases where enforcement of the instrument is manifestly contrary to public policy in the State addressed since it is possible to conceive of circumstances in which an authentic act could be irreconcilable with an earlier judgment and the validity (as opposed to the authenticity) of an authentic act can be challenged in the courts of the State of origin on grounds of mistake, misrepresentation, etc. even during the course of enforcement;

Amendment

6. Considers that authentic instruments should not be directly enforceable without *any* possibility of *challenging them before* the judicial authorities in the State in which enforcement is sought; takes the view *therefore* that the *exceptional* procedure to be introduced should not be limited to cases where enforcement of the instrument is manifestly contrary to public policy in the State addressed since it is possible to conceive of circumstances in which an authentic act could be irreconcilable with an earlier judgment and the validity (as opposed to the authenticity) of an authentic act can be challenged in the courts of the State of origin on grounds of mistake, misrepresentation, etc. even during the course of enforcement; *considers that the Commission should actively consider*

extending the treatment afforded to authentic acts to instruments having equivalent legal effects under their respective national law;

Or. en

Compromise amendment **F**
Tadeusz ZWIEFKA

Motion for a resolution
Paragraphe 13

Motion for a resolution

13. Considers that the question whether the rules of the Regulation should be given reflexive effect has not been sufficiently considered and that it would be premature to take this step without much study, wide-ranging consultations and political debate, in which Parliament should play a leading role; further considers that, in view of the existence of large numbers of bilateral agreements between Member States and third countries, questions of reciprocity and international comity, the problem is a global one and a solution should be sought in the Hague Conference through the resumption of negotiations on an international judgments convention; mandates the Commission to use its best endeavours to revive this project, the Holy Grail of private international law;

Amendment

13. Considers, *on the one hand*, that the question whether the rules of the Regulation should be given reflexive effect has not been sufficiently considered and that it would be premature to take this step without much study, wide-ranging consultations and political debate, in which Parliament should play a leading role, *and encourages the Commission to initiate this process*; considers, *on the other hand*, that, in view of the existence of large numbers of bilateral agreements between Member States and third countries, questions of reciprocity and international comity, the problem is a global one and a solution should *also* be sought *in parallel* in the Hague Conference through the resumption of negotiations on an international judgments convention; mandates the Commission to use its best endeavours to revive this project, the Holy Grail of private international law; *urges the Commission to explore the extent to which the 2007 Lugano Convention¹ could serve as a model and inspiration for such an international judgments*

¹ OJ L 147, 10.6.2009, p. 5.

convention;

Or. en

Compromise amendment **G**
Tadeusz ZWIEFKA

Motion for a resolution
Paragraphe 19 b (new)

Motion for a resolution

Amendment

19b. Considers that the terminological inconsistencies between Regulation No 593/2008 (“Rome I”) and Regulation No 44/2001 should be eliminated by including in Article 15(1) of the Brussels I Regulation the definition of "professional" incorporated in Article 6(1) of the Rome I Regulation and by replacing the expression "contract which, for an inclusive price, provides for a combination of travel and accommodation" in Article 15(3) of the Brussels I Regulation by a reference to the Package Travel Directive 90/314/EEC¹ as in Article 6(4)(b) of the Rome I Regulation;

Or. en

Or. en

Compromise amendment **H**
Tadeusz ZWIEFKA

Motion for a resolution
Paragraphe 19 d (new)

¹ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p. 59.

Motion for a resolution

Amendment

Jurisdiction over individual contracts of employment

19d. Calls on the Commission to consider, having regard to the case law of the Court of Justice, whether a solution affording greater legal certainty and suitable protection for the more vulnerable party might not be found for employees who do not carry out their work in a single Member State (e.g. long distance lorry drivers, flight attendants);

Or. en

Or. en

Compromise amendment I
Tadeusz ZWIEFKA

Motion for a resolution
Paragraph 21 a (new)

Motion for a resolution

Amendment

21a. Stresses that the Commissions' forthcoming work on collective redress instruments may need to contemplate special jurisdiction rules for collective actions;

Or. en