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THE EUROPEAN UNION**

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**NOTE**

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Subject : Summary of the meeting of the **Committee on Legal Affairs (JURI)**  
Brussels, 19-20 January 2009

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Mr SPERONI (UEN, IT) and Mrs Geringer de OEDENBERG (PSE, PL)  
GARGANI (EPP-ED, IT) chaired the meeting.

**1. HEARING WITH A VIEW TO THE FORTHCOMING REVIEW OF COUNCIL  
REGULATION (EC) N° 44/2001 OF 22 DECEMBER 2000 ON JURISDICTION AND THE  
RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND  
COMMERCIAL MATTERS**

Professor Horatia MUIR WATT made a general presentation of the issues which arose from the recent controversial case-law of the European Court of Justice (ECJ) in *Gasser*, *Turner*, *Owusu* and *West Tankers*.

Professor Muir Watt considered that the basic Brussels model, created by the initial Six Member States, along lines familiar to themselves, has encountered difficulties in accommodating a different conception of adjudication (specifically the common law model).

Mr LAYTON (QC) explained the Gasser and Turner cases. According to Mr LAYTON in both cases the ECJ based its rulings on the principle of mutual trust, principle that should be extended by the community legislator to litigants, who should not act in a way which is abusive to the proper functioning of the courts.

Professor SIMON illustrated the exclusion of arbitration from the scope of the Brussels I Regulation.

M. KOHLER, from the ECJ, said that criticism is based on what is defined as a 'blind application' of the rule contained in the Brussels I regulation. According to M. Kohler, such mechanical application of a procedural rule is a result of a cultural divide between continental judges, who apply procedural rules literally, as written, and common law judges, who are actually making law through precedents.

## **2. Reporting and documentation requirements in the case of merger and divisions**

The Report is due for 12 February 2009.

## **3. Equal treatment between men and women engaged in an activity in a self-employed capacity**

Mrs GERINGER DE OEDENBERG (PSE, PL), announced that the vote on the draft report will take place on 30 March 2009.

## **4. Cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters**

M MEDINA ORTEGA (PSE, ES), Rapporteur, considered that the Regulation should not be amended. Member States should rather make efforts to disseminate properly the Regulation as it is.

## **5. Term of protection of copyright and related rights**

M CROWLEY (UEN, IE) considered that the proposal was ready to be voted on. In order to meet the requests of some Members, he would accept an impact assessment concerning audio visual and collection societies.

Amongst the Parliamentarians who took the floor, a group of them considered that the complexity of the subject matter required more time for an in depth examination (Mrs LICHTENBERGER, Verts - AT, Mrs BOWLES, ALDE-UK, M MEDINA). Others insisted on the limited scope of the amendment, and insisted on a prompt approval, in order to avoid the draft becoming overloaded (M. TOUBON, PPE - FR, LEVAI, PSE - HU).

#### **6. Effective enforcement of judgments in the EU: the transparency of debtors' assets**

Mrs Gill (PSE, UK) criticised in her report some of the instruments the Commission proposed to address a significant problem, in particular for small companies, when it comes to enforcing their credit rights. Mrs WALLIS (ALDE, UK) didn't share some of the criticisms. According to Mrs Wallis a Manual of national enforcing laws and practices could be of some help, especially for small undertakings faced to recover a cross border credit. Access to fiscal registers could also be helpful, as the alternative may only be to hire a private investigator. M TOUBON wondered whether the proposal has been put forward on the right legal basis. He considered that, in any event, a European declaration of assets made for the purpose of recovering a debt may be in contradiction with national laws. The rights of taxpayers to privacy have to be protected, also considering that not all Member States consider a lack of payment as a criminal offence.

#### **7. Application of Directive 2004/38/EC on the right of EU citizens and their family members to move and reside freely within the territory of the Member States**

Mrs FRASSONI (Verts, IT) pointed out that in November 2007 the JURI Committee had requested a specific study from the Commission on the application of the Directive. The Commission will only hand in its study on the 27 January 2009. Anticipating the content of such a study, Mrs Frassoni emphasised the following :

- the Commission concentrated on transposition, rather than on application of the Directive;
- monitoring of the transposition was not consistent in all Member States;
- many provisions have been adopted at local level, but not at national level.

## **8. Patients' rights in cross-border healthcare**

Mrs WALLIS explained that the proposed Directive builds upon the legal certainty produced by the judgments of the court of Justice. She pointed out some unclear provisions concerning the applicable law. She proposed to include in the draft Directive a recital on damages taken from the Rome II Regulation.

M MEDINA expressed some doubts over the legal basis.

## **9. Exchange of views with Jiří Pospíšil, Czech Minister of Justice, on the priorities of the Czech Presidency**

M. POSPISIL pronounced the speech attached in the annex.

M LEHNE recalled the approval by the JURI Committee, earlier that day, of the report concerning a regulation on the European Private Company Statute. M Lehne assured his support to the Presidency for the adoption of this instrument, which needed unanimity within the Council. M Lehne also asked about the position of the Czech Presidency on Rome III (concerning applicable law in matrimonial matters) and the European Common Frame project. M MEDINA asked whether the Authentic act initiative was a priority for the Czech Presidency. Mrs Wallis inquired about the late payment directive proposal. M ZVERINA (PPE, CZ) rose the question of multilingualism.

M. POSPISIL said that Rome III had been discussed the previous week in Prague during the informal meeting of the Justice Ministers. No consensus could be reached. A proposal for enhanced cooperation is waited from the Commission. He thanked M Medina for the work done on the authentic act file, and assured that priority would be given to the file, once the Commission submits its proposal. He recalled that e Justice, for which Mrs Wallis was the draft person, would be one of the priorities of the Presidency. He then stressed the factual importance of multilingualism for individuals in the EU: the Czech Presidency would take the necessary steps to make available in their own languages all information provided, in particular, through the e justice web site.

**10. Date of next meeting**

- 11–12 February 2009

Dear Mr. President, honourable Members of the European Parliament, Ladies and Gentlemen.

It is an immense honour for me that I can address you today as the Minister of Justice of the country holding the Presidency and present its priorities in the sphere of justice for the next six months. Although this is not the first time we see each other, and certainly not the last, I consider this event to pose an excellent opportunity for debating agendas and tasks on which we will work together, striving for the best possible legislation that will, I believe, in effect improve the lives of all European citizens and make them easier.

I am very well aware of the integral role of the European Parliament among other European institutions and – as far as the justice agenda is concerned – especially of the role of the Legal Affairs and Civil Liberties, Justice and Home Affairs Committees. The active involvement of the Committee on Legal Affairs and your precious observations and amendments are essential for achieving optimum solutions in our often very complicated agendas. Therefore, as I dare hope, our cooperation in the next 6 months will be close and fruitful.

Allow me to briefly introduce the Czech Presidency's agenda in the sphere of justice, which can be summarised in two basic theses: More efficient judicial proceedings and greater legal certainty for citizens. I will first mention the proposals concerning your Committee in particular.

The instruments prepared on the European level must undoubtedly contribute to building fast and efficient justice accessible for all European citizens. We believe that in a Europe without barriers, citizens' legal certainty must be enhanced, which means ensuring that their legal matters follow clear and predictable legal rules. Consequently, the Czech Republic greatly welcomes the opportunity to commence debates on the draft regulation on succession and wills which should simplify and speed up the settlement of estates in cross-border cases in the future. A Eurostat (European Statistical Office) survey of November 2008 shows that in 2006, 1.7 million EU citizens changed the country of their usual residence. One half of them were under 34 years of age. Thanks to the mobility of European citizens cross-border social contacts are formed, which often lead to marriage. The movement of persons is related to the movement of their possessions and the consequences may include succession proceedings with an international aspect. So far the sphere of succession and wills has been regulated primarily by a national law; there is an absolute absence of any Community measure, and in the opinion of the Czech Presidency, this absence is felt very strongly. The main contribution of the new regulation should be the unification of jurisdiction rules and conflict-of-law rules determining the governing law, laying down mutual recognition of decisions and public deeds in inheritance matters and the introduction of the so-called European Certificate of Inheritance.

We are convinced that justice in Europe will be faster, more transparent and more accessible for citizens if advantage is taken of the opportunities afforded by e-Justice. We will give intensive support to the greater use of modern technologies throughout the European judicial system. In particular, I can mention for example our efforts supporting the greater use of videoconferences in cross-border court proceedings, and the availability of the maximum amount of information concerning justice on the European justice portal. As we understand that the initial investment into the acquisition of modern technologies is significant, we would also like to support greater opportunities to take advantage of Community programmes to finance this area. A summary of responses to the questionnaire sent out within the working group for e-Justice has shown that most Member States already have the technical equipment required for videoconferences, and most technical difficulties hindering its common use in cross-border cases in the European judicial area can be overcome relatively easily. I am convinced that videoconferences present a useful tool which can contribute to speed up cross-border proceedings and to reduce their costs both in civil and court proceedings. They can be used for more sensitive examinations of witnesses and experts, they can also be used in remote interpretation. After all, e-Justice as a whole has a positive impact on the final reduction of costs and overall efficiency of justice in the long term.

In this connection, the Czech Presidency very much appreciates the active approach of the European Parliament, and especially of the Committee on Legal Affairs, which has been concerned with the issues of e-Justice on a sustained basis. I would especially like to thank Member of Parliament Diana Wallis for her activities in the sphere of e-Justice.

In short, the Czech Republic's Presidency should contribute to European citizens being able to know in advance where they may sue or where they might be sued, and under what rules, whether in a civil or criminal matter. At the same time, such information should be available to them quickly and clearly, and any cross-border proceedings should be burdensome as little as possible.

In the next few days, debates will be launched on two parallel Commission proposals for creating mechanisms that would allow Member States to enter, in specific cases, into independent contractual relations with third countries in spite of the area being within the exclusive powers of the Community. For a number of Member States, this is a very much needed initiative given that they have traditionally cooperated with other countries on the basis of bilateral agreements. This should also resolve those burning cases when a Member State already has the text of a bilateral agreement agreed with a third country but cannot sign it or ratify it due to the lack of powers.

Naturally, we will continue to work hard on the future Common Frame of Reference for European Contract Law which will, as we hope, contribute to the cohesion in the future and to the good quality of EC legislation concerning contract law.

The Czech Republic is also planning to build on the excellent work of its French colleagues and to carry on, during the Czech Presidency, in discussions about the proposed regulation on a European Private Company. In doing so, we want to strive for the adoption of an EPC statute by the end of our Presidency. The Czech Presidency is convinced, as well as are the honourable colleagues from the Committee, that this legal form of a European company would enhance the competitiveness of small and medium European enterprises and would facilitate their establishment and operation in the internal market. The proposed uniform legal regulation should ensure a reduction in the costs related with the establishment of a company and set up common rules that preserve extensive contractual freedom for the founders. Consequently, we hope to achieve a balanced compromise soon.

Regarding both, the issue of the Common Frame of Reference and the European Private company, I believe in close cooperation with our distinguished colleague Klaus-Heiner Lehne, the rapporteur for these dossiers; our most recent and welcomed opportunity to meet and discuss was not long ago, during the visit of the Committee on Legal Affairs in Prague.

In terms of company law, we also support initiatives directed at reducing the administrative and financial burdens for companies. This support pertains primarily to proposals striving to modernise and simplify selected directives in the sphere of company law and accounting. Consequently, we hope that we will manage to reach agreement with the Parliament as soon as possible on the proposed 1st and 11th Directives concerning the undertakings of certain forms of companies with respect to publication and translation and that we will successfully carry on in the recently commenced discussions about the proposal for simplifying directives concerning company mergers and divisions.

Seven years after the taking effect of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, referred to as Brussels I, a report by the European Commission is expected this spring about its use and operation to-date. The Czech Republic welcomes the opportunity as an excellent occasion for evaluating the functioning to-date of this important legal instrument and for a debate on any suggestions as to its possible improvement.

And finally, in January and February 2009, the Czech Presidency will strive to reach consensus between the Council and the European Parliament with respect to the text of the amended Directive on Criminal Sanctions for Ship-Source Pollution.

Further legislative as well as non-legislative work is planned in the sphere of criminal justice, which, however, falls mostly outside of your Committee's scope of work. I do not want to burden you with an extensive list of other agendas planned. I am convinced that what I have already said will suffice for you to get the idea that the plan of the Czech Presidency is, as I see it, ambitious but, I trust, entirely realistic.

Nevertheless, let me briefly mention two agendas closely related to justice, which do, however, fall under the Competitiveness Council and in the Czech Republic, therefore, other ministries bear primary responsibility for them. These include the creation of a Community patent and the project of a single patent court for European and Community patents. The Czech Presidency is aware of the importance of improvements in the patent system for European industry and will strive to make progress in debates on this project, as many issues remain open. We will also strive to ensure that the European Court of Justice is approached with a request for its opinion as to the compatibility of the draft agreement on patent judiciary with primary law. The European Parliament will be duly consulted and its opinions expressed in its 2006 and 2007 resolutions will be duly taken into account.

The second agenda is the proposed European Parliament and Council Directive amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and certain related rights. Here, too, there are still many problem issues and the positions of individual Member States differ. The aim of the Czech Presidency will be to find a balanced solution that would bring a real improvement in the social situation of performing artists which would be acceptable for most Member States and would not entail an undue increase in the administrative burden on the participants of the system of collection and disbursement of additional remuneration.

I would like to assure you that we did not underestimate our preparations for our Presidency. This is the very first Presidency for the Czech Republic and we will work on our tasks with maximum commitment. We do not assume that the next six months will be easy; we do, however, hope that the greater will be the satisfaction obtained from looking back at our common work in July 2009. In order that there may be a reason for satisfaction for all European Union Member States and, above all, all of its citizens, it will be necessary for us to be able to, together with you, the European Parliament, find a common language in decisive moments. I trust that finding ways to facilitate such cooperation will not be difficult, as I firmly believe that we are pursuing the same interest, the same goal.

Ladies and Gentlemen, allow me to thank you for your attention and express my thanks for having been given the opportunity to present the agenda of the Czech Presidency. I look forward to our future cooperation.

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