

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters'

(2002/C 36/16)

On 13 June 2001, the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 October 2001. The rapporteur was Mr Ataíde Ferreira.

At its 385th plenary session (meeting of 17 October 2001), the Economic and Social Committee adopted the following opinion by 92 votes to one with four abstentions.

1. Background to the proposed regulation aimed at facilitating progress towards a European judicial area in civil matters

1.1. Legal basis

1.1.1. One of the key objectives which the Maastricht Treaty set the Union was to maintain and develop an area of freedom, security and justice; the Amsterdam Treaty, with this objective in mind, gave the Council the task of adopting measures on judicial cooperation in civil matters under the terms set out in Articles 65 and 67 (Article 61 of the consolidated Treaty).

1.1.2. The Council and Commission have issued a number of documents and declarations clarifying the sphere and scope of this objective and the measures to implement it. The most important of these were the December 1998 Action Plan on the best way to implement the Amsterdam Treaty provisions in this area (the Vienna Action Plan), the conclusions of the October 1999 Tampere European Council and the successive scoreboards assessing the progress in bringing about an area of freedom, security and justice, the latest scoreboard being dated May 2001 (COM(2001) 278 final).

1.1.3. As the Commission correctly points out in the explanatory memorandum preceding its proposal for a regulation, the overriding aims of these measures are 'to create a European judicial area in civil matters, where citizens have a common sense of justice throughout the Union and where justice is seen as facilitating the day-to-day life of people', to provide 'legal certainty (...) to individuals and business', and to achieve 'better compatibility and more convergence between the legal systems'.

1.2. Aims of the regulation

1.2.1. The present proposal for a regulation is designed to establish the legal basis for financing activities in the policy

area of judicial cooperation in civil matters for the period 2002-2006. Its objectives are:

- a) to promote judicial cooperation;
- b) to improve mutual knowledge of legal and judicial systems between the Member States;
- c) to ensure the sound implementation and application of Community instruments in this area; and
- d) to improve public access and information on moves towards establishing an area of freedom and certainty, particularly as regards access to justice, judicial cooperation and the legal systems of the Member States.

1.2.2. Activities deemed to be eligible for funding under the regulation are:

- a) Commission actions aimed specifically at ensuring the implementation and monitoring of Community instruments for judicial cooperation in civil matters through manuals, databases, publications and studies;
- b) subsidies for the running costs of non-governmental, non-profit organisations;
- c) subsidies for co-financing specific projects with other sources in the public and/or private sector.

1.3. The legal framework which warrants this regulation

1.3.1. With the above-mentioned legal basis, the proposal for a regulation aims to establish the conditions for effective implementation of a series of measures which have recently been or are about to be adopted on either the Commission's or the Council's initiative, as part of the new tasks and responsibilities in judicial cooperation in civil matters, assigned to the European Union under the Amsterdam Treaty.

1.3.2. Of the legislative instruments already adopted in the areas of civil law and civil procedure, all with the express support of the ESC, the main ones are:

- a) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings ⁽¹⁾;
- b) Council Regulation (EC) No 1347/2000 of the same date on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses ⁽²⁾;
- c) Council Regulation (EC) 1348/2000 of the same date on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters ⁽³⁾;
- d) Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters ⁽⁴⁾;
- e) Council Regulation (EC) 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters ⁽⁵⁾;
- f) Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters ⁽⁶⁾.

1.3.3. The following are currently being adopted:

- a) Proposal for a Regulation on the mutual enforcement of judgments on rights of access to children ⁽⁷⁾;

- b) Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters ⁽⁸⁾.

1.3.4. However, various other areas of civil law and civil procedure are being opened up to much-needed standardisation with a view to ever greater cooperation in judicial matters; some of the main ones are mentioned in the Commission Communication to the Council of 23 May 2001 ⁽⁹⁾ and — although not referred to in that communication — another no less important area concerns procedures for overindebtedness and insolvency cases involving individuals and families. This is a subject which the Committee started to look at some time ago ⁽¹⁰⁾, and the Consumer Affairs Council meeting in Luxembourg on 13 April 2000 also made a point of stressing the importance of adopting a Community-wide approach to this issue.

1.3.5. Also important here is the Communication from the Commission to the Council and the European Parliament on 'European Contract Law' ⁽¹¹⁾.

1.3.6. The importance of establishing a European judicial area, in terms of its civil and commercial aspects, has taken on particular importance following the tragic events in the USA, aimed at crime and terrorism prevention.

2. General comments

2.1. The above demonstrates that there is a clear need to establish a basis for planning and securing the means necessary to ensure that legislative initiatives in this sphere are formalised in a lasting, stable fashion, in such a way that they are properly established and implemented and that all parties concerned are aware of their existence.

2.2. Against this background, the ESC welcomes the proposed regulation, as it aims to respond to these needs on a solid, structured, well-planned and lasting basis, unlike previous isolated ad hoc initiatives such as those under the Grotius Programme or the Grotius-Civil Law Programme.

2.3. Moreover, the Committee feels that — as the Commission correctly points out — the regulation's objectives

⁽¹⁾ OJ L 160 of 30.6.2000; the ESC adopted its opinion on this Regulation on 26.1.2000 (CES 79/2000). The rapporteur was Mr Ravoet.

⁽²⁾ Idem; the ESC adopted its opinion on this Regulation on 20.10.1999 (CES 940/1999). The rapporteur was Mr Braghin.

⁽³⁾ Idem; the ESC adopted its opinion on this Regulation on 21.10.1999 (CES 947/1999). The rapporteur was Mr Hernández-Bataller.

⁽⁴⁾ OJ L 12 of 16.1.2001; the ESC adopted its opinion on this Regulation on 1.3.2000 (CES 233/2000). The rapporteur was Mr Malosse.

⁽⁵⁾ OJ L 174 of 27.6.2001; the ESC adopted its opinion on 28.2.2001. The rapporteur was Mr Hernández Bataller (opinion CES 228/2001).

⁽⁶⁾ OJ L 174 of 27.6.2001; the ESC adopted its opinion on 28.2.2001. The rapporteur was Mr Retureau (Opinion CES 227/2001).

⁽⁷⁾ OJ C 234 of 15.8.2000; the ESC adopted its opinion on 19.10.2000 (CES 1190/2000). The rapporteur was Mr Retureau.

⁽⁸⁾ OJ C 12 of 15.1.2001.

⁽⁹⁾ COM(2001) 278 final.

⁽¹⁰⁾ c.f. Information Report CES 212/2000 for which the rapporteur was Mr Manuel Ataíde Ferreira.

⁽¹¹⁾ COM(2001) 398 final of 11.7.2001.

cannot be achieved by Member States and can be best achieved at European level, thus complying with the principles of subsidiarity and proportionality.

2.4. The above-mentioned Communication dated May of this year could be criticised for not stressing more strongly the need to standardise the legal institutions which are important for the single market and the free movement of persons. For example there is a need to push ahead with steps to adapt the Geneva Conventions of 1930/31 (bills, promissory notes and cheques) more closely to the Community judicial area, whose sphere of application will necessarily be enlarged.

3. Specific comments

3.1. Conditions for supporting NGOs (Article 5)

3.1.1. Paragraph 2 of this article raises specific difficulties in that the required involvement of at least two-thirds of all EU Member States necessitates the involvement of a disproportionate number of all the Member States. Member States have to be involved; even if the text were to be corrected to take this into account by stipulating the involvement of 'at least two-thirds of the participating Member States', the two-thirds required (i.e. eight Member States) would still represent a high number. The ESC proposes requiring the involvement of 'at least one-half of the participating Member States'.

3.1.2. Paragraph 3 of this article is also likely to over-restrict the sphere of application of this article, with a detrimental impact which the Commission would certainly not wish for in terms of the transparency of procedures and the bodies it would wish to be involved. The Committee therefore recommends the following alternative wording:

'they must have as an objective to promote the development of a judicial area in civil matters'.

3.2. Submission of specific projects [Article 6(3)]

Under the proposed regulation:

'Projects may be submitted by institutions and public or private organisations, including professional organisations, research institutes and legal and judicial training/further training institutes for legal practitioners.'

It seems that universities would be excluded from the above and that only legal professionals could benefit from training programmes. The wording of Article 6(3) also runs counter to the definition of the target public set out in point 9.1.4 of the Financial Statement.

The Committee suggests that this paragraph reiterate the definition of the target public set out in point 9.1.4 of the Financial Statement.

It still has to be made clear that social economy organisations must be able to take part in the programme.

3.3. Minimum number of participating countries [Article 6(4)]

The requirement that at least three countries participate is likely to place unwanted limitations on the submission of projects. The Committee therefore recommends that this number be brought down to two, and that the level of funding vary in line with the number of states participating in the project being proposed.

3.4. Level of Community financing [Article 7(3)]

Unlike the Grotius Programme which set an 80 % ceiling on Community contributions to costs, the proposed regulation sets this limit in principle at 50 % and does not stipulate any criteria for cases warranting an exception to this rule. The ESC feels that this ceiling is too low. If the ceiling is to remain unchanged, criteria should be drawn up to define those cases where this percentage may be exceeded. This is necessary in order to ensure transparent procedures and prevent any arbitrary decisions.

3.5. Evaluation and selection criteria [Article 8(3)]

Alongside the criteria set out in Article 8(3), the ESC deems it appropriate to add the criterion that proposals should be in line with the priorities referred to in Article 8(1).

3.6. Implementation and evaluation reports (Article 14)

As occurs in other similar cases, the ESC suggests that it be stipulated that these reports be sent to it for information.

3.7. Assessment of budgetary appropriations

3.7.1. Given the sphere and scope of the proposed initiatives, the ESC fears that the overall allocation of EUR 15 million is seriously inadequate.

3.7.2. The ESC would query the distribution of the budget between the proposed activities and in particular the fact that two thirds of the overall amount (EUR 10 million) is to be allocated to the Commission's own activities (activities 1 to 3 in the table setting out commitment appropriations under point 7.2 of the Financial Statement).

3.7.3. Since there is no guarantee that certain appropriations, particularly those earmarked for the Commission's own activities, will not run out in the course of the period under consideration, the ESC fears that other appropriations might be affected.

3.7.4. The ESC would thus propose that the regulation set a minimum percentage — 40 % — for appropriations to be earmarked for other activities not directly launched by the Commission.

4. Conclusions

4.1. The establishment of a civil and commercial judicial area must be one of the great ambitions of the European Union, taking particular account of recent tragic events which

demonstrate the need for a single European judicial area for crime and terrorism prevention.

4.2. The ESC endorses the Proposal for a Council Regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters, with the proviso set out above, i.e.:

- a) the appropriations allocated to the programme should be increased so that steps to create a European judicial area can be truly effective, since over and above the subjects referred to in the Communication there are other issues deserving equally — if not more — urgent consideration (see 1.3.4 and 2.4 above);
- b) the conditions establishing the eligibility of bodies to participate in the programme and its funding should be re-examined particularly as regards:
 - a reduction in the minimum number of participating Member States (see 3.1.1 above);
 - the minimum number of participating countries (see 3.3 above);
 - the level of Community financing (see 3.4 above);
 - the minimum percentage to be earmarked for activities not launched by the Commission (see 3.7.4 above).

Brussels, 17 October 2001.

*The President
of the Economic and Social Committee*
Göke FRERICH