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25. Highlights the work of the JPA Committee on Social Affairs and the Environment with regard to its report on child labour and its intention to organise analysis and debate in relation to the environment and the social situation in ACP countries;
26. Welcomes, further, the reports and resolutions on climate change adopted in 2009 which enabled the voice of the JPA to be heard at the Copenhagen Summit;
27. Welcomes the growing involvement of non-state actors in JPA sessions, as illustrated by the debate resulting in the adoption of the abovementioned Port Moresby Declaration on the current international crisis and by the economic partners' report on EPAs submitted at the JPA session in Ljubljana;
28. Instructs its President to forward this resolution to the Council, the Commission, the ACP Council, the JPA Bureau and the governments and parliaments of the Czech Republic and Angola.

Civil, commercial, family and private international law aspects of the action plan implementing the Stockholm Programme

P7_TA(2010)0426

European Parliament resolution of 23 November 2010 on civil law, commercial law, family law and private international law aspects of the Action Plan Implementing the Stockholm Programme (2010/2080(INI))

(2012/C 99 E/04)

The European Parliament,

- having regard to Articles 67 and 81 of the Treaty on the Functioning of the European Union,
- having regard to the Communication from the Commission of 10 June 2009 entitled 'An area of freedom, security and justice serving the citizen' (COM(2009)0262), which outlines its priorities in the area of freedom, security and justice (AFSJ) for 2010-2014, together with its evaluation of the Hague Programme and Action Plan (COM(2009)0263) and the associated implementation scoreboard (SEC(2009)0765), as well as to the contributions made by national parliaments, civil society and EU agencies and bodies,
- having regard to the Council Presidency's document of 2 December 2009 entitled 'The Stockholm Programme – An open and secure Europe serving the citizen' (17024/09),
- having regard to its resolution of 25 November 2009 on the Stockholm Programme ⁽¹⁾,
- having regard to the Commission's Communication of 20 April 2010 on an Action Plan Implementing the Stockholm Programme (COM(2010)0171),
- having regard to its resolution of 17 June 2010 on Judicial Training – Stockholm Action Plan ⁽²⁾,

⁽¹⁾ OJ C 285 E, 21.10.2010, p. 12.

⁽²⁾ Texts Adopted, P7_TA(2010)0242.

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- having regard to Rule 48 of its Rules of Procedure,

- having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on International Trade, the Committee on the Internal Market and Consumer Protection (A7-0252/2010),

- A. whereas AFSJ is a shared competence between the Union and the Member States,

- B. whereas Article 67 TFEU emphasises respect for the different legal systems and traditions and access to justice, which is to be facilitated, in particular through the principle of mutual recognition; whereas this requires mutual trust and, in turn, mutual trust requires a reinforced understanding of the different legal traditions and methods,

- C. whereas, since the Union first obtained competence for justice and home affairs and the subsequent creation of the AFSJ, huge progress has been made in the area of civil justice, building and enlarging on the various private international law conventions concluded intergovernmentally; whereas the Commission is now proposing a very ambitious plan, which responds to a substantial number of the demands that Parliament has made in the recent period,

- D. whereas in the light of this ambitious plan and the huge achievements already made by the EU in this field, it is time to stand back and reflect on what we are doing in the field of civil law with a view primarily to adopting a more strategic and less fragmented approach based on the real needs of citizens and businesses when exercising their rights and freedoms in the single market, and taking account of the difficulties of legislating in an area of shared competence where harmonisation is only infrequently an option and overlapping needs to be avoided, and where there is a consequent need to respect and accommodate radically different legal approaches and constitutional traditions, and also with a view to conceptualising the Union's approach to this area in order better to understand what we are seeking to accomplish and how best to tackle the problems that have to be confronted, as part of an overall plan; whereas it is essential to focus in the first place on ensuring the functionality of the measures that have already been put in place and consolidating the progress that has already been made,

- E. whereas, if we look back at what has been achieved in the AFSJ, there is first of all harmonisation of the rules of private international law, which has advanced apace; whereas private international law is the means *par excellence* of achieving mutual recognition of, and respect for, each others' legal systems, and whereas the existence of public policy clauses is the last-ditch protection of national constitutional requirements,

- F. whereas, next, there is harmonisation or approximation which lends itself to certain areas where standardisation is desirable, if not essential – e.g. in the area of consumer protection – but recourse to which is limited in the AFJS,

- G. whereas drafting a European Contract Law will be one of the most important initiatives for the AFSJ in the coming years and may result in a so-called optional 28th civil law regime as an alternative to the traditional way of harmonising legislation in specific areas,

- H. whereas, lastly, there are the stand-alone instruments and action in the area of procedural law; measures in these areas are the key in many ways to dealing with cross-border disputes, since no matter to what extent substantive law is harmonised, citizens and businesses tend to come up against barriers in the form of national procedural law,

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- I. whereas the co-existence of different legal systems within the Union should be seen as a strength which has served as an inspiration for legal systems all over the world; however, divergences between legal systems should not constitute a barrier to the further development of European law; whereas the explicit and conceptual divergence between legal systems is not in itself problematic; whereas, however, it is necessary to address the adverse legal consequences for citizens arising from this divergence; whereas the concept of regulatory emulation, or a 'bottom up' approach to convergence, should be applied through the encouragement of economic and intellectual communication between different legal systems; whereas the ability to comprehend and manage the differences between our legal systems can only come from a European judicial culture which needs to be nurtured through the sharing of knowledge and communication, the study of comparative law and a radical shift in the way law is taught in the universities and judges participate in training and professional development, as explained in Parliament's resolution of 17 June 2010, including additional efforts to overcome linguistic barriers; whereas although this will take time, it is necessary to reflect on it and plan for it now,
 - J. whereas, in the meantime, greater dialogue and professional contact should be encouraged and promoted at European level in order to enable changes in teaching and programmes to be determined according to the needs of practitioners, their clients and the market as a whole; whereas the Commission's forthcoming communication on an Action Plan on European training for all legal professions should take account of the different teaching traditions and methods and also the different needs of practitioners operating in different geographical or practice areas, while fostering the exchange of best practices,
 - K. whereas it is vital not to leave practitioners out of account in building a European judicial culture; whereas although it is self-evident that Member States and national professional bodies maintain responsibility for determining the most appropriate training to address the needs of lawyers and their clients in each Member State in accordance with the principle of subsidiarity and that the national professional bodies are best placed to identify those needs because they are closer to the practitioners and the market in which they operate, those bodies have a vital role to play at European level; whereas it is essential to involve and draw upon existing structures, particularly the universities and professional organisations; whereas there is a need for a root-and-branch revision of judicial and practitioner training and university syllabuses; whereas it is essential to initiate serious reflection on how the Union may effectively assist this and encourage the competent national authorities to accept ownership of this project,
 - L. whereas this is the very stuff of Europe and the challenge of the AFSJ, and should not be seen as contradictory to the development and teaching of a real European legal culture,
 - M. whereas the determination in the Preamble to the Lisbon Treaty to 'lay the foundations of an ever closer union among the peoples of Europe' requires a narrowing of the real and perceived distance between the European Union, its law and its citizens,
 - N. whereas Union law must be at the service of citizens, notably in the areas of family law and civil status,
 - O. whereas the Commission must make sure that the Stockholm Action Plan truly reflects the needs of individual citizens and business, particularly small and medium-sized enterprises, for more Europe (in respect of mobility, employment rights, the needs of business, equal opportunities) while promoting legal certainty and access to rapid and efficient justice,
 - P. whereas in this context ever-increasing attention must be paid to simplifying the machinery of justice and the judicial system and securing clearer and more accessible procedures bearing in mind the need to save costs, particularly in the present economic climate,
 - Q. whereas the emphasis laid on party autonomy in recent EU initiatives on the sensitive issue of family law with transnational implications entails the risk, unless clear restrictions are applied, of opening the door to the unacceptable practice of forum shopping,
1. Congratulates the Commission on its proposed Action Plan;

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2. Considers nonetheless that the time is ripe for reflection on the future development of the AFSJ, and calls on the Commission to initiate a wide-ranging debate involving all interested parties, including in particular judges and practitioners;
3. Calls on the Commission to take stock as a matter of urgency, by means of an ex post impact assessment, of the measures which have already been adopted in the field of civil and family law, with a view to appraising their effectiveness and ascertaining to what extent they have proved successful in achieving their aims and satisfying the needs of citizens, business and practitioners; considers that at the same time a survey should be carried out covering in particular national Ministries of Justice, the legal professions, the business community and consumer organisations, in order to ascertain in what areas new measures in the field of judicial cooperation in civil matters are necessary and desirable;
4. Calls on the Commission to act on its resolution of 17 June 2010 on judicial training, while conferring with Parliament;
5. Underscores once again the need to use every possible means to nurture a European judicial culture, particularly through legal education and training;
6. Recommends that the 'Erasmus-style' exchange programmes proposed in the Action Plan should be just one of a series of initiatives fostering vertical and horizontal communication between national and European courts; draws attention to the fact that Parliament is to commission a study which will take stock of national training programmes and schools for the judiciary with a view also to identifying best practices in this sector;
7. Notes that existing national training institutions and networks, as the 'front line' of the implementation of Union law in the Member States and having as they do direct contact with national courts and judiciaries and a deep understanding of national legal cultures and needs, should be vehicles for the development of a common European judicial culture;
8. Considers that a start could be made by creating a regular forum where judges of all levels of seniority in areas of law where cross-border issues frequently arise, such as admiralty, commercial, family and personal injury cases, could hold discussions on a recent area or areas of legal controversy or difficulty, in order to encourage discussion, build contacts, create channels of communication and collaboration and build mutual confidence and understanding; believes that this could be assisted through the active participation of the universities and the participation of practitioners;
9. Considers that the Commission should support the ongoing effective dialogue and communication that take place between European legal professional bodies at the Council of Bars and Law Societies of Europe (CCBE); believes that this could be used as a basis from which to establish further cross-border training initiatives of professional bodies in partnership with other European stakeholders, such as the Academy of European Law (ERA);
10. Appreciates the Commission's generous funding of transnational legal training projects in the area of civil justice, but deplores the fact that the funding is very difficult to access and use effectively owing largely to the inflexibility of the current system; notes in addition the problems in recovering expenses incurred during co-financed training programmes and the fact that organising such programmes involves the professional organisation concerned in tying up large amounts of funds for a long period because of the requirements imposed by the Commission; calls therefore for a more flexible and innovative approach on the part of the Commission in order to enable organisations without large cash-flows to apply to operate training schemes;
11. Observes that the treatment of Union law as a discrete subject in legal and judicial education and training has a marginalising effect; therefore recommends that, in addition, legal educational and training syllabuses should incorporate Union law in every core area as a matter of course; considers that comparative law should become a key element of university syllabuses;

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12. Bearing in mind that education and training is primarily a Member State competence, calls on the Commission to initiate a dialogue with all those responsible for legal education with a view to achieving these aims; recommends also that in the longer term lawyers should be required to have a working knowledge of at least one other Union language; considers that this aim could be fostered immediately through greater funding and encouragement for students to undertake ERASMUS-style schemes as part of their legal studies;

13. Bearing in mind the Stockholm programme's ambitious goal of offering European training schemes to half of the judges, prosecutors, judicial staff and other professionals involved in European cooperation before 2014, and its call for the existing training institutions in particular to be used for this purpose, points out that the Network of the Presidents of the Supreme Judicial Courts, the European Network of the Councils for the Judiciary, the Association of the Councils of State and Supreme Administrative Jurisdictions and the Eurojustice network of European Prosecutors-General, court officers and legal practitioners have a huge amount to offer by coordinating and promoting professional training for the judiciary and mutual understanding of other Member States' legal systems and making it easier to resolve cross-border disputes and problems, and therefore considers that their activities must be facilitated and receive sufficient funding; further considers that this must lead to a fully funded plan for European judicial training drawn up in liaison with the abovementioned judicial networks, while avoiding unnecessary duplication of programmes and structures, and that it should culminate in the creation of a European Judicial Academy composed of the European Judicial Training Network and the Academy of European Law;

14. Considers that, especially at the stage of the drafting of Union legislation in the field of, in particular, civil and family law, room should be created for national and Union judges to have a say on the purely technical aspects of proposed measures in order to ensure that the future legislation may be implemented and applied with a minimum of difficulty by national judges; takes the view that this could also assist in creating further contacts between judges, thus opening up new channels of communication; positively welcomes input from national judiciaries in the course of legislative procedures;

15. Considers that the Commission should give priority to tackling the difficulties brought about by divergences in national procedural law (e.g. in limitation periods and the treatment of foreign law by the courts); suggests, in the light of the key importance of this aspect, that the date for the Commission's report on the functioning of the present EU regime on civil procedural law across borders should be brought forward from 2013 to the end of 2011; urges the Commission to respond to its resolution of 1 February 2007 ⁽¹⁾ by presenting a proposal for a common limitation period in cross-border disputes involving personal injuries and fatal accidents as a matter of urgency;

16. Welcomes the Green Paper of 1 July 2010 on policy options for progress towards a European Contract Law for consumers and businesses and supports the Commission's ambitious initiative towards a European contract law instrument that can be applied voluntarily by contracting parties (COM(2010)0348);

17. Emphasises the importance of cross-border justice in resolving cases of fraud and misleading business practices which originate in one Member State and target individuals, NGOs and SMEs in other Member States;

18. Draws attention to Parliament's resolution of 10 March 2009 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters ⁽²⁾ and urges the Commission to take action to improve cooperation between the Member States' courts for the purposes of taking evidence and enhancing the efficiency of Regulation (EC) No 1206/2001, in particular by ensuring that courts and practitioners are better informed about it and that they promote the extensive use of information technology and video-conferencing; considers that there should be a secure system for sending and receiving e-mails and that these matters should be taken up under the European e-Justice strategy;

⁽¹⁾ OJ C 250 E, 25.10.2007, p. 99.

⁽²⁾ OJ C 87 E, 1.4.2010, p. 21.

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19. Welcomes the fact that the Action Plan proposes a legislative initiative for a regulation on improving the efficiency of the enforcement of judgments concerning the transparency of debtors' assets and a similar regulation concerning the attachment of bank accounts; stresses, however, the complementary nature of both proposals, which should be brought forward as soon as possible;
20. Considers that such initiatives are of increasing importance in the context of the economic downturn;
21. Calls on the Commission to move forward with those initiatives as quickly as possible, focusing on the possibility of a self-standing European remedy to disclose and/or freeze assets in cross-border cases;
22. Stresses that this area has important financial and reputational consequences; this being the case, encourages a preventive recourse to alternative dispute resolution mechanisms;
23. Believes that the consolidation of legal arrangements by the means set out in this report should certainly lead to the development and strengthening of economic and professional relations, thus contributing to the creation of a real single market;
24. Calls on the Commission and the Member States to ensure the more uniform application of EU legislation (in its procedural aspects), with the focus on standardised rules and administrative procedures which should apply in areas of Union competence such as taxation, customs, trade and consumer protection, subject to the limits of the EU Treaties, with a view to the proper functioning of the single market and freedom of competition;
25. Points out that the Stockholm Programme seeks to create a European area of freedom, security and justice that will guarantee citizens' fundamental rights, including freedom of enterprise, so as to develop entrepreneurship in all economic sectors;
26. Strongly supports the Commission in its goal of enacting legislation that reduces business and transaction costs, particularly for SMEs;
27. Encourages joint initiatives by the Commission and the Member States to support SMEs operating across borders throughout the EU by cutting down red tape in order to achieve a tangible reduction in administrative, financial and regulatory burdens; welcomes the upcoming revision of the Late Payments Directive;
28. Underlines that the correct functioning of the single market supports the European Area of Freedom, Security and Justice and contributes to strengthening the European social market economy model; also acknowledges that the establishment of a European Area of Freedom, Security and Justice will strengthen the single market and, in particular, consumer protection;
29. Stresses that Article 12 of the Treaty on the Functioning of the European Union reaffirms – as a provision of general application – that consumer protection should be taken into account in defining and implementing other Union policies and activities; emphasises the importance of the proposed new Consumer Rights Directive, as well as of the upcoming modernisation of the directive on package travel, the Unfair Commercial Practices Directive and the directive concerning misleading and comparative advertising;
30. Calls on the Commission to ensure the removal of all barriers to the development of e-commerce most recently identified in the 2010 'Digital Agenda' by both legislative and non-legislative means; urges that a quick solution be found to cross-border trade problems for online consumer purchases, particularly with respect to payments and cross-border deliveries; stresses the need to increase the confidence of consumers and business in cross-border e-commerce, inter alia by stepping up the fight against cyber-crime and counterfeiting; calls for the development of an EU charter of consumers' rights in the area of online services and e-commerce;

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31. Reiterates its call upon the Commission to ensure that the European Parliament is kept immediately and fully informed of the advancement of ACTA at all stages of the negotiations in order to respect the letter and spirit of the Lisbon Treaty, as well as its request for further reassurance that ACTA will not modify the EU *acquis* on IPR enforcement and fundamental rights; calls upon the Commission to engage closely with third countries which are not part of ACTA negotiations, in particular emerging countries;

32. Draws attention to problems linked to the legal uncertainty of commercial exchanges from and to non-EU countries, and to the issue of which jurisdiction is competent for the settlement of a given dispute; notes that while principles of private international law do exist, their implementation raises a number of problems primarily affecting consumers and small businesses, who often lack knowledge of their own rights; underlines, besides, the new legal challenges arising from globalisation and the development of Internet transactions; emphasises the need for a coherent approach to be adopted on an international level to avoid consumers and small businesses being punished for this situation;

33. Draws the Commission's attention in the field of company law as it is affected by private international law, to Parliament's resolutions of 10 March 2009 with recommendations to the Commission on the cross-border transfer of the registered office of a company (2008/2196(INI), 4 July 2006 on recent developments and prospects in relation to company law, and 25 October 2007 on the European Private Company and the Fourteenth Company Law Directive on the transfer of the company seat, and to the judgments of the Court of Justice in *Daily Mail and General Trust*, *Centros*, *Überseering*, *Inspire Art*, *SEVIC Systems*, and *Cartesio*;

34. Notes that the dictum in *Cartesio* to the effect that, in the absence of a uniform Union law definition of the companies which may enjoy the right of establishment on the basis of a single connecting factor determining the national law applicable to a company, the question whether Article 49 TFEU applies to a company which seeks to rely on the fundamental freedom enshrined in that article is a preliminary matter which, as Union law now stands, can only be resolved by the applicable national law; further notes that the developments in the field of company law envisaged in the Treaty, as pursued by means of legislation and agreements, have not as yet addressed the differences between the legislation of the various Member States and, accordingly, have not yet eradicated those differences; observes that this evidences a lacuna in Union law; reiterates its call for this lacuna to be remedied;

35. Urges the Commission to use its best endeavours at the Hague Conference to revive the project for an international judgments convention; considers that the Commission could make a start with wide-ranging consultations, while informing and involving Parliament, on whether the rules of Regulation (EC) No 44/2001⁽¹⁾ should be given reflexive effect in order to incentivise other countries, particularly the United States, to resume negotiations; takes the view that it would be premature and ill-advised to contemplate giving the rules of that regulation reflexive effect until it is sufficiently clear that the attempts to restart the negotiations in the Hague have failed and it appears from the consultations and studies carried out that this move would have positive benefits and advantages for citizens, business and practitioners in the EU;

36. Calls upon the Commissioner for Justice to ensure that in future Parliament is more closely involved with the activities of the Commission and the Council at the Hague Conference through Parliament's observer and by means of regular statements to the competent parliamentary committee; in this context reminds the Commission of the institutional commitments expressed by Commissioner Frattini before Parliament in September 2006 that the Commission would cooperate fully with the Parliament in its work with the Hague Conference;

37. Encourages the Commission to play its full role in the work of the Hague Conference; urges the Commission to take steps to ensure that the EU ratifies the Hague Convention of 19 October 1996 on the Protection of Children;

⁽¹⁾ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.01.2001, p. 1).

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38. Resolves to set up an interparliamentary forum on the work of the Hague Conference; considers, by way of example only, that the promotion by the Hague Conference of party autonomy in contractual relations worldwide has such serious implications from the point of view of the evasion of mandatory rules as to warrant its being debated and reflected upon in democratic fora worldwide;

39. Observes that the Commission has set up a working group on arbitration; cautions the Commission against adopting any legislative initiative in this area without holding open consultations while involving the European Parliament to the full; calls on the Commission to ensure that a representative of the competent parliamentary committee is invited to take part in all such working groups and considers that, without detracting from the Commission's right of initiative, the European Parliament should have the right to nominate a member or members of such working groups in order to ensure that they are truly representative;

40. Stresses the need to ensure mutual recognition of official documents issued by national administrations; welcomes the Commission's efforts to empower citizens to exercise their free movement rights and strongly supports plans to enable the mutual recognition of the effects of civil status documents; calls for further efforts to reduce barriers for citizens who exercise their rights of free movement, particularly with regard to access to the social benefits to which they are entitled and their right to vote in municipal elections;

41. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.
