



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.11.2001
COM(2001) 705 final

2001/0109 (CNS)

Amended proposal for a

COUNCIL REGULATION

**establishing a general framework for Community activities to facilitate the
implementation of a European judicial area in civil matters**

(presented by the Commission pursuant to
Article 250 (2) of the EC Treaty)

EXPLANATORY MEMORANDUM

1. BACKGROUND

On 15 May 2001 the Commission adopted a proposal for a Council Regulation establishing a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters. The proposal was transmitted to the European parliament and to the Council 15 May 2001. The European Parliament referred the proposal to its Committee on Public Liberties and Citizens' Rights (LIBE), as the Committee responsible, and to the Committee on Budgets and the Committee on Legal Affairs and the Internal Market for their opinions. The Budget Committee adopted its report 13 September 2001. The Committee on Legal Affairs and the Internal Market decided 10 July 2001 not to issue an opinion. The LIBE Committee adopted its report 10 October 2001.

At its plenary session on 23 October 2001 the European Parliament adopted its opinion, approving the Commissions proposal subject to 6 amendments and asked the Commission to amend its proposal in accordance with Article 250(2) of the EC Treaty.

2. THE OPINION OF THE EUROPEAN PARLIAMENT

The following sets out the Commission's position with regard to the amendments proposed by the European Parliament. The Commission can accept, wholly or in part, 4 of the amendments. These amendments have been integrated into the text of the original proposal and are underlined for sake of illustration.

2.1. Amendments accepted in whole or in part

2.1.1. Amendments 1 and 6 - new recital 6a, new Article 6(4a)

In accordance with amendment 1 the Commission can accept to add a recital referring to the Robert Schuman Project, in view of that this project also forms part of previous actions in the field of Justice and Home Affairs. Concerning amendment 6, the Commission can accept to add to Article 6 a definition of the term "legal practitioners", slightly re-worded to avoid an exhaustive definition and to be in line with the wording used in the Grotius-civil programme. Given that the term "legal practitioners" figures in Article 6(3) the Commission prefers to add the new text in that paragraph.

2.1.2. Amendments 2 and 3 – new recitals 16a and 16b

The Commission can accept both amendments, adding two recitals referring to the financial perspective and the administrative expenditure, with a slight adjustment of amendment 2 for the sake of clarity, and adding these new recitals between the current recitals 13 and 14.

2.2. Amendments not accepted

2.2.1. Amendment 4 – adjustment of Article 2(1)a

This amendment proposes the adjustment of Article 2(1)a in order to stress the rights of the defence when promoting judicial cooperation aiming at ensuring legal certainty, one of the specific objectives of the proposal. This paragraph has been closely modelled upon the Tampere Conclusions. This is in line with the overall objective of proposal, that is, to support the development and implementation of policy in this area and thus contributing to the realisation of a European Judicial Area in civil matters. The proposal is not intended to create a new action plan, but rather to support the policy aims already laid down by the European Council and the Council. For these reasons the Commission cannot accept this amendment.

2.2.2. Amendment 5 – adjustment of Article 5(2)

The amendment entails making more generous the criteria for granting support to the activities of non-governmental organisations, by reducing the number of Member States that have to be involved in such organisations from two thirds of the Member States to one third. The Commission cannot accept this amendment. The purpose of the action in question is to support organisations with a true European dimension only. Lowering the criteria to one third would entail making organisations with a regional scope and character eligible for support also. In addition, the criteria of two thirds should be feasible also in a situation with more than 15 Member States of the European Union.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured. To this end, the Community should adopt, among others, measures in the field of judicial cooperation in civil matters necessary for the proper functioning of the internal market.
- (2) On 3 December 1998, the Council adopted an Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (the Vienna Action Plan)⁴.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 adopted the conclusions “Towards a union of freedom, security and justice: the Tampere milestones”.
- (4) On 30 November 2000, the Council adopted a joint programme of the Commission and the Council of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters⁵.
- (5) Council Joint Action 96/636/JHA⁶ established, for the period 1996-2000, a programme of incentives and exchanges for legal practitioners (Grotius).

¹ OJ C 213 E, 31.7.2001, p. 271. COM(2001) 221 final, 15.5.2001.

² OJ C

³ OJ C

⁴ OJ C 19, 23.1.1999, p. 1.

⁵ OJ C 12, 15.1.2001, p. 1.

⁶ OJ L 287, 8.11.1996, p. 3.

- (6) By Council Regulation (EC) No 290/2001⁷, the programme of incentives and exchanges for legal practitioners in the area of civil law (Grotius-civil) was extended for a one-year transition period only, pending the outcome of a thorough analysis of how Community actions and support should be focussed in the future.
- (6a) Council Decision No 1496/98/EC of the European Parliament and of the Council of 22 June 1998 established an action programme to improve awareness of Community law within the legal professions (Robert Schuman Project) for a period of three years.
- (7) A flexible and effective general framework for activities in the area of civil law is necessary if the ambitious objectives set by the EC Treaty, the Vienna Action Plan and the Tampere conclusions are to be realised.
- (8) The framework for activities should provide for initiatives taken by the Commission, in compliance with the principle of subsidiarity, for actions in support of organisations and bodies promoting and facilitating judicial cooperation in civil matters, and for actions in support of specific projects.
- (9) A number of actions will be required for the further development of a European judicial area and should therefore be undertaken at Community-level; the planning and implementation of those actions will benefit from being grouped together in a general framework for activities.
- (10) A framework for activities to improve mutual understanding of the legal and judicial systems of the Member States will contribute to lowering the barriers to judicial cooperation in civil matters, which will improve the functioning of the internal market.
- (11) Measures to ensure the sound implementation and application of Community instruments in the area of judicial cooperation in civil matters are necessary and will be more effective if they are coordinated within a general framework for activities.
- (12) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the EC Treaty, the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the European dimension necessary for achieving its objectives, the expected economies of scale and the cumulative effects of the actions envisaged, be better achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (13) The participation in this framework for activities of the candidate countries for accession to the European Union will provide a useful preparation for accession, in particular as regards these countries' ability to apply the Community *acquis*.
- (13a) The financial framework for this framework for activities shall be compatible with the current ceiling under heading 3 of the financial perspective, with no restriction being placed on other currently funded programmes.
- (13b) The administrative expenditure is covered from allocations under heading 5 within the framework of decisions to be taken during the annual budgetary procedure.

⁷ OJ L 43, 14.2.2001, p. 1.

- (14) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁸, measures for the implementation of this Regulation should be adopted by use of the advisory procedure provided for in Article 3 of that Decision.
- (15) The United Kingdom and Ireland, in accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, are not participating in the adoption of this Regulation, and are therefore not bound by it nor subject to its application.
- (16) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

HAS ADOPTED THIS REGULATION:

CHAPTER I

OBJECTIVES AND ACTIVITIES

Article 1

Subject matter

1. This Regulation establishes, for the period from 1 January 2002 to 31 December 2006, a general framework for Community activities to facilitate the implementation of a European judicial area in civil matters.
2. This Regulation shall not apply to Denmark, Ireland and the United Kingdom.

Article 2

Objectives

The framework for activities shall have the following objectives:

- (1) to promote judicial cooperation, aiming in particular at:
 - (a) ensuring legal certainty and improving access to justice,
 - (b) promoting mutual recognition of judicial decisions and judgments,
 - (c) promoting the necessary approximation of legislation, or
 - (d) eliminating obstacles created by disparities in civil law and civil procedures;

⁸ OJ L 184, 17.7.1999, p. 23.

- (2) to improve mutual knowledge of legal and judicial systems between the Member States;
- (3) to ensure the sound implementation and application of Community instruments in the area of judicial cooperation in civil matters; and
- (4) to improve information to the public on access to justice, judicial cooperation and the legal systems of the Member States.

Article 3

Types of activities

The activities supported or carried out under this framework for activities shall meet at least one of the objectives in Article 2 and shall consist of:

- (1) actions taken by the Commission; or
- (2) actions providing financial support for the running costs of European non-governmental organisations, under the conditions set out in Article 5; or
- (3) actions providing financial support for specific projects of Community interest under the conditions set out in Article 6.

Article 4

Participation of third countries

This framework for activities shall be open to the participation of:

- (1) the candidate countries of central and eastern Europe (CEECs), in accordance with the conditions established in the Europe Agreements, in their additional protocols and in the decisions of the respective Association Councils;
- (2) Cyprus, Malta and Turkey, on the basis of bilateral agreements to be concluded with these countries; and
- (3) other countries, when agreements and procedures so allow.

Article 5

Activities of non-governmental organisations

Financial support for the actions referred to in Article 3(2) may be granted to support activities of European non-governmental organisations that meet the following criteria:

- (1) they must be non-profit-making organisations;
- (2) they must pursue activities with a European dimension and involve, as a general rule, at least two thirds of the Member States;
- (3) they must have as a main objective to promote judicial cooperation in civil matters.

Article 6
Specific projects

1. The specific projects referred to in Article 3(3) shall consist of:
 - (a) training;
 - (b) exchanges and work experience placements;
 - (c) studies and research;
 - (d) meetings and seminars;
 - (e) dissemination of information.
2. Financial support may also be granted to projects for the creation of new organisations intended to meet the criteria specified in Article 5.
3. 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.

The term “legal practitioners” shall include judges, prosecutors, advocates, solicitors, academic and scientific personnel, ministry officials, court officers, bailiffs, court interpreters and other professionals associated with the judiciary in the area of civil law.

4. To be eligible for co-financing, the projects must involve at least three countries participating in this framework for activities.

Projects may also associate practitioners from Denmark, Ireland and the United Kingdom, from the candidate countries where this would contribute to their preparation for accession, or from other countries not participating in this framework for activities where this serves the aims of the projects.

CHAPTER II

FINANCING, IMPLEMENTATION AND PROCEDURES

Article 7
Financing

1. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.
2. The co-financing of activities under this framework for activities shall be exclusive of any other financing by another programme financed by the budget of the European Communities.

3. The proportion of financial support from the Community budget may not, in principle, exceed 50% of the running costs for actions referred to in Article 3(2) or of the expenditure involved for projects referred to in Article 3(3).

Article 8

Implementation of the framework for activities

1. The Commission shall, if possible before 30 June each year, publish an annual work programme setting out the priorities in terms of objectives and types of activities for the following year, including a description of the selection and award criteria and the procedures for submission and approval of proposals.
2. The Commission shall adopt the annual work programme in accordance with the procedure referred to in Article 12(2).
3. The Commission shall pay particular attention to the following criteria when evaluating and selecting proposals:
 - (a) ability to contribute to the objectives in Article 2;
 - (b) problem-solving orientation;
 - (c) European dimension;
 - (d) measures foreseen to ensure dissemination of the results;
 - (e) complementarity with other past, present or future activities; and
 - (f) size of the action, in particular in terms of economies of scale and cost-effectiveness.
4. The Commission shall adopt the measures to be taken in accordance with the procedure referred to in Article 12(2).

Article 9

Financing decisions

1. The Commission's financing decisions under Article 3(2) and (3) shall be followed by grant agreements between the Commission and the beneficiaries.
2. The financing decisions and contracts arising therefrom shall be subject to financial control by the Commission and to audits by the Court of Auditors.

Article 10

Monitoring

1. The Commission shall ensure the regular monitoring and supervision of the implementation of the actions financed by the Community. This shall be done on the basis of reports using procedures agreed between the Commission and the beneficiary; it may include checks *in situ* by means of sampling.

2. Beneficiaries shall submit a report to the Commission for each action within three months of its completion. The Commission shall determine the form of this report, including the type of information that must be included in it.
3. Beneficiaries of financial support shall keep at the Commission's disposal all the documentary evidence of expenditure for a period of five years from the last payment concerning an action.

Article 11

Dissemination of information

1. The Commission shall ensure the yearly publication of a list of the beneficiaries and of the activities financed under this framework for activities, including an indication of the amount of the support.
2. Where projects financed under Article 3(3) do not provide for dissemination of the results and where it would contribute to one of the objectives in Article 2, such measures may be taken by the Commission.
3. At the beginning of each year, the Commission shall provide the Committee established in Article 12(1) with information on the activities undertaken under Article 3(1) in the previous year.

Article 12

Committee

1. The Commission shall be assisted by a Committee composed of representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of the Council Decision 1999/468/EC shall apply, in compliance with Article 7 thereof.

Article 13

Sanctions

1. The Commission may reduce, suspend or recover financial support granted for an activity if it detects irregularities or learns that the activity has, without its approval, been significantly modified so that it is incompatible with the objectives of the agreed implementing arrangements.
2. If the deadlines are not met or if the state of progress of an activity warrants only partial use of the appropriations granted, the Commission shall ask the beneficiary concerned to provide an explanation within a given period of time. If the beneficiary's reply is not satisfactory, the Commission may cancel the balance of the financial support and require that any sums already paid be refunded immediately.
3. All undue payments shall be refunded to the Commission. Any sums not refunded in good time may be increased by default interest.

Article 14

Reporting and evaluation

1. The Commission will report to the European Parliament and to the Council by 30 June 2004 at the latest on the implementation of this framework for activities, including the results of the control, the reports and the monitoring of the activities.
2. The Commission shall submit to the European Parliament and the Council an evaluation report on this framework for activities to be available in time for a possible renewal of the framework or, by 31 December 2005 at the latest. This report will include an evaluation of cost-effectiveness and an assessment, based on performance indicators, of whether the objectives have been achieved.

Article 15

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States, in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council
The President