EUROPEAN UNION
THE COUNCIL

Brussels, 30 July 1997 (11.08)
(OR. f)

9439/97

LIMITE

JUSTCIV 56

OUTCOME OF PROCEEDINGS

of : Working Party on the European Enforcement Order (EEO)

on: 12 and 13 June 1997

1. **Adoption of the agenda**

The Working Party adopted the agenda in telex No 2352 of 29 May 1997.

2. **General discussion on the need for, feasibility and form of an instrument on a European enforcement order**

(a) Completion of the examination of 7149/97 JUSTCIV 28 (point III.6 et seq.)

Point 6 – Competent bodies

The Working Party discussed the matter of which bodies should be designated in the Member State where enforcement was sought to issue the enforcement order for a judgment given in another Member State.

Some delegations were prepared to adopt the system under the Brussels Convention, whereby enforcement orders are issued by the courts of the Member State in which enforcement is sought. It was stressed that the advantages of any proposed new solution should be carefully examined before departing from this system.

Other delegations thought that administrative authorities might perhaps issue the enforcement order. This approach, however, would depend on the type of enforcement order decided on.

The Working Party considered the discussion to be premature even though some delegations were already of the opinion that it was for the individual Member State to designate the body or bodies competent to issue the enforcement order.

Point 7 – Effect of enforcement

Several delegations pointed out that the judgment against the relevant party would have to be reviewed by the Member State where enforcement was sought, especially with regard to the grounds for refusal listed in Articles 27 and 28 of the Brussels Convention (see "Enforcement", page 4). Most delegations, however, felt that this aspect should be considered later.

Point 8 – Exchange of information

The Working Party discussed whether a mechanism should be created for exchanging information on the enforcement procedure itself once the enforcement order had been issued in the Member State where enforcement was sought.

The Working Party looked at various aspects of the question. The first concerned the national rules applying to the identification of the debtor's assets. It was clear that these rules differed. In some Member States it is up to the creditor to identify the debtor's assets, whereas in others different solutions applied.

The second aspect discussed was whether Member States should exchange information on the data collected which identified the debtor's assets. Some delegations thought it might be useful to have a sophisticated information system incorporating, if appropriate, an information-exchange mechanism on the lines of those planned in the fields of asylum, immigration or fighting organized crime.

However, many delegations pointed out that their countries did not have automated information systems. It was not conceivable to set up a European system that was more sophisticated than national systems.

The Commission representative said that the Commission was studying national systems currently in use and looking at solutions that would be suitable for this context.

Following this discussion, the Working Party decided to make an inventory of methods used by the Member States to identify a debtor's assets. ([1])

(b) Exchange of views on 8287/97 JUSTCIV 48

The Working Party went on to examine 8287/97 JUSTCIV 48. The document was generally welcomed as representing a good working basis for further discussion. The Working Party examined from point II onwards.

Scope

On the whole delegations could endorse the Presidency's approach that, as a start, the scope in relation to subject matter should be confined to judgments involving money.

Some delegations pointed out that the concept of periodic payment by way of penalty was not viewed in the same way in all Member States. The United Kingdom delegation pointed out that in some Member States the money from the penalty payment went to the State and not to the other party. This delegation accordingly requested that the current discussions should exclude cases where payment went to the State. The Presidency proposed amending JUSTCIV 48 to take account of this difference in Member States' systems.

([1]) See telex No 2257 of 4 June 1997.

Standard form

The Working Party welcomed the principle of a standard form. One delegation would have preferred a certificate to a form. Another delegation raised the question of making the form optional. Since the answer to this question depended largely on the outcome of the discussions on the other points, the decision was taken to return to it later.

The Commission representative recommended identifying the items to be included in the form as soon as possible.

Enforcement

The Working Party considered in detail the section on enforcement. It was established that the current proceedings would confine themselves to judgments that were already enforceable in the Member State of origin.

Regarding the procedure for issuing the enforcement order, several delegations suggested simplifying the system provided for in the Brussels Convention while providing for some degree of review by an authority in the State where enforcement was sought.

Delegations held differing opinions as to the extent of that review; some would have preferred to go further and set up a simpler system. There was nevertheless a general trend in favour of a procedure whereby only certain essential aspects would be reviewed before the competent authority in the Member State where enforcement was sought issued the order enforcing the judgment handed down in the Member State of origin. Some delegations mentioned review of the following aspects:

- the documents relating to the judgment in the Member State of origin including, where appropriate, the document establishing that the applicant qualifies for legal aid;
- the grounds set out in Article 27(2) of the Brussels Convention (default of appearance);
- whether the judgment falls within the scope of the Convention and complies with the latter's rules on jurisdiction.

After these checks, the order enforcing the judgment could be issued. Some delegations thought that recognition of the judgment could be given by means of a seal affixed by an authority to be designated by the Member States.

Several delegations responded favourably to the idea that review of the other grounds for refusing recognition under Articles 27 and 28 of the Brussels Convention should be carried out in the framework of an objection lodged by the debtor with the courts having jurisdiction in the Member State where enforcement was sought. The Irish delegation entered a scrutiny reservation on this approach.

The Working Party tended to favour retaining the grounds for refusal listed in Articles 27 and 28 of the Brussels Convention, except in relation to public policy (Article 27(1)) and judgment given in default of appearance (Article 27(2)), which would need to be considered later in the light of the replies to the relevant questionnaire.

The Working Party agreed with the Belgian delegation's point that where a debtor had to lodge an objection based on Article 27(2) he would have trouble producing evidence.

The Portuguese delegation suggested following Article III of the Protocol to the Brussels Convention of 1968 and providing that in proceedings for the issue of an order for enforcement no charge, duty or fee should be levied in the State in which enforcement was sought.

Appeal

The Working Party considered that remedies should be available to both debtors and creditors.

It also considered that ways should be sought to reduce the number of layers of appeal, so that protracted appeals procedures could be avoided as far as possible, while ensuring that the interests of those concerned were adequately safeguarded.

In this connection, a few delegations could accept the Presidency's idea of specifying a sum of money (ceiling) beyond which a further appeal could be made. However, many delegations rejected this solution on the grounds that:

- it would be inappropriate and discriminatory to make access to justice dependent on the amount of money at stake in an application;
- a distinction had to be drawn between individuals' interests, which should have priority in an appeal, and the sum of money involved;
- it would be difficult to set a Europe-wide threshold in view of the differences between Member States in this matter.

Alternative solutions were considered, for example:

- some delegations proposed limiting applications to appeal courts (supreme courts) to points of law;
- one delegation suggested limiting appeals in all cases to one level.

A few delegations also suggested providing for appeal to the Court of Justice.

In the light of these considerations the Presidency did not rule out the possibility of tabling new solutions.

Some delegations (S/IRL/D) entered scrutiny reservations on the question of appeal.

Provisional, including protective, measures

The Working Party held an initial discussion of this section.

Several delegations wondered whether Articles 24 and 39 of the Brussels Convention, possibly with adjustments to be discussed in the context of revision of the Brussels and Lugano Conventions, would not be sufficient to settle this question.

It was stated that the only situations that could be discussed in connection with the European enforcement order were those arising after the judgment had been handed down in the Member State of origin.

The Working Party also considered the question of the basis on which provisional, including protective, measures could be taken. Some delegations suggested a maximalist approach, whereby such measures could be taken simply on the basis of the judgment handed down in the Member State of origin. Others, however, considered that a review would have to be carried out in the Member State in which enforcement was sought, but not necessarily by the authority issuing the enforcement order.