

Thursday 21 September 2000

TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT

(Amendment 14)

ARTICLE 1(3)

Article 11(2a) (new) (Regulation (EC) No 3448/93)

2a. As an exemption from the provisions of Article 115(2) of Regulation (EEC) No 2913/92, the quantity referred to in paragraph 2 of this Article may be replaced by imports of milk powder and/or butter/butter oil provided that liquid milk or cream is used in the production of the exported goods and that none of the following ingredients of milk: milk fat, milk protein and lactose, calculated on the basis of dry matter, exceed the corresponding ingredients used in production. The quantities shall be reduced however by a coefficient equivalent to the value added through processing in the imported products as established by the Commission in accordance with the procedure laid down in Article 16.

(Amendment 15)

ARTICLE 1(5a) (new)

Article 21a (new) (Regulation (EC) No 3448/93)

5a. The following Article is added after Article 21:

Article 21a

The Commission shall submit an interim report to the European Parliament at the end of the first year of the new system, which should, in particular, take stock of the situation in each COM concerned.

## 12. Enforcement of civil and commercial judgments \*

A5-0253/2000

Proposal for a Council regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 – C5-0169/1999 – 1999/0154(CNS))

The proposal was amended as follows:

TEXT PROPOSED  
BY THE COMMISSION<sup>(1)</sup>AMENDMENTS  
BY PARLIAMENT

(Amendments 2 and 12)

Recital 3a (new)

(3a) This Regulation must be applied and interpreted in a way which is compatible with Community law and in particular neither hinders nor makes less attractive the exercise of the fundamental principles of free movement of goods and services guaranteed by the Treaty and Directives concerning the application of these principles in certain areas.

<sup>(1)</sup> OJ C 376 E, 28.12.1999, p. 1.

Thursday 21 September 2000

TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT

(Amendment 35)

*Recitals 4a, 4b and 4c (new)*

(4a) Allowing consumers to sue in the courts of their domicile is likely to have a deterrent effect on new entrants to the growing electronic-commerce market and judicial proceedings must be regarded as constituting a last resort for the consumer, in view also of the costs and delays involved. However, regard must also be had to the fact that the supplier and/or the credit card company (in the event that a charge-back scheme is adopted) are in a better position, as compared with the principal, to insure against the risk of litigation.

(4b) It is recognised, however, that the judicial system is inappropriate for consumer claims relating to transactions concluded on-line, especially where the parties are domiciled in different Member States, in view of the aforementioned costs and delays and the stigma often associated with going to court. Consequently, provision is made for incorporation in consumer contracts of a clause under which the consumer and the trader agree that any dispute is to be referred to an extrajudicial dispute resolution system accredited under a scheme approved by the Commission, provided that specific conditions ensuring that the consumer makes an informed decision to acquiesce to such a clause are satisfied. This must not affect the consumer's or the trader's right to sue in the consumer's courts on a point or points of law or in order to enforce an award made or a settlement reached under an extrajudicial dispute resolution system.

(4c) Extrajudicial dispute resolution schemes should be accredited and the grant of trust marks by national authorities, trade and consumer associations and, possibly, the Commission itself should be conditional upon the site in question providing for an extrajudicial dispute resolution system accredited under a scheme approved by the Commission. The Commission is further to promote arrangements for accrediting such systems, whilst encouraging their introduction in particular for Internet transactions.

(Amendment 5)

*Recital 4d (new)*

(4d) Consequently, this Regulation must be regarded as forming part of a package of legislative and non-legislative measures concerning electronic commerce. In particular, the Commission has decided to make proposals as a matter of the utmost urgency for an out-of-court dispute-settlement system and a small-claims procedure which can be applied as between Member States and ultimately internationally.

Thursday 21 September 2000

TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT

(Amendment 7)

*Recital 4e (new)*

(4e) This Regulation is regarded as an urgent measure designed to remove existing legal uncertainties as to the application of the Brussels Convention to electronic commerce. Corresponding adjustments must subsequently also be made to the Rome Convention on the law applicable to contractual obligations in order to create a coherent legal framework. In addition, voluntary initiatives on the part of business aimed at establishing out-of-court dispute-settlement systems should be encouraged, as they would provide a useful alternative to legal proceedings, given the many disputes involving very small amounts.

(Amendment 8)

*Recital 4f (new)*

(4f) In addition, the Commission intends to liaise and collaborate with interested parties, especially the banking and credit-card industry and consumer groups, in order to facilitate the development of other extrajudicial dispute-resolution schemes for electronic commerce, where necessary proposing framework legislation.

(Amendment 10)

*Recital 4g (new)*

(4g) As this Regulation constitutes part of this package of legislative and non-legislative initiatives, its entry into force was deferred until such time as the remainder of the package was ready for adoption.

(Amendment 13)

*Recital 4h (new)*

(4h) The Commission undertakes to draw up standard terms and conditions for consumer-to-business electronic commerce ('ecoterms Europe').

(Amendment 14)

*Recital 5*

(5) On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the EC Treaty, concluded the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters ('the Brussels Convention'). Work has been undertaken for the revision of that Convention, which is part of the 'acquis communautaire' and has been extended to all the new Member States, and the Council has approved the content of the revised text. Continuity in the results achieved in that revision should be ensured.

(5) On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the EC Treaty, concluded the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters ('the Brussels Convention'). Given that that Convention, which is part of the *acquis communautaire* and has been extended to all the new Member States, may continue to apply as between Denmark and the other Member States, this Regulation was adopted only following the amendment of the Brussels Convention in line with the provisions of this Regulation.

Thursday 21 September 2000

TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT

(Amendment 36)

Recital 13

(13) Account must be taken of the growing development of the new communication technologies, particularly in relation to consumers; *whereas*, in particular, electronic commerce in goods or services by a means accessible in another Member State constitutes an activity directed to that State. Where that other State is the State of the consumer's domicile, the consumer must be able to enjoy the protection available to him when he enters into a consumer contract by electronic means from his domicile.

(13) Account must be taken of the growing development of the new communication technologies, particularly in relation to consumers. **In** particular, electronic commerce in goods or services by a means accessible in another Member State constitutes an activity directed to that State **where the on-line trading site is an active site in the sense that the trader purposefully directs his activity in a substantial way to that other State**. Where that other State is the State of the consumer's domicile, the consumer must be able to enjoy the protection available to him when he enters into a consumer contract by electronic means from his domicile. **Nevertheless, subject to the Rome Convention on the law applicable to contractual obligations<sup>(1)</sup> and the provisions of European law applicable to electronic commerce, the law applicable to the supply of goods or the provision of services in question remains that of the country of origin of the supplier of the goods or the provider of the services.**

<sup>(1)</sup> OJ C 27, 26.1.1998, p. 34.

(Amendment 18)

Recital 17

(17) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.

(17) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute. **The same applies (a) to authentic instruments, which, like decisions, are an emanation of public authority and therefore possess equal value as evidence and (b) to settlements reached pursuant to an alternative dispute-resolution system approved by the Commission.**

(Amendment 19)

Recital 18

(18) By virtue of the same principle of mutual trust, the procedure for enforcement in one Member State of a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable must be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility of automatically raising any of the grounds for non-enforcement provided for by this Regulation.

(18) By virtue of the same principle of mutual trust, the procedure for enforcement in one Member State of a judgment given, **or of an authentic instrument drawn up**, in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable must be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility of automatically raising any of the grounds for non-enforcement provided for by this Regulation.

(Amendment 20)

Recital 25a (new)

**(25a) The Commission will consider proposals for the establishment of a Centralised Electronic European Union Causebook and Judgment Registry Database.**

Thursday 21 September 2000

TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT

(Amendment 21)

*Article 5(5a) (new)*

**5a. As settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;**

(Amendment 22)

*Article 9(2)*

(2) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary in the courts for the place where the plaintiff is domiciled, or

(2) in another Member State in the case of actions **regarding individual insurance contracts** brought by the policyholder, the insured or a beneficiary in the courts for the place where the plaintiff is domiciled, or

(Amendment 37)

*Article 15, 1st paragraph a (new)*

**The expression 'directing such activities' shall be taken to mean that the trader must have purposefully directed his activity in a substantial way to that other Member State or to several countries including that Member State. In determining whether a trader has directed his activities in such a way, the courts shall have regard to all the circumstances of the case, including any attempts by the trader to ring-fence his trading operation against transactions with consumers domiciled in particular Member States.**

(Amendment 38)

*Article 16, 1st subparagraph*

A consumer may bring proceeding against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.

**Subject to Article 17a**, a consumer may bring proceedings against the other party to a contract in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.

(Amendment 39)

*Article 17a (new)***Article 17a**

**1. Notwithstanding the provisions of Article 16 and Article 17, where a contract has been concluded by electronic means over the Internet by a consumer with a person pursuing commercial or professional activities, the consumer and the trader may agree that any dispute is to be referred to an extrajudicial dispute resolution system accredited under a scheme approved by the Commission ('an accredited EDR system'), which is indicated on the trader's Internet site, provided that the following conditions are satisfied:**

(a) **the consumer is informed in plain language that, in the event of a dispute, consumers have the right**

Thursday 21 September 2000

TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT

- under Community law to sue and be sued in the courts of the Member State where they are domiciled,
- (b) the consumer is informed of the advantages to himself and the trader of electing to refer any disputes to an accredited EDR system,
- (c) the consumer is provided with a link to the website(s) of the accredited EDR system(s) offered by the trader,
- (d) the consumer positively acquiesces to the inclusion of the clause,
- (e) the consumer cannot proceed with the transaction unless he has positively accepted or rejected the clause.
2. The trader may refuse to proceed with the transaction if the consumer refuses to accept the clause.
3. A clause satisfying the requirements of this provision shall be presumed to have been individually negotiated for the purposes of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>(1)</sup>.

<sup>(1)</sup> OJ L 95, 21.4.1993, p. 29.

(Amendment 27)

Article 23, 4th paragraph a (new) and 5th paragraph

The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

Agreements conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13 and 17 or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

Agreements **or provisions of a trust instrument** conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13 and 17 or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

(Amendment 28)

Article 35, 1st paragraph

The application shall be submitted to the court or competent authority appearing in the list in Annex II.

The application shall be submitted to the court, **competent notary** or competent authority appearing in the list in Annex II.

(Amendment 29)

Article 54

A document which has been formally drawn up or registered as an authentic instrument in one Member State shall automatically be recognised in the other Member States, with due regard for the legal order of the receiving State.

Thursday 21 September 2000

TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Member State shall, in another Member State, be declared enforceable there, on application made in accordance with the procedure provided for in Article 34 to 49. The court with which an appeal is lodged under Article 39 or 40 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is contrary to public policy in the Member State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.

Section 3 of Title III shall apply as appropriate.

The competent authority of a Member State where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI.

**An authentic document which** is enforceable in one Member State shall, in another Member State, be declared enforceable there, on application made in accordance with the procedure provided for in Article 34 to 49. The court with which an appeal is lodged under Article 39 or 40 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is contrary to public policy in the Member State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.

Section 3 of Title III shall apply as appropriate.

The competent authority **or competent notary** of a Member State where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI.

(Amendment 41)

Article 55a (new)

**Article 55a**

**A settlement which has been reached pursuant to an alternative dispute-resolution system accredited under a scheme approved by the Commission shall be enforceable under the same conditions as authentic instruments.**

(Amendment 30)

Article 57, 2nd paragraph (new)

**In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.**

(Amendment 31)

Article 65

No later than *five years* after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.

No later than **two years** after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation, **having regard in particular to its impact on small and medium-sized businesses and consumers.** The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.

(Amendment 32)

Article 67, 1st paragraph

This Regulation shall enter into force *on the 20th day following that of its publication in the 'Official Journal of the European Communities'*.

This Regulation shall enter into force **six months after the day** of its publication in the 'Official Journal of the European Communities'.

Thursday 21 September 2000

TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT

(Amendment 33)

*Annex II*

The courts or competent authorities to which the applications referred to in Article 35 may be addressed are the following:

The courts, **notaries** or competent authorities to which the applications referred to in Article 35 may be addressed are the following:

(Amendment 34)

*Annex VI(3) to (3.2.2.)*

3. Authority which has given authenticity to the instrument

3. **Notary or** authority **who**/which has given authenticity to the instrument

3.1. Authority involved in the drawing up of the authentic instrument (if applicable)

3.1. **Notary or** authority involved in the drawing up of the authentic instrument (if applicable)

3.1.1. Name and designation of authority

3.1.1. Name and designation of **notary or** authority

3.1.2. Place of authority

3.1.2. Place of authority

3.2. Authority which has registered the authentic instrument (if applicable)

3.2. Authority which has registered the authentic instrument (if applicable)

3.2.1. Type of authority

3.2.1. Type of authority

3.2.2. Place of authority

3.2.2. Place of **notary or** authority

**European Parliament legislative resolution on the proposal for a Council regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 – C5-0169/1999 – 1999/0154(CNS))**

(Consultation procedure)

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(1999) 348) (1),
- having regard to Article 61(c) and 67 of the EC Treaty,
- having been consulted by the Council (C5-0169/1999),
- having regard to Rule 67 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0253/2000),

1. Approves the Commission proposal as amended;
2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
3. If the Council intends to depart from the text approved by Parliament, calls on the Council to notify Parliament;
4. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;

(1) OJ C 376 E, 28.12.1999, p. 1.

Thursday 21 September 2000

5. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
6. Instructs its President to forward its position to the Council and Commission.

### 13. Undeclared work

A5-0220/2000

**European Parliament resolution on the Commission communication on undeclared work (COM(1998) 219 – C4-0566/1998 – 1998/2082(COS))**

*The European Parliament,*

- having regard to the Commission communication (COM(1998) 219 – C4-0566/1998),
  - having regard to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>(1)</sup>,
  - having regard to the joint statement on the black economy by the European social partners in the cleaning industry, the European Federation of the Cleaning Industry (EFCI) and the International Federation of Employees and Technicians (Euro-Fiet), adopted in October 1998 in the framework of their European social dialogue,
  - having regard to the Council Resolution of 22 February 1999 on the 1999 Employment Guidelines<sup>(2)</sup>,
  - having regard to the Council Resolution of 22 April 1999 on a Code of Conduct for improved cooperation between authorities of the Member States concerning the combating of transnational social security benefit and contribution fraud and undeclared work, and concerning the transnational hiring-out of workers<sup>(3)</sup>,
  - having regard to Council Decision 2000/185/EC of 28 February 2000 authorising Member States to apply a reduced rate of VAT to certain labour-intensive services in accordance with the procedure provided for in Article 28(6) of Directive 77/388/EEC<sup>(4)</sup>,
  - having regard to Rule 47(1) of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Women's Rights and Equal Opportunities (A5-0220/2000),
- A. whereas one cause of undeclared work is poverty, which clearly can be seen in the statistics showing that the problem is greater in poorer regions and low-income sectors,
  - B. whereas other major causes of undeclared work include high tax and contribution rates for individuals, and excessive administrative burdens and on-costs on businesses,
  - C. whereas the phenomenon of undeclared work appears to be growing in many Member States and to be expanding faster than the formal economy,

<sup>(1)</sup> OJ L 18, 21.1.1997, p. 1.

<sup>(2)</sup> OJ C 69, 12.3.1999, p. 2.

<sup>(3)</sup> OJ C 125, 6.5.1999, p. 1.

<sup>(4)</sup> OJ L 59, 4.3.2000, p. 10.