

AMENDMENT FORM

Suggestion for amendment of Article : Title ...: Area of freedom, security and justice, 14

Suggestion for protocol :

By / Mr : Hain With the support of Lord Tomlinson, substitute

Status : - Member -

Article 14 : [Judicial cooperation in civil matters]

1. The Union shall develop judicial cooperation in civil matters based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. ~~Such cooperation shall include the adoption of measures for the approximation of national laws having cross border implications.~~
2. To this end, the European Parliament and the Council, in accordance with the legislative procedure, shall where necessary for the proper functioning of the internal market, adopt laws and framework laws aiming inter alia to ensure:
 - the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;
 - the cross-border service of judicial and extrajudicial documents;
 - the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;
 - cooperation in the taking of evidence;
 - ~~effective a high level of~~ access to justice across European borders;
 - the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;

- the development of measures of preventive justice and alternative methods of dispute settlement for use in appropriate cases;
- support for the training of the judiciary and judicial staff, whilst fully respecting the principle of judicial independence.

~~1.~~ ~~3.~~—The Council, on a proposal from the Commission, shall unanimously adopt laws and framework laws concerning family law; it shall act after consulting the European Parliament. ~~The European Parliament and the Council, in accordance with the legislative procedure, shall adopt laws and framework laws concerning parental responsibility.~~

Explanation (if any) :

Article 14 : *We would support a provision that allows for practical measures to enhance the operation of mutual recognition of judgments and promotes effective access to justice in cross-border cases, helping people in one country to go to court in another. Article 65 as it appeared in the existing Treaty allowed for that, but draft Article 14 goes further than is necessary or appropriate. We should respect and recognise each others' legal systems and work on the interface between them, promoting compatibility between them, rather than seeking to approximate them as the draft Article seems to suggest.*

Article 14(2) : *The working group was divided on whether to retain the requirement that work in the field of civil judicial co-operation should be “necessary for the proper functioning of the internal market”. Those words, as interpreted by the Court of Justice, provided an important definition of the scope of work in this area (see the Tobacco Advertising jurisprudence). The explanation given in the Secretariat draft for omitting them is unconvincing.*

The expression “a high level of access to justice” is insufficiently focused. It is unclear what is meant by “a high level”, and it needs to be made clear that this work is concerned with access to justice in cross-border cases. Indent 6 mirrors Article 65 and is acceptable. Indent 7 : It is important to make clear that alternative methods of dispute resolution are not suitable for all cases and should not be compulsory; therefore the Article should state explicitly that they are intended for use in appropriate cases. Indent 8 : It is essential to recognise the sensitivity of the principle of judicial independence, and the draft should explicitly do so where it refers to training for the judiciary and judicial staff.

Article 14(3) : *There is no justification for different voting procedure for questions affecting parental responsibility. There is, moreover, insufficient clarity about what would constitutes matters “concerning parental responsibility”. Arguably many areas of family law would be covered, negating the general rule.*