

AMENDMENT FORM

Suggestion for amendment of Article : III-165

By Mr Hain

Status : Member

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1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. ~~Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.~~
 2. To this end, a law or framework law shall, where necessary for the proper functioning of the internal market, lay down measures aimed inter alia at ensuring:
 - (a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;
 - (b) the cross-border service of judicial and extrajudicial documents;
 - (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
 - (d) cooperation in the taking of evidence;
 - (e) ~~effective a high level of~~ access to justice across European borders;
 - (f) the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
 - (g) the development of alternative methods of dispute settlement;
 - (h) support for the training of the judiciary and judicial staff.
 3. *Okay.*

Explanation (if any) :

This Article is designed to succeed the current Article 65. It expands on it significantly.

In paragraph 1 the reference to the principle of mutual recognition is welcome. However there is no need for an express Treaty base covering approximation of the civil law. The draft Article goes further than Article 65 and is in far too general terms. It is neither necessary nor appropriate. The purpose of civil judicial co-operation should be to ensure that borders do not represent an obstacle to litigation or the recognition and enforcement of judgments. Whilst that might require a degree of harmonisation of civil law and procedure we should respect and recognise each others' legal systems and work on the interface between them, promoting compatibility between them. Unfortunately the current draft suggests that approximation of law should be an end in itself. The words "necessary for the proper functioning of the internal market" which appeared in Article 65, have been omitted. We wish to restore them. They provided an important definition of the scope of work in this area. The Court of Justice has made clear the importance of the link to the internal market in the Tobacco Advertising jurisprudence.

So far as Paragraph 2(e) is concerned, the expression "a high level of access to justice" is highly ambiguous. It could lead to potentially unaffordable proposals to extend or increase spending on civil legal aid. It must also be made clear beyond doubt that this work is concerned with access to justice in cross-border cases and should not extend to purely internal situations.