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INFORMAL MEETING OF THE JUSTICE AND HOME AFFAIRS MINISTERS

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Discussion paper

"Ways to further develop the judicial cooperation in civil and commercial matters"

I. Background

In 2019 there will be the 20th anniversary of the entry into force of the Treaty of Amsterdam[1] and of the adoption of the Tampere Programme[2]. The Treaty of Amsterdam brought judicial cooperation in civil matters within the scope of European Union. Mutual trust between the Member States' justice systems and mutual recognition of judicial decisions are the principles around which EU judicial cooperation in civil and commercial matters is built. An extensive acquis has been developed through the years, starting with the Tampere Programme (1999)[3], and then continuing under the Hague (2004)[4], Stockholm (2009)[5] and Post-Stockholm (2014)[6] Programmes.

The EU legislation in the field of judicial cooperation in civil and commercial matters covers the following[7]: jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; law applicable to contractual and non-contractual obligations; special procedures like the European order for payment procedure, the European small claims procedure, the European account preservation order procedure, and the European enforcement order for uncontested claims; service of documents; taking of evidence; insolvency proceedings; family law (jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, law applicable to divorce and legal separation, maintenance obligations, matrimonial property regimes, property consequences of registered partnerships); successions; recognition of protection measures in civil matters; circulation of public documents; legal aid; mediation.

In general these instruments have proven very useful in practice for EU citizens and businesses, responding to an increasing number of cross-border cases, which are in turn a consequence of increased mobility.

It is also to be noted that, in the area of family law, since the adoption of the Maintenance Regulation in 2009 until the on-going review of the Brussels IIa Regulation this year, the EU did not pass other legislation under the special legislative procedure which requires unanimity in the Council after the consultation of the European Parliament. Three legislative instruments

[1] The Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed in Amsterdam on 2 October 1997, entered into force on 1st May 1999.
[2] Tampere European Council 15 and 16 October 1999.
[3] http://www.europarl.europa.eu/summits/tam_en.htm#c
[4] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XG0303(01)&from=EN
[5] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504(01)&from=EN
[6] In its conclusions of 26-27June 2014, the European Council defined the strategic guidelines for legislative and operational planning within the area of freedom, security and justice, in accordance with Article 68 of the Treaty on the European Union. They have been published in the Official Journal of the European Union https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2014:240:FULL&from=EN
[7] See also the inventory in the annex

have been adopted under the enhanced cooperation: the Rome III Regulation on applicable law on divorce and legal separation, the matrimonial property regimes Regulation and the property consequences of registered partnerships Regulation.
Through the years, the Court of Justice of the EU has also helped in the interpretation of the EU provisions in the area of judicial cooperation in civil and commercial matters.
In addition to adopting legislation in itself, the EU has also invested in practical judicial cooperation via the European Judicial Network in civil and commercial matters and in the training of judiciary and practitioners in order to facilitate the application and functioning in practice of this acquis.
Work has been carried out in the area of awareness rising for the citizens so that the EU legislation is better known and explained ("marketing process"), the main vectors being the E-justice Portal and the practice guides provided to citizens and stakeholders.
Furthermore, EU funding dedicated to grants for improving judicial cooperation under the Justice Programme has also been constantly provided for within successive MFF cycles.
Some legislative proposals are pending negotiations and/or adoption: The Restructuring and Insolvency Directive, Digital Content Directive, Sale of Goods Directive, Brussels IIa recast, Regulation on the law applicable to the third party effects of assignment of claims, Revision of the Service of Documents Regulation, Revision of the Taking of Evidence Regulation.

II. Possible ways to further develop the judicial cooperation in civil and commercial matters

Given the wide extent of the acquis and in the context of the end of European Parliament's current legislature in May 2019, and the end of European Commission's current term in October 2019, the Romanian Presidency considers that this would be an appropriate moment to kick off a reflection process with regard to the future of judicial cooperation in civil and commercial matters in the EU beyond 2019.
The view of the Romanian Presidency is that the judicial cooperation in civil and commercial matters at EU level could be further developed on the basis of the following principles:

- Citizen-centred policies, making civil justice faster and cheaper for EU citizens and businesses;
- Facilitating access to justice;
- Respect for common values, fundamental rights and freedoms and the rule of law;
- Respect for the different traditions and legal systems of the Member States;
- Further enhancing the mutual trust in one another's justice systems;
- Building up and strengthening networks;
- Modernisation and digitalization;
- Promoting an EU-compatible approach in the global context.

In the opinion of the Romanian Presidency, a two-track approach could be possible for the future development of judicial cooperation in civil and commercial matters: on one hand, looking into the areas which are already regulated, but where there could be room for improvement, and, on the other hand, looking into possible new areas in which European level legislation would be beneficial.
In the case of areas already regulated we could rely on the revision clauses of the existing legislation. Besides the general review to be carried out for this legislation, there are issues already identified that might require specific attention in the future (they were identified in the legislative process as meriting further consideration, but could not be solved at the time the

respective legislation was adopted). Of course, these issues should be based on rigorous assessments. By way of example the Brussels Ia Regulation[8] refers to "an evaluation of the possible need for a further extension of the rules on jurisdiction to defendants not domiciled in a Member State". The European Account Preservation Order Regulation[9] refers to "an evaluation as to whether: (a) financial instruments should be included in the scope of this Regulation, and (b) amounts credited to the debtor's account after the implementation of the Preservation Order could be made subject to preservation under the Order". The deadline set in the revision clause of the Regulation on the recognition of protection measures in civil matters is approaching[10]. The Regulation on the circulation of public documents also has a revision clause[11] on the extension of the scope to other public documents and on the use of electronic systems for the direct transmission of public documents and the exchange of information between the authorities of the Member States. The Maintenance Regulation[12] refers to "an evaluation of the practical experiences relating to the cooperation between Central Authorities, in particular regarding those Authorities' access to the information held by public authorities and administrations, and an evaluation of the functioning of the procedure for recognition, declaration of enforceability and enforcement applicable to decisions given in a Member State not bound by the 2007 Hague Protocol. Thus, there are issues already identified in the existing legislation that might require attention in the future.

Another means of reaching improvement in the areas already regulated is to strengthen the efforts of better implementation and application of existing legislation.

With regard to the new areas possibly benefiting from the European level legislation, the starting point could be the general principle of law according to which the legal provisions and norms should respond to the developments at the level of the society. Nowadays these developments are mainly linked to the rapid technological changes of our society. There are reflections and assessments started at the level of the EU in certain areas with regard to the possibilities of creating legislation: digitalisation and sustainability of the civil justice procedures, issues related to liability in the context of Artificial Intelligence or Robotics, contract law rules adapted to digitalisation, etc. Through digitalisation, the judiciary can benefit from increased efficiency and citizens and businesses can benefit from better access to justice. At the same time, digitalisation should be accompanied by legal certainty and security of communication. Besides legislation, the EU can use also financial instruments, like the future Digital Europe Programme, to support the deployment of digitalisation in the area of judiciary. Stronger focus could be given to the international context to address the challenges of increasingly globalised world, which requires closer cooperation with third countries also in the field of private international law and judicial cooperation. As an example, the Hague Judgments

[8] Article 79: "By 11 January 2022 the Commission shall present a report to the European Parliament, to the Council and to the European Economic and Social Committee on the application of this Regulation. That report shall include an evaluation of the possible need for a further extension of the rules on jurisdiction to defendants not domiciled in a Member State, taking into account the operation of this Regulation and possible developments at international level. Where appropriate, the report shall be accompanied by a proposal for amendment of this Regulation."

[9] Article 53: "Monitoring and review 1. By 18 January 2022, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Regulation, including an evaluation as to whether: (a) financial instruments should be included in the scope of this Regulation, and (b) amounts credited to the debtor's account after the implementation of the Preservation Order could be made subject to preservation under the Order. The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the amendments to be introduced."

[10] Article 21, Review: "By 11 January 2020, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals for amendments."

[11] Article 26 – Review

[12] Article 74 - Review

Convention will be very relevant in the context of the Hague Conference of Private International Law.
Based on, but not limited to, the context above (the areas mentioned are just examples), the objective of this discussion is to gather the views of the Member States on the ways to further develop the judicial cooperation in civil and commercial matters.

III. Questions for ministers/heads of delegations

1. Should the approach from the Post-Stockholm Programme be continued, i.e. rather concentration on the implementation of the existing acquis and less legislative initiatives and only where the EU action is justified and needed?
2. If legislative action would be required, what areas do you consider that would need further legislation at the level of the EU? On one hand, should the future legislation target the improvement or consolidation of the areas already regulated, e.g. by codifying the existing ones, clarifying the relationship between the instruments in force and coordinating their implementation? On the other hand, what new areas could be targeted by the future EU legislation?

Annex

Inventory of EU Legislation on Judicial Cooperation in Civil and Commercial Matters

Civil and commercial matters

1. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I') - no longer in force, date of end of validity: 09 January 2015, repealed by Regulation (EU) No 1215/2012
2. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ("Brussels I (recast)")
3. Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
4. Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)
5. Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims
6. Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
7. Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
8. Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters
9. Commission Implementing Regulation (EU) 2016/1823 of 10 October 2016 establishing the forms referred to in Regulation (EU) No 655/2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters
10. Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
11. Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters

Insolvency Law

12. Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings - no longer in force, date of end of validity: 24 June 2015, repealed by Regulation (EU) 2015/848
13. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings
14. Regulation (EU) 2017/353 of the European Parliament and of the Council of 15 February 2017 replacing Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings

Family Law

15. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 ("Brussels IIa")

16. Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation ("Rome III")
17. Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
18. Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
19. Commission Implementing Regulation (EU) 2018/1935 of 7 December 2018 establishing the forms referred to in Council Regulation (EU) 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
20. Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships
21. Commission Implementing Regulation (EU) 2018/1990 of 11 December 2018 establishing the forms referred to in Council Regulation (EU) 2016/1104 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships

Succession Law

22. Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession
23. Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation (EU) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession

Protection Orders

24. Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters

Circulation of public documents

25. Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012

Legal aid

26. Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes

Mediation in civil and commercial matters

27. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters

European Judicial Network in civil and commercial matters

28. Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (2001/470/EC), modified by Decision No 568/2009/EC of the European Parliament and of the Council as from 18 September 2009

Compensation to crime victims

29. Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims