European Parliament Endorses Proposal on Jurisdiction in e-Commerce Disputes

IRIS 2001-1:1/5

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On 21 September 2000 the European Parliament endorsed the proposals on jurisdiction in electronic commerce disputes.

This proposal for a council regulation (COM 1999/348, 99/0154) was presented by the Commission on 14 July 1999. It replaces and updates the 1968 Brussels Convention on jurisdiction, recognition and enforcement of judgements.

The Parliament acknowledges that consumers should have the right to sue in their local court but accepted that the particular nature of e-commerce also requires other forms of dispute resolution.

In an amendment suggested by the Parliament, the right of consumers to sue foreign suppliers of goods or providers of services in their jurisdiction is restricted to active Internet sites that actually target the consumer's country.

This amendment follows the approach intended to secure a balance needed between the interests of the different parties who might be involved in litigation.

Among other innovations in the original proposal are new rules of jurisdiction:

- The material scope of the provisions governing consumer contracts has been extended so as to offer consumers better protection, notably in the context of electronic commerce.

- The consumer can avail himself of the jurisdiction provided for by Article 16 where the contract is concluded with a person pursuing commercial or professional activities in the State of the consumer's domicile directing such activities towards that State, provided the contract in question falls within the scope of such activities.

The concept of activities pursued in or directed towards a Member State is designed to make clear that it applies to consumer contracts concluded via an interactive website accessible in the State of the consumer's domicile. The fact that a consumer simply had knowledge of a service or the possibility of buying goods via a passive website accessible in his country of domicile will not trigger the protective jurisdiction. The contract is thereby treated in the same way as a

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contract concluded by telephone, fax and the like, and activates the grounds of jurisdiction provided for by Article 16.

The condition in the old Article 13(3)b) that the consumer must have taken necessary steps for the conclusion of the contract in his home State is to be removed. This must also been seen in the context of contracts concluded via an interactive website. For such contracts the place where the consumer takes these steps may be difficult or impossible to determine, and they may be irrelevant to creating a link between the contract and the consumer's State. The philosophy of the new Article 15 is that the co-contractor creates the necessary link when directing his activities towards the consumer's State.

The new Article 15 offers more protection to consumers, as the weaker parties to a contract. It entitles the consumer to sue in the courts of his domicile. The wording of Article 15 has given rise to certain anxieties among sectors of the industry looking to develop electronic commerce. These concerns relate primarily to the fact that companies engaging in electronic commerce will have to contend with potential litigation in every Member State, or will have to specify that their products or services are not intended for consumers domiciled in certain Member States. One such concern relates to the perceived problems with the notion of "directing his activities" in Article 15, first paragraph, point (3), which is considered to be difficult to comprehend in the Internet world. This concept of using the words "directed at" is also found in US jurisprudence and is utilized by the World Intellectual Property Organization (WIPO).

Parliament has modified the Commission draft to allow freedom of contract to choose Alternative Dispute Resolution. Together with the existing consumer rights set out in EC legislation on unfair contract terms and some reliance on the "directed at"-concept, this should lessen these anxieties.

In the original proposal two amendments are made in Article 23 concerning the prorogation of jurisdiction. The first confirms that the jurisdiction conferred by a choiceof-forum clause is an exclusive jurisdiction (Case 23/78 Meeth v Glacetal [1978] ECR 2133), while enabling the parties to agree that this jurisdiction is not exclusive. This additional flexibility is warranted by the need to respect the autonomous will of the parties. The second takes account of the development of new communication techniques. The need for an agreement "in writing or evidenced in writing" should not invalidate a choice-offorum clause concluded in a form that is not written on paper but accessible on screen. The reference, of course, is mainly to clauses in contracts concluded by electronic means. This amendment is also directed to the objectives pursued by the Commission proposal for a Council Directive on certain legal aspects of electronic commerce in the internal market (OJ C 30, 5 February 1990, COM(1998) 586). Although the amendments suggested by the Parliament are not binding, the Commission has stated that some modifications will be made before presenting the final version

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for signature to the Council of Ministers.

Proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgements in Civil and commercial matters, COM(1998) 348 final of 14 July 1999

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