JUDICIAL COOPERATION IN CIVIL MATTERS

Free movement of goods, services, capital and people cross-border is constantly on the increase. In civil matters having cross-border implications, the European Union is developing judicial cooperation, building bridges between the different legal systems. Its main objectives are legal certainty and easy and effective access to justice, implying identification of the competent jurisdiction, clear designation of the applicable law and speedy and effective recognition and enforcement procedures.

LEGAL BASIS

Article 81(1) TFEU; Protocols Nos 21 and 22 to the Treaty of Lisbon.

OBJECTIVES

In a European area of justice, individuals should not be prevented or discouraged from exercising their rights. The incompatibility and complexity of legal or administrative systems in EU Member States should not be a barrier. Legislation in this complex and sensitive field covers classical civil law, which includes a wide range of fields varying from family law to sales law, etc, but also procedural law, which until recently was an exclusive prerogative of the Member States.

Private international law aims to deal with the cross-border aspects of all issues relating to relationships between private persons, such as family law, property law and the law of contract. Measures relating to family law with cross-border implications have to be adopted by the Council unanimously (Article 81(3)). The main tools for facilitating access to cross-border justice are the principle of mutual recognition, based on mutual trust between Member States, and direct judicial cooperation between national courts.

The EU’s action in the area of judicial cooperation in civil matters seeks primarily to achieve the following objectives:

— to ensure a high degree of legal certainty for citizens in cross-border relations governed by civil law;
— to guarantee citizens easy and effective access to civil justice in order to settle cross-border disputes;
— to simplify cross-border cooperation instruments between national civil courts;
— to support the training of the judiciary and judicial staff.

Each legislative act in preparation must be forwarded to the national parliaments (Article 12 TEU). In addition, national parliaments have the right to object to decisions regarding certain aspects of family law with cross-border implications. Such decisions can only be taken under the ordinary legislative procedure if no national parliament (Article 81(3) TFEU) opposes them.
ACHIEVEMENTS

A. The development of primary law in judicial cooperation in civil matters

Judicial cooperation in civil matters was not one of the objectives of the EC when the founding treaty was adopted. However, Article 220 of the EC Treaty stipulated that Member States were bound to simplify ‘formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards’. Judicial cooperation in civil matters, in the intergovernmental context of ‘Justice and Home Affairs’, was officially included within the EU’s sphere of activity by the Treaty of Maastricht. The Treaty of Amsterdam brought judicial cooperation in civil matters within the Community sphere, transferring it from the Treaty on European Union to the Treaty establishing the European Community, although it did not make it subject to the Community method. The Treaty of Nice allowed measures relating to judicial cooperation in civil matters — except family law — to be adopted using the legislative codecision procedure.

The Tampere European Council (October 1999) laid the foundations for the European Area of Justice. Following recognition that not enough had been done to implement this, a new action plan for 2005-2010 was launched at the European Council of The Hague (November 2004). The Hague Programme underlined the need to continue the implementation of mutual recognition and to extend it to new areas such as family property, successions and wills. It was followed by the Stockholm Programme, which represents the roadmap for future developments in the area of freedom, security and justice over the five-year period from 2010 to 2014.

The Treaty of Lisbon makes all measures in the field of judicial cooperation in civil matters subject to the ordinary legislative procedure. However, family law remains subject to a special legislative procedure: the Council acts unanimously after consulting Parliament.

It should be noted that Denmark, Ireland and the United Kingdom have opt-outs from Title V of Part Three of the TFEU (area of freedom, security and justice) under Protocols No 21 and 22 to the Treaty of Lisbon. Ireland and the United Kingdom have a flexible opt-out from legislation adopted in this area, which allows them to opt in or out of legislation and legislative initiatives on a case-by-case basis (Protocol No 21 of the Treaty of Lisbon). In contrast, Denmark has a more rigid opt-out from the area of freedom, security and justice, which means that it does not take part at all in this policy. In the negotiations of the Treaty of Lisbon, Denmark obtained an option to convert its opt-out into a flexible opt-in modelled on the Irish and British opt-outs (Protocol No 22). A referendum was held on 3 December 2015 to approve the exercise of this option (5.12.1). It was rejected by 53% of voters.

B. Main legislation adopted

1. Determination of the competent court; recognition and enforcement of judgments and of decisions in extrajudicial cases

The main instrument in this area is 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 Regulation’). This regulation seeks to harmonise the rules of conflict of jurisdiction within the Member States and to simplify and expedite the recognition and enforcement of decisions in civil and commercial matters. The Brussels I Regulation is supplemented by 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 (‘Brussels IIa Regulation’). Increasing mobility means that family ties are developing among individuals of different nationalities. Binational couples need
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3. Facilitating access to justice

In order to improve access to justice in cross-border disputes, the Council adopted Directive 2003/8/EC establishing minimum common rules relating to legal aid for such disputes. The purpose of the directive is to guarantee an ‘adequate’ level of legal aid in cross-border disputes for persons who lack sufficient resources. In order to make access to justice easier and more
effective for European citizens and businesses, the European Union has introduced common procedural rules for simplified and accelerated cross-border litigation on small claims and the cross-border recovery of uncontested pecuniary claims throughout the European Union. These are found in Regulation (EC) No 861/2007 establishing a European Small Claims Procedure, and Regulation (EC) No 1896/2006 creating a European order for payment procedure. These procedures are optional and additional to the procedures provided for by national law. Directive 2008/52/EC establishes common rules on certain aspects of mediation in civil and commercial matters in order to increase legal certainty and thereby encourage use of this method of dispute resolution.

4. Instruments for cross-border cooperation between national civil courts

Article 81(2)(a) and (c) TFEU also entrusts Parliament and the Council with the task of adopting measures aimed at ensuring mutual recognition and enforcement of judgments and the compatibility of national rules with regard to conflict of laws and of jurisdiction. Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 is intended to simplify and expedite the transmission between Member States of judicial and extrajudicial documents for service purposes and thus to increase the efficiency and speed of judicial procedures. In order to simplify and accelerate cooperation between courts in the various Member States in the taking of evidence in civil or commercial matters, the Council adopted Regulation (EC) No 1206/2001. To improve, simplify and expedite judicial cooperation between the Member States and to promote access to justice for citizens engaging in cross-border disputes, a European Judicial Network in civil and commercial matters was established by Council Decision 2001/470/EC of 28 May 2001. The network is composed of contact points designated by the Member States, the central authorities provided for in some EU instruments, liaison magistrates, and any other authority with responsibilities for judicial cooperation between state actors (courts, central authorities). Decision 2001/470/EC was amended by Decision 568/2009/EC of 18 June 2009 aimed at enhancing and reinforcing the role of the European Judicial Network in civil and commercial matters. A major innovation introduced by the new decision consists of opening the network to professional associations representing legal practitioners, in particular lawyers, solicitors, barristers, notaries and bailiffs.

Another tool for simplifying judicial cooperation in civil matters consists of the development of the use of information and communication technologies in the administration of justice. This project was launched in June 2007 and led to a European e-Justice Strategy. The e-Justice tools cover: the European e-Justice portal, which aims to facilitate access by citizens and enterprises to justice in Europe; the interconnection of criminal records at European level; better use of videoconferencing during judicial proceedings, and innovative translation tools such as automated translation, dynamic online forms and a European database of legal translators and interpreters. The Commission’s yearly EU Justice Scoreboard is an information tool aiming to assist the EU and the Member States in achieving more effective justice by providing objective, reliable and comparable data on the quality, independence and efficiency of justice systems in all Member States. Such data is essential to support reforms in national justice systems.

ROLE OF THE EUROPEAN PARLIAMENT

With the exception of family law, where the Council acts unanimously and Parliament is only consulted, the ordinary legislative procedure is applied to judicial cooperation in civil matters. Parliament has played an active role in defining the content of the legislative instruments described above. It has, in the past, noted that a genuine European judicial culture is needed if citizens are to be given all the benefits of their rights under the treaties. One of the most important aspects of this is training, in particular in the legal field. In June 2013, Parliament
adopted (on the basis of an own-initiative report) a resolution on ‘Improving access to justice: legal aid in cross-border civil and commercial disputes’.

In the area of jurisdiction, applicable law and the recognition and enforcement of decisions in the matter of property regimes of international couples, covering both matrimonial property regimes and the property consequences of registered partnerships, Parliament had given its consent in 2013 to the 2011 draft acts, but by the end of 2015 it became clear that it would not be possible for all Member States to agree to the proposals. Twenty-three Member States therefore agreed on enhanced cooperation (Article 20 TEU) in order to advance with the draft legislation. In early 2016 the Commission, using the enhanced cooperation procedure, drew up new proposals for acts, the substance of which was based on the compromise reached earlier. The vote in Parliament on the two proposals concerning property regimes for international couples was held in June 2016.

The position of European Parliament Mediator for International Parental Child Abduction was created in 1987 in order to help children from binational marriages/relationships who are victims of parental child abduction. The mediator’s role is to help find mutually acceptable solutions in the child’s best interest when, following the separation of spouses/partners of different nationalities or who live in different countries, a child is taken away from one of the parents. Mairead McGuinness was appointed European Parliament Mediator for cases of international child abduction in 2014, following Roberta Angelilli (2009-2014), Evelyne Gebhardt (2004-2009), Mary Banotti (1995-2004) and Marie-Claude Vayssade (1987-1994).

Udo Bux
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