



JUDICIAL COOPERATION IN CIVIL MATTERS

Free movement of goods, services, capital and people across borders 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 of the Treaty on the Functioning of the European Union (TFEU); Protocols No 21 and 22 annexed to the Treaties.

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, 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 contract law. Measures relating to family law with cross-border implications have to be adopted by the Council unanimously (Article 81(3) TFEU, second subparagraph). 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 of the Treaty on European Union (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 opposes them (Article 81(3) TFEU, third subparagraph).

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 European Community when the founding treaty was adopted. However, Article 220 of the Treaty establishing the European Community 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 (1.1.3.). 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 (1.1.4.) 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 (1.1.5.) 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 annexed to the Treaties. 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 annexed to the Treaties). 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 (4.2.1). 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 [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 \('Brussels I Regulation'\)](#). 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 to know how to name their children and divorced people need to be able to start again in another country without cutting off contact with their children. Concerning children who are abducted by one of their parents, the Hague Convention on the Civil Aspects of International Child Abduction^[1], which has 99 (October 2018) contracting states including all EU Member States, is based on a very simple objective: the prompt return of the abducted child. In parallel, the Brussels IIa Regulation has been in force for 15 years now, but there has been much discussion on improving it with regard to this issue.

In order to facilitate international recovery of maintenance obligations, the Council adopted [Regulation \(EC\) No 4/2009](#) in December 2008. This regulation brings together in a single instrument uniform rules on jurisdiction, applicable law, recognition and enforcement, as well as on cooperation between national authorities. With a view to improving the efficiency and effectiveness of cross-border insolvency proceedings, European Parliament and Council Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings sets out uniform rules on jurisdiction, recognition and applicable law in this area. In order to abolish exequatur for decisions relating to uncontested claims, Parliament and the Council adopted [Regulation \(EC\) No 805/2004](#) creating a European Enforcement Order for uncontested claims. [European Parliament and Council Regulation \(EU\) No 650/2012](#) 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 seeks to eliminate obstacles encountered by citizens in the enforcement of their rights in the context of international successions.

Because of the different legal consequences resulting from the distinctive features of marriage and registered partnerships, the Commission presented two separate proposals for regulations in 2011, laying down property regimes for international couples — one for married couples and the other for registered partnerships — on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

[1][Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.](#)



2. Harmonisation of conflict-of-law rules

A number of instruments have been adopted at EU level to deal with the most crucial matters related to private international law (namely the Brussels and Rome Regulations). Parliament and the Council adopted [Regulation \(EC\) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations \('Rome I Regulation'\)](#). The adoption of [Regulation \(EC\) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations \('Rome II Regulation'\)](#) has enabled the creation of a uniform set of conflict-of-law rules for non-contractual obligations in civil and commercial matters. It thus seeks to improve legal certainty and the predictability of the outcome of litigation. Conflict-of-law rules relating to maintenance obligations are set out in 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. In the area of the law applicable to divorce and legal separation, in December 2010 the Council adopted [Regulation \(EU\) No 1259/2010](#), which establishes a clear and comprehensive legal framework for divorce and legal separation. With regard to international successions, Regulation (EU) No 650/2012 determines, among other things, the applicable law.

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 Regulations [\(EC\) No 861/2007](#) establishing a European Small Claims Procedure, and [\(EC\) 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 entrust 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 (currently under review) 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](#).^[2] 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 (EJN) 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; 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 noted in the past that a genuine European judicial culture is needed if citizens are to gain 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 a resolution on 'Improving access to justice: legal aid in cross-border civil and commercial disputes'^[3].

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 but the two acts remained blocked for years in the Council. 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 drew up new proposals for acts, the substance of which was based on the Parliament vote and compromises reached earlier.

[2] [Decision No 568/2009/EC of the European Parliament and of the Council of 18 June 2009 amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters.](#)

[3] OJ C 65, 19.2.2016, p. 12.



[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](#) was finally adopted on 24 June 2016.

Concerning civil court procedures in the European Union, Parliament called on the Commission in July 2017, pursuant to Article 225 TFEU, to submit a proposal for a legislative act by 30 June 2018, on the basis of Article 81(2) of the TFEU, on common minimum standards of civil procedure^[4]. The text of the proposed EU directive annexed to Parliament's resolution seeks to approximate civil procedure systems so as to ensure full respect for the right to a fair trial as recognised in Article 47 of the Charter of Fundamental Rights of the EU and in Article 6 of the European Convention on Human Rights (4.1.2.) by laying down minimum standards concerning the commencement, conduct and conclusion of civil proceedings before Member States' courts or tribunals.

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 office, which is always held by an incumbent MEP, was re-named '[European Parliament Coordinator on Children's Rights](#)' in April 2018 under Elisabeth Morin-Chartier, in order to reflect the evolution of the mandate granted to the position, to encompass children's rights.

Anna Maria Corazza Bildt held the position of European Parliament Coordinator on Children's Rights from January 2019 until the 2019 European elections. Her predecessors in the post were Elisabeth Morin-Chartier (2017-2019), Mairead McGuinness (2014-2017), Roberta Angelilli (2009-2014), Evelyne Gebhardt (2004-2009), Mary Banotti (1995-2004) and Marie-Claude Vayssade (1987-1994).

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[4]European Parliament resolution of 4 July 2017 with recommendations to the Commission on common minimum standards of civil procedure in the European Union (OJ C 334, 19.9.2018, p. 39).

