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*Committee on Legal Affairs*

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**2010/0383(COD)**

19.10.2011

# **AMENDMENTS**

## **59 - 120**

**Draft report**  
**Tadeusz Zwiefka**  
(PE467.046v01-00)

Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)

Proposal for a regulation  
(COM(2010)0748 – C7-0433/2010 – 2010/0383(COD))

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**EN**

*United in diversity*

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**Amendment 59**  
**Rolandas Paksas**

**Proposal for a regulation**  
**Recital 2**

*Text proposed by the Commission*

(2) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. In order to establish progressively such an area, the Union should adopt, amongst other things, the measures relating to judicial cooperation in civil matters, ***particularly when necessary for the proper functioning*** of the internal market.

*Amendment*

(2) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. In order to establish progressively such an area, the Union should adopt, amongst other things, the measures relating to judicial cooperation in civil matters, ***in order to ensure a better functioning of the Area of Freedom, Security and Justice and of the internal market, which can only be promoted at the supranational level.***

Or. It

**Amendment 60**  
**Juozas Imbrasas**

**Proposal for a regulation**  
**Recital 2**

*Text proposed by the Commission*

(2) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. In order to establish progressively such an area, the Union should adopt, amongst other things, the measures relating

*Amendment*

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to judicial cooperation in civil matters, *particularly when necessary for the proper functioning* of the internal market.

to judicial cooperation in civil matters, *in order to ensure a better functioning of the Area of Freedom, Security and Justice and* of the internal market.

Or. It

**Amendment 61**  
**Rolandas Paksas**

**Proposal for a regulation**  
**Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

*(7a) On 30 November 2000 the Justice and Home Affairs Council adopted a programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, the aim of which was to abolish all procedures needed for the enforceability of decisions in civil and commercial matters taken in another Member State; it was decided to focus on a pilot project in a very specific sector: the abolition of the exequatur procedure for uncontested claims. It is worth noting that the final aim is to secure the recognition and enforcement of judgments issued in another Member State without any additional intermediary measure being required, which amounts to abolishing the exequatur procedure.*

Or. It

**Amendment 62**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Recital 11**

*Text proposed by the Commission*

*Amendment*

***(11) This Regulation does not apply to arbitration, save in the limited case provided for therein. In particular, it does not apply to the form, existence, validity or effects of arbitration agreements, the powers of the arbitrators, the procedure before arbitral tribunals, and the validity, annulment, and recognition and enforcement of arbitral awards.***

*deleted*

Or. en

**Amendment 63**  
**Evelyn Regner**

**Proposal for a regulation**  
**Recital 13**

*Text proposed by the Commission*

*Amendment*

(13) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice. The existence of a close link should ensure legal certainty avoiding that the defendant is sued before a court of a Member State which was not reasonably foreseeable for him. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

(13) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice. The existence of a close link should ensure legal certainty avoiding that the defendant is sued before a court of a Member State which was not reasonably foreseeable for him ***and avoiding 'forum shopping'***. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation, ***and in international disputes arising out of industrial action which are bound to develop in an increasingly mobile labour market.***

Or. en

**Amendment 64**  
**Evelyn Regner**

**Proposal for a regulation**  
**Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) This Regulation assumes as a general principle that the courts of the Member State where the industrial action is taking place should have jurisdiction, with the aim of protecting the rights and obligations of workers and employers. Indeed, the scope of the specific provision relating to industrial action should correspond to that of the provision relating to industrial action contained in 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)<sup>1</sup> and should be interpreted in the same way. The special rule on industrial action in point -1 of Article 22 is without prejudice to the conditions relating to the exercise of such action in accordance with national law and without prejudice to the legal status of trade unions or of organisations representing the professional interests of workers as provided for in the law of the Member States.***

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<sup>1</sup> OJ L 199, 31.7.2007, p. 40.

Or. en

*Justification*

*It is necessary to ensure that the rules of Brussels I are consistent with those of Rome II, so as to guarantee maximum legal certainty for workers and for employers. Besides, consistency between Rome II and Brussels I means that the competent judge will often be able to apply his or her own law, which is especially relevant in the complex area of industrial actions as the law is so diverse from one Member State to another.*

**Amendment 65**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Article 1 – paragraph 2 – point d**

*Text proposed by the Commission*

(d) arbitration, *save as provided for in Articles 29, paragraph 4 and 33, paragraph 3.*

*Amendment*

(d) arbitration.

Or. en

**Amendment 66**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 2 – point c**

*Text proposed by the Commission*

(c) ‘court’ shall include any authorities designated by a Member State as having jurisdiction in the matters falling within the scope of this Regulation;

*Amendment*

(c) ‘court’ shall include any authorities designated by a Member State as having jurisdiction in the matters falling within the scope of this Regulation. ***It shall also include international authorities to which a Member State has assigned jurisdiction in matters falling within the scope of this Regulation; such an international authority shall be deemed to be a court of the Member State concerned even if it is located outside its territory;***

Or. en

**Amendment 67**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 4 – paragraph 2**

*Text proposed by the Commission*

2. Persons *not* domiciled in *any of the* Member *States* may *be sued in the courts* of *a Member State only by virtue of* the rules set out in Sections 2 to 8 of this Chapter.

*Amendment*

2. Persons domiciled in *a Member State* may *also avail themselves* of the rules set out in Sections 2 to 8 of this Chapter *as against a defendant not domiciled in a Member State*.

Or. en

**Amendment 68**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. Without prejudice to paragraph 2 and subject to Articles 22 and 23, the jurisdiction of the courts of each Member State as against a defendant not domiciled in a Member State shall be determined by the law of the Member State concerned.*

Or. en

**Amendment 69**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 4 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*2b. As against a defendant not domiciled in a Member State, persons domiciled in a Member State may, whatever their nationality, avail themselves in that Member State of the rules of jurisdiction there in force in the same way as nationals of that Member State.*



**Amendment 70**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 5 – point 2**

*Text proposed by the Commission*

2. in matters relating to tort, delict or quasi-delict, the courts for the place where the harmful event occurred or may occur;

*Amendment*

2. in matters relating to tort, delict or quasi-delict, the courts for the place where the harmful event occurred or may occur;  
***those courts may accept jurisdiction only where a sufficient, substantial or significant link exists with the country in which the action is brought;***

**Amendment 71**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 5 – point 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. in matters arising out of a violation of privacy or rights relating to personality, where the violation is caused by the publication or broadcasting of contentious material on the internet, the courts of the country at which the publication or broadcast is chiefly targeted, provided that their acceptance of jurisdiction is based on a series of relevant connecting factors asserting the territorial jurisdictional relevance. The country at which the online publication or broadcast is chiefly targeted shall be determined in particular by the language of the online publication or broadcast or the domain name, or by sales or audience***

*size in a given country as a proportion of total sales or audience size, or by a combination of those factors;*

Or. en

**Amendment 72**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 5 – point 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. in matters relating to tort, delict or quasi-delict arising out of environmental damage or damage sustained by persons or property as a result of such damage, the courts for the place where the harmful event occurred or may occur, unless the person seeking compensation for damage chooses to sue in the courts for the place where the event giving rise to the damage occurred, including the place where the decision leading to the tort, delict or quasi-delict was adopted;*

Or. en

**Amendment 73**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 5 – point 3**

*Text proposed by the Commission*

*Amendment*

*3. as regards rights in rem or possession in moveable property, the courts for the place where the property is situated;*

*deleted*

Or. en

### *Justification*

*A jurisdiction at the location of moveable property is missed. This creates legal uncertainty, since moving objects are most likely not situated at one specific place. Where the claimant holds the property, it is easy to do forum shopping. In this regard, but also in other cases, it is also unclear at what time the property has to be at the specific place: at the time of filing of the suit or at the time of notification of the defendant.*

#### **Amendment 74** **Diana Wallis**

##### **Proposal for a regulation** **Article 6 – point 1**

###### *Text proposed by the Commission*

1. where he **is domiciled in a Member State and** is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

###### *Amendment*

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

Or. en

#### **Amendment 75** **Diana Wallis**

##### **Proposal for a regulation** **Article 8**

###### *Text proposed by the Commission*

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to point 5 of Article 5.

###### *Amendment*

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to **Article 4(2a)** and point 5 of Article 5.

Or. en

**Amendment 76**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 15 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to **point 5 of Article 5**, if:

*Amendment*

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to **Article 4(2a) and point 5 of Article 5**, if:

Or. en

**Amendment 77**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 18 – paragraph 1**

*Text proposed by the Commission*

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to point 5 of Article 5 **and point 1 of Article 6**.

*Amendment*

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to point 5 of Article 5.

Or. en

*Justification*

*Employees should have the right to sue several employers, too. This might be important if it is difficult to clearly point out the actual responsible employer among many, e.g. because of complicated company structures.*

**Amendment 78**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 18 – paragraph 1**

*Text proposed by the Commission*

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to point 5 of Article 5 and **Article 6(1)**.

*Amendment*

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article **4(2a)**, point 5 of Article 5 and **point 1 of Article 6**.

Or. en

**Amendment 79**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 18 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1a. Employees shall have the right to rely on point 1 of Article 6.**

Or. en

*Justification*

*Employees should have the right to sue several employers, too. This might be important if it is difficult to clearly point out the actual responsible employer among many, e.g. because of complicated company structures.*

**Amendment 80**  
**Tiziano Motti, Antonio Cancian**

**Proposal for a regulation**  
**Article 20 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. An employer may bring proceedings only in the courts of the Member State **in which the employee is domiciled**.

1. An employer may bring proceedings only in the courts of the Member State **which is competent in accordance with the employment contract signed by the**

*employer and the employee. The choice of the court having jurisdiction in the Member State, as above, must take account of the difficulties encountered by small and medium-sized enterprises in bringing legal proceedings outside the territory in which their enterprise is based.*

Or. it

**Amendment 81**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 22 – introductory wording**

*Text proposed by the Commission*

The following courts shall have exclusive jurisdiction:

*Amendment*

The following courts shall have exclusive jurisdiction *regardless of domicile*:

Or. en

**Amendment 82**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 22 – point -1 (new)**

*Text proposed by the Commission*

*Amendment*

***-1. in proceedings relating to an industrial action, pending or carried out, the courts of the Member State in which the action is to be, or has been, taken.***

Or. en

*Justification*

*According to recital 7 of Rome II, there should be coherence between the Community law instruments that regulate applicable law and court jurisdiction. A jurisdiction that*

*corresponds with Art. 9 of Rome II should be introduced to avoid "forum shopping". A consistent rule to Rome II grants legal certainty for employers and workers. Consistency of Rome II and Brussels I means that the competent judge will often apply its own law - relevant in the complex area of industrial actions.*

**Amendment 83**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 23 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

1. If the parties have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substance under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

*Amendment*

1. If the parties have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substance under the ***applicable*** law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

Or. en

**Amendment 84**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 25 – introductory wording**

*Text proposed by the Commission*

Where no court of a Member State has jurisdiction in accordance with Articles 2 to 24, jurisdiction ***shall lie with the courts of the Member State where property belonging to the defendant is located, provided that***

*Amendment*

Where no court of a Member State has jurisdiction in accordance with Articles 5 to 24, ***the courts of a Member State shall have jurisdiction as against a defendant domiciled in a Member State:***

**Amendment 85**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 25 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) the value of the property is not disproportionate to the value of the claim; and*

*deleted*

Or. en

**Amendment 86**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 25 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) the value of the property is not disproportionate to the value of the claim; and*

*the value of the property is not disproportionate to the value of the claim.*

Or. en

**Amendment 87**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 25 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the dispute has a sufficient connection with the Member State of the court seised.*

*deleted*

Or. en



*Justification*

*This restriction creates legal uncertainty and leaves space for interpretation. If there is a "sufficient connection", the jurisdiction rules of Chapter II, sections 2 to 7, of this regulation apply, so it should be deleted.*

**Amendment 88**

**Diana Wallis**

**Proposal for a regulation**

**Article 25 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) the dispute has a sufficient connection with the Member State of the court seised.*

*deleted*

Or. en

**Amendment 89**

**Diana Wallis**

**Proposal for a regulation**

**Article 25 – paragraph 1 – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

*1. in matters relating to a contract concluded with a defendant who pursues commercial or professional activities, or who by any means directs such activities to that Member State or to several States including that Member State, if the contract falls within the scope of those activities;*

*2. in matters relating to a non-contractual obligation which is closely connected with the defendant's commercial or professional activities in, or directed to, that Member State or to several States including that Member State;*

*3. in matters relating to a non-contractual obligation which is closely connected with a contract between the parties, if the court*

*of that Member State has jurisdiction in matters relating to that contract under point 1 of Article 5;*

*4. in matters relating to a contract, if the law of that Member State has been chosen by the parties to govern the contract between them.*

Or. en

**Amendment 90**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 26 – introductory wording**

*Text proposed by the Commission*

Where no court of a Member State has jurisdiction under this Regulation, the courts of a Member State *may*, on an exceptional basis, *hear the case* if the right to a fair trial or the right to access to justice so requires, in particular:

*Amendment*

Where no court of a Member State has jurisdiction under this Regulation, the courts of a Member State *shall have jurisdiction*, on an exceptional basis, *as against a defendant domiciled in a Member State* if the right to a fair trial or the right to access to justice so requires, in particular:

Or. en

**Amendment 91**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 26 – final wording**

*Text proposed by the Commission*

*and the dispute has a sufficient connection with the Member State of the court seised.*

*Amendment*

*deleted*

Or. en

### *Justification*

*This restriction creates legal uncertainty and leaves space for interpretation. If there is a "sufficient connection", the jurisdiction rules of Chapter II, sections 2 to 7, of this regulation apply, so it should be deleted.*

#### **Amendment 92**

**Diana Wallis**

#### **Proposal for a regulation**

#### **Article 26 – final wording**

*Text proposed by the Commission*

and the *dispute has a sufficient connection with* the Member State of the court seised.

*Amendment*

and the *claimant is domiciled in* the Member State of the court seised.

Or. en

#### **Amendment 93**

**Evelyn Regner**

#### **Proposal for a regulation**

#### **Article 27**

*Text proposed by the Commission*

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which *it has no jurisdiction under this Regulation*, it shall declare of its own motion that it has no jurisdiction.

*Amendment*

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which *the courts of another Member State have exclusive jurisdiction by virtue of Article 22*, it shall declare of its own motion that it has no jurisdiction.

Or. en

#### **Amendment 94**

**Evelyn Regner**

**Proposal for a regulation**  
**Article 28 – paragraph 1**

*Text proposed by the Commission*

1. Where a defendant is sued in a court of a Member State and does not enter an appearance, the court shall ***stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.***

*Amendment*

1. Where a defendant is sued in a court of a Member State and does not enter an appearance, the court shall ***declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from this Regulation.***

Or. en

**Amendment 95**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 28 – paragraph 1 a (new)**

*Text proposed by the Commission*

***1a. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to that end.***

*Amendment*

Or. en

**Amendment 96**  
**Giuseppe Gargani**

**Proposal for a regulation**  
**Article 29 – paragraph 2**

*Text proposed by the Commission*

2. In cases referred to in paragraph 1, the court first seised shall establish its jurisdiction within **six months** except where exceptional circumstances make this impossible. Upon request by any other court seised of the dispute, the court first seised shall inform that court of the date on which it was seised and of whether it has established jurisdiction over the dispute or, failing that, of the estimated time for establishing jurisdiction.

*Amendment*

2. In cases referred to in paragraph 1, the court first seised shall establish its jurisdiction within **thirty days** except where **duly substantiated** exceptional circumstances make this impossible. Upon request by any other court seised of the dispute, the court first seised shall inform that court of the date on which it was seised and of whether it has established jurisdiction over the dispute or, failing that, of the estimated time for establishing jurisdiction.

Or. it

**Amendment 97**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 29 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The courts of a Member State whose jurisdiction is contested on the ground that the parties have agreed that the court or courts of another Member State are to have exclusive jurisdiction under Article 23(1) shall, unless their own jurisdiction is based on Article 22 or Article 23, stay proceedings once the court or courts of the Member State which are claimed to have been chosen are seised of proceedings to determine, as their main object or as an incidental question, the existence, validity or effects of the choice of court agreement with respect to the dispute between the parties concerned.***

***This paragraph shall apply regardless of which court was first seised.***

***This paragraph shall not apply in relation to disputes concerning matters referred to***

**Amendment 98**  
**Giuseppe Gargani**

**Proposal for a regulation**  
**Article 29 – paragraph 4**

*Text proposed by the Commission*

***4. Where the agreed or designated seat of an arbitration is in a Member State, the courts of another Member State whose jurisdiction is contested on the basis of an arbitration agreement shall stay proceedings once the courts of the Member State where the seat of the arbitration is located or the arbitral tribunal have been seised of proceedings to determine, as their main object or as an incidental question, the existence, validity or effects of that arbitration agreement.***

***This paragraph does not prevent the court whose jurisdiction is contested from declining jurisdiction in the situation referred to above if its national law so prescribes.***

***Where the existence, validity or effects of the arbitration agreement are established, the court seised shall decline jurisdiction.***

***This paragraph does not apply in disputes concerning matters referred to in Sections 3, 4, and 5 of Chapter II.***

*Amendment*

***4. Where the plaintiff has lodged an application belatedly or illegally, the court previously seised, in a decision contesting that court's jurisdiction in favour of any court other than the court first seised, may order him to pay a sum of money proportionate to the value of the dispute, the amount being no higher than 10% of the value of the action, without prejudice to the compensation for damages that might be claimed by the other party. It shall be assumed that the plaintiff has acted belatedly or illegally where he has lodged an application in breach of a jurisdiction clause that he knew, or that he did not know owing to his own negligence.***

*deleted*

**Amendment 99**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 29 – paragraph 4 – subparagraph 4**

*Text proposed by the Commission*

This paragraph *does* not apply in disputes concerning matters referred to in Sections 3, 4, and 5 of Chapter II.

*Amendment*

This paragraph *shall* not apply in *relation to* disputes concerning matters referred to in Sections 3, 4, and 5 of Chapter II *and in any proceedings where a final binding decision has been taken concerning jurisdiction.*

Or. en

**Amendment 100**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 31 – paragraph 2**

*Text proposed by the Commission*

*In particular, the court seised with an application for provisional, including protective measures shall seek information from the other court on all relevant circumstances of the case, such as the urgency of the measure sought or any refusal of a similar measure by the court seised as to the substance.*

*Amendment*

*Such cooperation shall not in any way compromise the urgency of the measure sought. If cooperation proves to be impossible in advance of the decision on that measure, the court ordering the measure shall contact and exchange information with the court seised as to the substance after the measure has been ordered. If by this exchange the court ordering the measure arrives at a different evaluation of the measure sought, it shall, in coordination with any other court involved, annul or amend the measure without further application by the parties.*

Or. en

**Amendment 101**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 32 – paragraph 2**

*Text proposed by the Commission*

**2. With the exception of agreements governed by Sections 3, 4 and 5 of this Chapter, where an agreement referred to in Article 23 confers exclusive jurisdiction to a court or the courts of a Member State, the courts of other Member States shall have no jurisdiction over the dispute until such time as the court or courts designated in the agreement decline their jurisdiction.**

*Amendment*

**deleted**

Or. en

**Amendment 102**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 32 – paragraph 2**

*Text proposed by the Commission*

2. With the exception of agreements governed by Sections 3, 4 and 5 of this Chapter, where an agreement referred to in Article 23 confers exclusive jurisdiction **to** a court or the courts of a Member State, the courts of other Member States shall **have no jurisdiction over the dispute** until such time as the court or courts designated in the agreement decline their jurisdiction.

*Amendment*

2. With the exception of agreements governed by Sections 3, 4 and 5 of this Chapter, where an agreement referred to in Article 23 confers exclusive jurisdiction **on** a court or the courts of a Member State, the courts of other Member States shall **stay the proceedings before them** until such time as the court or courts designated in the agreement decline their jurisdiction, **or until both parties agree to the jurisdiction of the courts of that other Member State or enter an appearance in accordance with Article 24.**

Or. en



**Amendment 103**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Article 32 – paragraph 2**

*Text proposed by the Commission*

**2. With the exception of agreements governed by Sections 3, 4 and 5 of this Chapter, where an agreement referred to in Article 23 confers exclusive jurisdiction to a court or the courts of a Member State, the courts of other Member States shall have no jurisdiction over the dispute until such time as the court or courts designated in the agreement decline their jurisdiction.**

*Amendment*

**2. Without prejudice to Article 24, where a court of a Member State on which an agreement referred to in Article 23 confers exclusive jurisdiction is seised, any court of another Member State which is also seised shall stay proceedings until such time as the jurisdiction of the court designated in the agreement is established.**

Or. en

**Amendment 104**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Article 32 – paragraph 2 a (new)**

*Text proposed by the Commission*

**2a. Where the jurisdiction of the court designated in the agreement is established, any court of another Member State which is also seised shall decline jurisdiction in favour of that court.**

*Amendment*

Or. en

**Amendment 105**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Article 32 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. Paragraphs 2 and 3 shall not apply to agreements governed by Sections 3, 4 and 5 when the policyholder, the insured, the injured party or a beneficiary of the contract of insurance, the consumer or the employee is the claimant.***

Or. en

**Amendment 106**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 34 – paragraph 1 – introductory wording**

*Text proposed by the Commission*

*Amendment*

1. Notwithstanding the rules in Articles 3 to 7, if proceedings in relation to the same cause of action and between the same parties are pending before the courts of a third State ***at a time when a*** court in a Member State ***is seised, that*** court may stay its proceedings if:

1. Notwithstanding the rules in Articles 3 to 7, if ***either*** proceedings in relation to the same cause of action and between the same parties ***or related proceedings*** are pending ***at the same time*** before the courts of a third State ***and*** a court in a Member State, ***the latter*** court may, ***on the application of a party,*** stay its proceedings if:

Or. en

**Amendment 107**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 34 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

***(a) the court of the third State was seised first in time;***

***deleted***

Or. en

**Amendment 108**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 34 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) it may be expected that the court in the third State will, within a reasonable time, render a judgment that will be capable of recognition and, where applicable, enforcement in that Member State; and

*Amendment*

(b) it may be expected that the court in the third State will, within a reasonable time, render a judgment that will be capable of recognition and, where applicable, enforcement in that Member State, ***except where there are sufficient assets located in the third State to satisfy a judgment given in favour of the claimant***; and

Or. en

**Amendment 109**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 34 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) the court is satisfied that ***it is necessary for the proper administration of justice to do so.***

*Amendment*

(c) the court ***of the Member State*** is satisfied that ***to stay the proceedings before it is in the interests of justice and the courts of the third State are clearly more appropriate to determine the case than the forum courts.***

Or. en

**Amendment 110**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 34 – paragraph 4**

*Text proposed by the Commission*

4. The court shall dismiss the proceedings upon application by either party ***or of its own motion*** if the proceedings in the court of the third State are concluded and have resulted in a judgment enforceable in that State, or capable of recognition and, where applicable, enforcement in the Member State.

*Amendment*

4. The court shall dismiss the proceedings upon application by either party if the proceedings in the court of the third State are concluded and have resulted in a judgment enforceable in that State, or capable of recognition and, where applicable, enforcement in the Member State.

Or. en

**Amendment 111**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 34 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The sets of proceedings referred to in paragraph 1 shall be deemed to constitute related actions within the meaning of Article 30(3).***

Or. en

**Amendment 112**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 34 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 34a***

***1. Notwithstanding the rules in Articles 3 to 7, if either proceedings between the same parties or related proceedings are pending at the same time before the courts of a third State and a court in a Member State, the latter court may, on the***

*application of a party, stay the proceedings before it if the proceedings before the courts of the third State have as their object one of the following:*

*(a) rights in rem in immovable property or tenancies of immovable property where the property in question is situated in that third State;*

*(b) the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, where the seat of the company, legal person or association concerned is located in that third State;*

*(c) the registration or validity of patents, trade marks, designs or similar rights to be deposited or registered where such deposit or registration has been applied for or has taken place in that third State, provided that:*

*(i) it may be expected that the court in the third State will, within a reasonable time, deliver a judgment that will be capable of recognition and, where applicable, enforcement in that Member State, except where there are sufficient assets located in the third State to satisfy a judgment given in favour of the claimant; and*

*(ii) the court of the Member State is satisfied that to stay the proceedings before it is in the interests of justice and the courts of the third State are clearly more appropriate to determine the case than the forum courts.*

*2. During the period of the stay the party who has seised the court in the Member State shall not lose the benefit of interruption of prescription or limitation periods provided for under the law of that Member State.*

*3. The court of the Member State may discharge the stay at any time upon*

*application by either party if one of the following conditions is met:*

*(a) the proceedings in the court of the third State are themselves stayed or are discontinued;*

*(b) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time;*

*(c) discharge of the stay is required for the proper administration of justice.*

*4. The court of the Member State shall upon application by either party dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment enforceable in that State, or capable of recognition and, where applicable, enforcement in the Member State.*

*5. The sets of proceedings referred to in paragraph 1 shall be deemed to constitute related actions within the meaning of Article 30(3).*

Or. en

**Amendment 113**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 34 b (new)**

*Text proposed by the Commission*

*Amendment*

*Article 34b*

*1. Notwithstanding the rules in Articles 3 to 7, if proceedings between the same parties falling within the material scope of a choice of court agreement conferring exclusive jurisdiction on the courts of a State which is neither a Member State nor a State bound by the 2007 Lugano Convention arise in that third State and in*

*a court in a Member State, the latter court may, on the application of a party, stay the proceedings before it if:*

*(a) it may be expected that the court in that third State will, within a reasonable time, deliver a judgment that will be capable of recognition and, where applicable, enforcement in that Member State, except where there are sufficient assets located in the third State to satisfy a judgment given in favour of the claimant; and*

*(b) it is satisfied that to stay the proceedings before it is in the interests of justice; and*

*(c) the subject-matter of the choice of court agreement falls outside the scope of the 2005 Hague Convention on Choice of Court Agreements.*

*2. During the period of the stay, the party who has seised the court in the Member State shall not lose the benefit of interruption of prescription or limitation periods provided for under the law of that Member State.*

*3. The court of the Member State may at any time, upon application by either party, discharge the stay if one of the following conditions is met:*

*(a) the proceedings in the court of the third State are themselves stayed or are discontinued;*

*(b) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time;*

*(c) discharge of the stay is required for the proper administration of justice*

*4. The court of the Member State shall upon application by either party dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment enforceable in that State, or capable of recognition*

*and, where applicable, enforcement in the Member State.*

Or. en

**Amendment 114**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 40 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*With the exception of protective measures under the first paragraph, no enforcement measure shall be ordered unless either:*

*(a) the applicant has, not less than 14 days before the date upon which the enforcement measure is sought, served on the party against whom the measure is sought a copy of the certificate referred to in Article 42(1) or (2) in accordance with the requirements of Regulation (EC) No 1393/2007, where applicable; or*

*(b) it is impracticable to serve judicial documents on the party against whom the enforcement measure is sought, and the applicant has taken reasonable steps to bring the contents of the judgment to the notice of the party against whom the measure is sought.*

Or. en

**Amendment 115**  
**Diana Wallis**

**Proposal for a regulation**  
**Article 42 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

*(ba) if the competent authority of the*



*Member State of enforcement so requires, a certificate in the form set out in Annex I confirming that the requirements of the second paragraph of Article 40 have been satisfied.*

Or. en

**Amendment 116**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Article 44**

*Text proposed by the Commission*

*Amendment*

***1. In the event of an application for a review pursuant to Article 45 or Article 46, the competent authority in the Member State of enforcement may, on application by the defendant:***

*deleted*

***(a) limit the enforcement proceedings to protective measures;***

***(b) make enforcement conditional on the provision of such security as it shall determine; or***

***(c) suspend, either wholly or in part, the enforcement of the judgment.***

***2. The competent authority shall, on application by the defendant, suspend the enforcement of the judgment where the enforceability of that judgment is suspended in the Member State of origin.***

***3. Where a protective measure was ordered without the defendant having been summoned to appear and enforced without prior service of the defendant, the competent authority may, on application by the defendant, suspend the enforcement if the defendant has challenged the measure in the Member State of origin.***

**Amendment 117**  
**Tadeusz Zwiefka**

**Proposal for a regulation**  
**Article 46 – paragraph 1**

*Text proposed by the Commission*

1. ***In cases other than those covered by Article 45, a party shall have the right to apply for a refusal of recognition or enforcement of a judgment where such recognition or enforcement would **not be permitted by the fundamental principles underlying the right to a fair trial.*****

*Amendment*

1. *A party shall have the right to apply for a refusal of recognition or enforcement of a judgment where:*

*(a) such recognition or enforcement is **manifestly contrary to public policy (ordre public) in the Member State in which recognition is sought;***

*(b) **the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment or to apply for a review under Article 45 when it was possible for him to do so;***

*(c) **the judgment is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought;***

*(d) **the judgment is irreconcilable with an earlier judgment given in proceedings in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is***

sought;

*(e) the judgment conflicts with Chapter II, Sections 3, 4, 5 or 6.*

Or. en

**Amendment 118**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 46 – paragraph 1**

*Text proposed by the Commission*

**1. *In cases other than those covered by Article 45, a party shall have the right to apply for a refusal of recognition or enforcement of a judgment where such recognition or enforcement would **not be permitted by the fundamental principles underlying the right to a fair trial.*****

*Amendment*

1. A party shall have the right to apply for a refusal of recognition or enforcement of a judgment where:

***(a) such recognition or enforcement is manifestly contrary to public policy (ordre public) in the Member State in which recognition is sought;***

***(b) the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment or to apply for a review under Article 45 when it was possible for him to do so;***

***(c) the judgment is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought;***

***(d) the judgment is irreconcilable with an earlier judgment given in proceedings in another Member State or in a third State involving the same cause of action and***

*between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought;*

*(e) the judgment conflicts with Chapter II, Sections 3, 4, 5 or 6;*

*(f) the judgment was given in breach of the requirements of Section 5 of Chapter II concerning jurisdiction over individual contracts of employment.*

Or. en

**Amendment 119**  
**Rolandas Paksas**

**Proposal for a regulation**  
**Article 58 – paragraph 3**

*Text proposed by the Commission*

3. The court seised of an appeal under Article 57 shall give its decision ***without delay***.

*Amendment*

3. The court seised of an appeal under Article 57 shall give its decision ***within 90 days from the date it was seised, except where exceptional circumstances make this impossible***.

Or. It

**Amendment 120**  
**Evelyn Regner**

**Proposal for a regulation**  
**Article 85**

*Text proposed by the Commission*

***This Regulation shall not affect the right of workers and employers, or their respective organisations, to engage in collective action to protect their interests, in particular the right or freedom to strike***

*Amendment*

***The courts of the Member State in which an industrial action is pending or has taken place shall have exclusive jurisdiction in the matter.***

***or to take other actions, in accordance with Union law and national law and practices.***

Or. en

*Justification*

*According to recital 7 of Rome II, there should be coherence between the Community law instruments that regulate applicable law and court jurisdiction. A jurisdiction that corresponds with Art. 9 of Rome II should be introduced in Brussels I to avoid "forum shopping". In the case of more defendants (industrial action) a company can still choose the court jurisdiction which seems to be more favourable for its interests, which is not in coherence with Brussels I objectives.*