



EUROPEAN PARLIAMENT

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*Plenary sitting*

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**A7-0320/2012**

15.10.2012

**\*\*\*I**  
**REPORT**

on the proposal for a regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)  
(COM(2010)0748 – C7-0433/2010 – 2010/0383(COD))

Committee on Legal Affairs

Rapporteur: Tadeusz Zwiefka

(Recast – Rule 87 of the Rules of Procedure)

### *Symbols for procedures*

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### *Amendments to a draft act*

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)**

**(COM(2010)0748 – C7-0433/2010 – 2010/0383(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0748) and to the impact assessment carried out by the Commission (SEC(2010)1547),
  - having regard to Article 294(2), Article 67(4) and points (a), (c) and (e) of Article 81(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0433/2010),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Netherlands Senate and the Netherlands House of Representatives, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 5 May 2011<sup>1</sup>,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>2</sup>,
  - having regard to the undertaking given by the Council representative by letter of X to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rules 87 and 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Employment and Social Affairs (A7-0320/2012),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of

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<sup>1</sup> OJ C 218, 23.7.2011, p. 78.

<sup>2</sup> OJ C 77, 28.3.2002, p. 1.

the existing texts, without any change in their substance;

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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**REGULATION (EU) NO .../2012  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of**

**on jurisdiction and the recognition and enforcement of judgments in civil and  
commercial matters  
(Recast)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular  
Article 67(4) and *points (a), (c) and (e) of* Article 81(2) thereof,

Having regard to the proposal from the European Commission,

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the  
symbol ■.

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

Whereas:

- (1) *On 21 April 2009 the Commission adopted a report<sup>3</sup> on the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>4</sup>. The report concluded that, in general, the operation of that Regulation is satisfactory, but that it is desirable to improve the application of certain of its provisions, to further facilitate the free circulation of judgments, and to further enhance access to justice. Since a series of amendments are to be made, that Regulation should, in the interests of clarity, be recast* ■ .

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<sup>1</sup> OJ C 218, 23.7.2011, p. 78.

<sup>2</sup> Position of the European Parliament of ... [(OJ ...)] [(not yet published in the Official Journal)] and decision of the Council of ...

<sup>3</sup> Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(2009)0174).

<sup>4</sup> OJ L 12, 16.1.2001, p. 1.



- (1a) *At its meeting in Brussels on 10 and 11 December 2009 the European Council adopted a new multiannual programme called 'The Stockholm Programme – an open and secure Europe serving and protecting citizens'<sup>1</sup> (hereinafter referred to as 'the Programme'). In the Programme the European Council considered that the process of abolishing all intermediate measures (the *exequatur*) should be continued during the period covered by the Programme. At the same time the abolition of the *exequatur* should also be accompanied by a series of safeguards.*
- (2) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, *inter alia* by facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. *For the gradual establishment of* such an area, the Union *is to* adopt ■ measures relating to judicial cooperation in civil matters *having cross-border implications*, particularly when necessary for the proper functioning of the internal market.
- (3) Certain differences between national rules governing jurisdiction and *the* recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters, and to ensure rapid and simple recognition and enforcement of judgments *given in a Member State*, are essential.

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<sup>1</sup> *OJ C 115, 4.5.2010, p. 1.*

- (4) *Such provisions fall within the* area ■ of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty on the Functioning of the European Union.
- (5) In order to attain the objective of free *circulation* of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable.

■ (moved to Recital 27a)

- (7) On 27 September 1968 the then Member States of the European Communities, acting under Article 293, fourth indent, of the Treaty establishing the European Community, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, *subsequently* amended by conventions on the accession *to that Convention* of ■ new Member States ■ (hereinafter referred to as the ‘*1968 Brussels Convention*’)<sup>1</sup>. On 16 September 1988 *the then Member States of the European Communities* and *certain* EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (*hereinafter referred to as the ‘1988 Lugano Convention’*)<sup>2</sup>, which is a parallel Convention to the 1968 Brussels Convention. *The 1988 Lugano Convention became applicable to Poland on 1 February 2000.*

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<sup>1</sup> OJ L 299, 31.12.1972, p. 32., OJ L 304, 30.10.1978, p. 1., OJ L 388, 31.12.1982, p. 1., OJ L 285, 3.10.1989, p. 1., OJ C 15, 15.1.1997, p. 1. For a consolidated text, see OJ C 27, 26.1.1998, p. 1.

<sup>2</sup> *OJ L 319, 25.11.1988, p. 9.*

- (8) On 22 December 2000 **■** the Council adopted Regulation (EC) No 44/2001, which replaced the *1968 Brussels Convention with regard to the territories of the Member States covered by the Treaty on the Functioning of the European Union* as between all Member States except Denmark. By Decision 2006/325/EC<sup>1</sup>, **■** the Union concluded an agreement with Denmark ensuring the application of the provisions of Regulation (EC) No 44/2001 in Denmark. The 1988 Lugano Convention was revised by the **■** Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters<sup>2</sup>, *done at Lugano* on 30 October 2007 by the Union, Denmark, *Iceland, Norway and Switzerland (hereinafter referred to as the ‘2007 Lugano Convention’)*. **■**
- (8a) The *1968 Brussels Convention* continues to apply to the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the Treaty on the Functioning of the European Union. **(ex-Recital 30)**

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<sup>1</sup> *OJ L 120, 5.5.2006, p. 22.*

<sup>2</sup> *OJ L 147, 10.6.2009, p. 5.*

- (10) The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters, *in particular maintenance obligations, which should be excluded from the scope of this Regulation following* the adoption of 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<sup>1</sup> .
- (10a) *For the purposes of this Regulation, courts or tribunals of the Member States should include courts or tribunals common to several Member States, such as the Benelux Court of Justice, when they exercise jurisdiction on matters falling within the scope of this Regulation. Therefore, judgments given by such courts or tribunals should be recognised and enforced in accordance with this Regulation.*
- (11) This Regulation *should* not apply to arbitration . *Nothing in this Regulation should prevent a court of a Member State, when seised of a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration or from staying or dismissing the proceedings and from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with its national law.*

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<sup>1</sup> *OJ L 7, 10.1.2009, p. 1.*

- (11a)** *A ruling given by a court of a Member State as to whether or not an arbitration agreement is null and void, inoperative or incapable of being performed should not be subject to the rules of recognition and enforcement laid down in this Regulation, regardless of whether the court decided on this as a principal issue or as an incidental question.*
- (11b)** *On the other hand, where a court, exercising jurisdiction under this Regulation or under national law, has determined that an arbitration agreement is null and void, inoperative or incapable of being performed, this should not preclude that court's judgment on the substance of the matter from being recognised and, as the case may be, enforced in accordance with this Regulation. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 (hereinafter referred to as the '1958 New York Convention'), which takes precedence over this Regulation.*

- (11c) This Regulation should not apply to any action or ancillary proceedings relating to, in particular, the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of an arbitration procedure or any other aspects of such a procedure, nor to any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.*
- (11d) There must be a connection between proceedings to which this Regulation applies and the territory of the Member States. Accordingly, common rules of jurisdiction should, in principle, apply when the defendant is domiciled in a Member State.*
- (11e) A defendant not domiciled in a Member State should in general be subject to the national rules of jurisdiction applicable in the territory of the Member State of the court seised.*
- (11f) However, in order to ensure the protection of consumers and employees, to safeguard the jurisdiction of the courts of the Member States in situations where they have exclusive jurisdiction and to respect party autonomy, certain rules of jurisdiction in this Regulation should apply regardless of the defendant's domicile.*

- (12) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject-matter of the *dispute* or the autonomy of the parties warrants a different *connecting* factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.
- (13) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close *connection* between the court and the action or in order to facilitate the sound administration of justice. The existence of a close *connection* should ensure legal certainty, avoiding *the possibility of* the defendant *being sued in* a court of a Member State which *he could* not reasonably *foresee*. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

- (13a) *The owner of cultural objects as defined in Article 1(1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State<sup>1</sup> should be able under this Regulation to initiate civil proceedings for the recovery, based on ownership, of a cultural object in one of the courts for the place where the cultural object is situated at the time the court is seised. Such proceedings should be without prejudice to proceedings initiated under Directive 93/7/EEC.*
- (14) In relation to insurance, consumer ■ and employment *contracts*, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the *generally applicable* rules.
- (15) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, *should* be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.

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<sup>1</sup> *OJ L 74, 27.3.1993, p. 74.*



*(15a) Where a question arises as to whether a choice-of-court agreement in favour of a court or the courts of a Member State is null and void as to its substantive validity, that question should be decided in accordance with the law of the Member State of the court or courts designated in the agreement. The reference to the law of the Member State of the designated court or courts should include the conflict-of-laws rules of that State.*

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(18) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. There *should* be a clear and effective mechanism for resolving cases of *lis pendens* and related actions and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation that time should be defined autonomously.

- (19) *However, in order to enhance the effectiveness of exclusive choice-of-court agreements ■ and to avoid abusive litigation tactics, it is necessary to provide for an exception to the general lis pendens mechanism in order to deal satisfactorily with a particular situation in which concurrent proceedings may arise. This is the situation where a court not designated in an exclusive choice-of-court agreement has been seised of proceedings and the designated court is seised subsequently of proceedings involving the same cause of action and between the same parties. In such a case, the court first seised should be required to stay its proceedings as soon as the designated court has been seised and until such time as the latter court declares that it has no jurisdiction under the exclusive choice-of-court agreement. This is to ensure that, in such a situation, the designated court is given priority to decide on the validity of the agreement and on the extent to which the agreement applies to the dispute pending before it. The designated court should be able to proceed whether or not the non-designated court has already decided on the stay of proceedings.*
- (19a) *The rule described in recital 19 should not cover situations where the parties have entered into conflicting exclusive choice-of-court agreements or where a court designated in such an agreement has been seised first. In such cases the general lis pendens provision of this Regulation should apply.*

- █
- (21) *This Regulation should provide for a flexible mechanism █ allowing the courts of the Member States to take into account proceedings pending before the courts of third States, considering in particular **whether or not any third-State judgment will be capable of recognition and enforcement in a given Member State under the law of that Member State and** the proper administration of justice █ .*
- (21a) *When taking into account the proper administration of justice in the circumstances described in recital 21, the court of the Member State concerned should assess all the circumstances of the case before it. This could include connections between the facts of the case and the parties and the third State in question, the stage to which the proceedings in the third State have progressed by the time proceedings are initiated in the court of the Member State and whether or not the court of the third State can be expected to give a judgment within a reasonable time.*
- (21b) *That assessment could also include consideration of the question whether the court of the third State has exclusive jurisdiction in the particular case in circumstances where a court of a Member State would have exclusive jurisdiction.*

- (22) The notion of provisional, including protective, measures should include, *for instance*, protective orders aimed at obtaining information or preserving evidence as referred to in *Articles* 6 and 7 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights<sup>1</sup>. *It* should not include measures which are not of a protective nature, such as measures ordering the hearing of a witness. *This should be without prejudice to the application of 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*<sup>2</sup>.
- (23) Mutual trust in the administration of justice in the Union *justifies the principle that judgments given in a Member State should be recognised without the need for any special procedure. In addition*, the aim of making cross-border litigation less time-consuming and costly *justifies* the abolition of the *declaration of enforceability* prior to enforcement in the Member State *addressed*. As a result, a judgment given by the courts of a Member State should be treated as if it had been *given* in the Member State in which *recognition is invoked or* enforcement is sought.
- (23a) *For the purposes of the free circulation of judgments, a judgment given in a Member State should be recognised and enforced in another Member State even if it is given against a person not domiciled in a Member State.*

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<sup>1</sup> OJ L 157, 30.4.2004, p. 45.

<sup>2</sup> *OJ L 174, 27.6.2001, p. 1.*

- (23b) *Where the judgment contains a measure or order which is not known in the law of the Member State addressed, that measure or order, including any right indicated therein, should, as far as possible, be adapted to one which, under the law of that Member State, has equivalent effects attached to it and pursues similar aims. How, and by whom, the adaptation is to be carried out should be determined by each Member State.*
- (23c) *The direct enforcement in the Member State addressed of a judgment given in another Member State without a declaration of enforceability should not jeopardise respect for the rights of the defence. Therefore, the person against whom enforcement is sought should be able to apply for refusal of the recognition and/or enforcement of a judgment if he considers one of the grounds for non-recognition to be present. This should include the ground that he had not had the opportunity to arrange for his defence where the judgment was given in default of appearance in a civil action linked to criminal proceedings. It should also include the grounds which could be invoked on the basis of an agreement between the Member State addressed and a third State concluded pursuant to Article 59 of the 1968 Brussels Convention.*

- (23d) *A party challenging the enforcement of a judgment given in another Member State should, as far as possible, in accordance with the legal system of the Member State addressed, be able to invoke, in the same procedure, in addition to the grounds of refusal provided for in this Regulation, the grounds of refusal available under national law and within the time-limits laid down in that law.*
- (23e) *The recognition of a judgment should, however, be refused only if one or more of the grounds provided for in this Regulation are present.*
- (23f) *Pending a challenge to the enforcement of a judgment, it should be possible for the courts in the Member State addressed, during the entire proceedings on such a challenge, including any appeal, to allow the enforcement to proceed subject to a limitation of the enforcement or to the provision of security.*
- (23g) *In order to inform the person against whom enforcement is sought of the enforcement of a judgment given in another Member State, the certificate established under this Regulation, if necessary accompanied by the judgment, should be served on that person in reasonable time before the first enforcement measure. In this context, the first enforcement measure should mean the first enforcement measure after such service.*

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- (25) ■ Where *provisional, including protective*, measures are ordered by a court having jurisdiction as to the substance of *the matter*, their free circulation should be ensured *under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement. This should not preclude recognition and enforcement of such measures under national law.* Where *provisional, including protective*, measures are *ordered* by a court of a *Member State* not having jurisdiction as to the substance *of the matter*, the effect of such measures should be confined, *under this Regulation*, to the territory of that Member State. ■
- (26) Continuity between the *1968* Brussels Convention, *Regulation (EC) No 44/2001* and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation *by the Court of Justice of the European Union* of the *1968* Brussels Convention and *of* the Regulations replacing it ■ .

- (26a) Respect for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties. **(ex-Recital 32)**
- (26b) *Without prejudice to the obligations of the Member States under the Treaties, this Regulation should not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.*
- (26c) *In order to ensure that the certificates to be used in connection with the recognition or enforcement of judgments, authentic instruments and court settlements under this Regulation are kept up-to-date, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to Annexes I and II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.*



- (27) This Regulation *respects* fundamental rights *and observes the principles recognised* in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and ■ to a fair trial guaranteed in Article 47 of the Charter. ■
- (27a) *Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.*

- (28) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland **■**, annexed to the Treaty on European Union and to the *then Treaty establishing the European Community*, took part in the adoption and application of Regulation (EC) No 44/2001. In accordance with *Article 3 of Protocol No 21* on the position of the United Kingdom and Ireland *in respect of the area of freedom, security and justice*, annexed to the Treaty on European Union and *to* the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have *given notice of* their wish to *take part* in the adoption and application of this Regulation **■**.
- (29) **■** In accordance with Articles 1 and 2 of **■** Protocol *No 22* on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, *Denmark* is not taking part in the adoption of this Regulation **■** and is **■** not bound by it *or* subject to its application, without prejudice *to* the possibility for Denmark of applying the amendments to Regulation (EC) No 44/2001 pursuant to Article 3 of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters **■**<sup>1</sup>, *concluded on 19 October 2005*,

**■**

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<sup>1</sup> OJ L 299, 16.11.2005, p. 62.

HAVE ADOPTED THIS REGULATION:

CHAPTER I  
SCOPE AND DEFINITIONS

Article 1

1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters *or to the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii")*.
2. This Regulation shall not apply to:
  - (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship *or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;*
  - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

- (c) social security;
- (d) arbitration ■ ;
- (e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;
- (f) *wills and succession, including maintenance obligations arising by reason of death.*

■

## Article 2

For the purposes of this Regulation:

- (a) 'judgment' means any judgment given by a court or tribunal of *a Member State*, whatever the judgment may be called, including *a decree, order, decision or writ of execution, as well as a decision on* the determination of costs or expenses by an officer of the court *or tribunal*.

For the purposes of Chapter III, the term 'judgment' includes provisional, including protective, measures ordered by a court *or tribunal* which by virtue of this Regulation has jurisdiction as to the substance of the matter. It *does not include a provisional, including protective, measure which is* ordered without the defendant being summoned to appear, *unless that judgment has been served on* the defendant *prior to enforcement*;

■

- (d) 'court settlement' means a settlement which has been approved by a court *of a Member State* or concluded before a court *of a Member State* in the course of proceedings;
- (e) 'authentic instrument' means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:
  - (i) relates to the signature and the content of the instrument, and
  - (ii) has been established by a public authority or other authority empowered for that purpose;

- (f) 'Member State of origin' means the Member State in which, as the case may be, the judgment has been given, the court settlement has been approved or concluded, or the authentic instrument has been *formally drawn up or registered*;
- (g) 'Member State *addressed*' means the Member State in which the *recognition of the judgment is invoked or, as the case may be, in which the* enforcement of the judgment, the court settlement or the authentic instrument is sought;
- (h) 'court of origin' means the court which has given the judgment *the recognition of which is invoked and/or the enforcement of which is sought*.

#### *Article 2a*

*For the purposes of this Regulation, 'court' includes the following authorities to the extent that they have jurisdiction in matters falling within the scope of this Regulation:*

- (a) *in Hungary, in summary proceedings concerning orders to pay (fizetési meghagyásos eljárás), the notary (közjegyző),*
- (b) *in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande) and assistance (handräckning), the Enforcement Authority (kronofogdemyndigheten).*

CHAPTER II  
JURISDICTION

Section 1  
General provisions

Article 3

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.
2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 4

1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

2. *In particular, the rules of national jurisdiction notified by the Member States to the Commission in accordance with point (a) of Article 88(1) shall not be applicable as against the persons referred to in paragraph 1.*

*Article 4a*

1. *If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 16(1), Article 19(2) and Articles 22 and 23, be determined by the law of that Member State.*
2. *As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of national jurisdiction there in force, and in particular those notified by the Member States to the Commission in accordance with point (a) of Article 88(1), in the same way as nationals of that Member State.*



Section 2  
Special jurisdiction

Article 5

*A person domiciled in a Member State may be sued in another Member State:*

1. (a) in matters relating to a contract, *in* the courts for the place of performance of the obligation in question;
- (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
  - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
  - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;
- (c) if point (b) does not apply then point (a) applies;

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

■

4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, *in* the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

*4a. as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in Article 1(1) of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised;*

5. as regards a dispute arising out of the operations of a branch, agency or other establishment, *in* the courts for the place *where* the branch, agency or other establishment is situated;

6. as *regards a dispute brought against a* settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, *in* the courts of the Member State in which the trust is domiciled;
7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, *in* the court under the authority of which the cargo or freight in question:
  - (a) has been arrested to secure such payment, or
  - (b) could have been so arrested, but bail or other security has been given.

*This* provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

#### Article 6

A person *domiciled in a Member State* may also be sued:

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;
2. as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.

## Article 7

Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability *arising* from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

## Section 3

### Jurisdiction in matters relating to insurance

## Article 8

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

## Article 9

1. An insurer *domiciled in a Member State* may be sued:
  - (a) in the courts of the Member State *in which* he is domiciled, or
  - (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the *claimant* is domiciled,
  - (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.
  
2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

## Article 10

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

## Article 11

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.
2. Articles 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.
3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

## Article 12

1. Without prejudice to Article 11(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

## Article 13

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
2. which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section; or



3. which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that *Member* State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that *Member* State; or
4. which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 14.

#### Article 14

The following are the risks referred to in *point 5 of Article 13*:

1. any loss of or damage to:
  - (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;

- (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;
- 2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage:
  - (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
  - (b) for loss or damage caused by goods in transit as described in point 1(b);
- 3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;
- 4. any risk or interest connected with any of those referred to in points 1 to 3;
- 5. notwithstanding points 1 to 4, all 'large risks' as defined in Directive 2009/138/EC of the European Parliament and of the Council *of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)*<sup>1</sup>.

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<sup>1</sup> OJ L 335, 17.12.2009, p. 1.

## Section 4

### Jurisdiction over consumer contracts

#### Article 15

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 4a and* point 5 of Article 5, if:
  - (a) it is a contract for the sale of goods on instalment credit terms; or
  - (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
  - (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in *a* Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that *Member* State.
3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

#### Article 16

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, *regardless of the domicile of the other party*, in the courts for the place where the consumer is domiciled.
2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

#### Article 17

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
3. which is ***concluded between*** the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which ***has the effect of conferring*** jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

## Section 5

### Jurisdiction over individual contracts of employment

#### Article 18

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to *Article 4a*, point 5 of Article 5 and, *in the case of proceedings brought against an employer, point 1 of Article 6*.
2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

#### Article 19

1. An employer *domiciled in a Member State* may be sued:
  - (a) in the courts of the Member State *in which* he is domiciled; or

**(b)** in another Member State:

- (i)** in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so, or
- (ii)** if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

**2. *An employer not domiciled in a Member State may be sued in a court of a Member State according to point (b) of paragraph 1.***

#### Article 20

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

## Article 21

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
2. which allows the employee to bring proceedings in courts other than those indicated in this Section.

## Section 6

### Exclusive jurisdiction

## Article 22

The following courts *of a Member State* shall have exclusive jurisdiction, *regardless of the domicile of the parties*:

1. in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated. ■



*However*, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State ■ ;

■

2. in proceedings which have as their object 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, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;

4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place.

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction ■ in proceedings concerned with the registration or validity of any European patent granted for *the Member State concerned*;

5. in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

Section 7  
Prorogation of jurisdiction

Article 23

1. If the parties, *regardless of domicile*, 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 *substantive validity* under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. *The* agreement conferring jurisdiction shall be either:
  - (a) in writing or evidenced in writing; or
  - (b) in a form which accords with practices which the parties have established between themselves; or

- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.
2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.
  3. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between *those* persons or their rights or obligations under the trust are involved.
  4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

**4a. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.**

**The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.**

#### Article 24

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.
2. In matters referred to in Sections 3, 4 and 5 **where the policyholder, the insured, a beneficiary of the insurance contract or the injured party, the consumer or the employee is the defendant, the court, before assuming jurisdiction under paragraph 1, shall ensure that the defendant is informed of his right to contest the jurisdiction and of the consequences of entering or not entering an appearance.**

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## Section 9

### Examination as to jurisdiction and admissibility

#### Article 27

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.

#### Article 28

1. Where a defendant *domiciled in one Member State* is sued in a court of *another* 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 the provisions of this Regulation*.

- 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 this end.
2. Article 19 ■ of Regulation (EC) No 1393/2007 of the European Parliament and of the Council<sup>1</sup> shall apply instead of ■ paragraph *1a of this Article* if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to *that* Regulation.
3. Where ■ Regulation (EC) No 1393/2007 *is* not applicable, Article 15 of the Hague Convention ■ on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, *concluded on 15 November 1965*, shall apply if the document instituting the proceedings or an equivalent document had to be transmitted *abroad* pursuant to that Convention.

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<sup>1</sup> *OJ L 324, 10.12.2007, p. 79.*

Section 10

*Lis pendens* — related actions

Article 29

1. Without prejudice to Article 32(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. In cases referred to in paragraph 1, ■ upon request by *a court seised of the dispute*, any other court seised ■ shall *without delay* inform *the former* court of the date *when* it was seised *according to Article 33*.
3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

■



## Article 30

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where the action in the court first seised is pending at first instance, any other court may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question *and its law permits their consolidation*.
3. For the purposes of this Article, actions are deemed to be related where they 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.

■

## Article 32

1. Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.
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* ■ *shall stay the proceedings* until such time as the court *seised on the basis of the agreement declares that it has no jurisdiction under the agreement.*
- 2a. *Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State shall decline jurisdiction in favour of that court.*
- 2b. *Paragraphs 2 and 2a shall not apply to matters referred to in Sections 3, 4 and 5 where the policyholder, the insured, a beneficiary of the insurance contract or the injured party, the consumer or the employee is the claimant and the agreement is not valid under those Sections.*

## Article 33

1. For the purposes of this Section, a court shall be deemed to be seised:
  - (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the *claimant* has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or
  - (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the *claimant* has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served.

2. The courts *or* authorities responsible for service referred to in paragraph 1 shall note **■** the date **■** of *the* lodging of the document instituting *the* proceedings or *the equivalent document or* of *the* receipt of the documents to be served.

**■**

Article 34

1. ***Where jurisdiction is based on Article 3 and Articles 5 to 7 and where*** proceedings are pending before ***a court*** of a third State at ***the*** time when a court in a Member State is seised ***of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings if:***

■

- (b) it ***is*** expected that the court ***of*** the third State will ***give*** a judgment ■ capable of recognition and, where applicable, enforcement in that Member State; and
- (c) the court is satisfied that ***a stay*** is necessary for the proper administration of justice ■ .

■

3. The court ***of the Member State*** may ***continue the proceedings*** at any time ■ if ■ :

- (a) the proceedings in the court of the third State are themselves stayed or ■ discontinued; *or*
  - (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; *or*
  - (c) *the continuation* of the *proceedings* is required for the proper administration of justice.
4. The court *of the Member State* shall dismiss the proceedings ■ if the proceedings in the court of the third State are concluded and have resulted in a judgment ■ capable of recognition and, where applicable, enforcement in the Member State *of the court seised*.
- 4a. The court of the Member State seised shall apply this Article on application by one of the parties or, when this is possible under national law, of its own motion.*

*Article 34a*

1. *Where jurisdiction is based on Article 3 and Articles 5 to 7 and where proceedings are pending before a court of a third State at the time when a court in a Member State is seised of an action which is related to the action in the third State, the court of the Member State may stay the proceedings if:*
  - (a) *it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings;*
  - (b) *it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, enforcement in that Member State; and*
  - (c) *the court is satisfied that a stay is necessary for the proper administration of justice.*
  
2. *The court of the Member State may continue the proceedings at any time if:*
  - (a) *it appears to the court that there is no longer a risk of irreconcilable judgments; or*

- (b) *the proceedings in the court of the third State are themselves stayed or discontinued; or*
  - (c) *it appears to the court that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or*
  - (d) *the continuation of the proceedings is required for the proper administration of justice.*
3. *The court of the Member State may dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, enforcement in the Member State of the court seised.*
4. *The court of the Member State seised shall apply this Article on application by one of the parties or, when this is possible under national law, of its own motion.*

#### Section 11

Provisional, including protective, measures



Article 36

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that *Member* State, even if the courts of another Member State **|** have jurisdiction as to the substance of the matter.

CHAPTER III  
RECOGNITION **|** AND ENFORCEMENT

**|**

*Section 1*  
*Recognition*

**|**



*Article 38a*

1. *A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.*
2. *Any interested party may, in accordance with the procedure provided for in Subsection 2 of Section 2a, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 48.*
3. *If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of refusal of recognition, that court shall have jurisdiction over that question.*

Article 39

1. A party who wishes to invoke in a Member State *the recognition of a judgment given in* another Member State ■ shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; *and*

(b) *the certificate issued pursuant to Article 64a.*

2. The court *or authority* before which *the recognition of a judgment given in another Member State* is invoked may, where necessary, *require* the party invoking it **█** to provide, in accordance with Article 69, *a translation or a transliteration of the contents of the certificate referred to in paragraph 1. The court or authority may require the party to provide a translation of the judgment instead of the translation of the contents of the certificate if it cannot proceed without a translation of the judgment itself.*

**█**

#### *Article 39a*

*The court or authority before which the recognition of a judgment given in another Member State is invoked may suspend the proceedings, in whole or in part:*

- (a) *if the judgment is challenged in the Member State of origin; or*
- (b) *if an application has been submitted for a decision that there are no grounds for refusal of recognition as referred to in Article 48 or for a decision that the recognition is to be refused on the basis of those grounds.*

*Section 2*  
*Enforcement*

*Article 39b*

*A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.*

I

## Article 40

An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State *addressed*.

## Article 41

1. Subject to the provisions of this *Section*, the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State *addressed*. A judgment given in a Member State which is enforceable in the Member State *addressed* shall be enforced there under the same conditions as a judgment given in the Member State *addressed*.
2. Notwithstanding paragraph 1, the grounds of refusal or *of* suspension of enforcement under the law of the Member State *addressed* shall **■** apply in so far as they *are not incompatible with the grounds* referred to in *Article 48*.

- 2a. *The party seeking the enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.*

Article 42

1. For the purposes of enforcement in *a Member State of a judgment given in* another Member State ■ , the applicant shall provide the competent enforcement authorities with:
- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
  - (b) the certificate ■ issued *pursuant to Article 64a*, certifying that the judgment is enforceable *and indicating, where applicable, under which conditions*, and ■ containing ■ an extract of the judgment as well as, *where appropriate*, relevant information on the recoverable costs of the proceedings and the calculation of interest.

2. For the purposes of enforcement in *a Member State of a judgment given in* another Member State ■ ordering a provisional, including *a* protective, measure, the applicant shall provide the competent enforcement authorities with:
- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
  - (b) the certificate ■ issued *pursuant to Article 64a*, containing a description of the measure and certifying
    - (i) that the court has jurisdiction as to the substance of the matter; ■
    - (ii) *that the judgment is enforceable in the Member State of origin, indicating, where applicable, under which conditions; and*
  - (c) where the measure *was* ordered without the defendant being summoned to appear, *proof of* service of the *judgment*.

3. The competent *enforcement* authority may, where necessary, *require the applicant to provide, in accordance with Article 69*, a translation *or a transliteration* of the *contents* of the *certificate* referred to in point (b) of paragraphs 1 and 2 **█** .
4. The competent *enforcement authority* may **█** require the applicant to provide a translation of the judgment *in accordance with Article 69 only if it cannot proceed without a translation of the judgment itself.* **█**

#### *Article 42a*

1. *Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 64a shall be served on the person against whom enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.*

2. *Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, he may request a translation of the judgment in order to contest the enforcement if the judgment is not written in or accompanied by a translation into either of the following languages:*

- (a) a language which he understands, or*
- (b) the official language of the Member State in which he is domiciled or, where there are several official languages in that Member State, the official language or one of the official languages of the place where he is domiciled.*

*Where a translation of the judgment is requested under the first subparagraph, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought.*

*This paragraph shall not apply if the judgment has already been served on the person against whom enforcement is sought in one of the languages mentioned in the first subparagraph or accompanied by a translation into one of those languages.*



3. *This Article shall not apply to the enforcement of a protective measure in a judgment or when the applicant proceeds to protective measures in accordance with Article 40.*

**I**

Article 44

1. *In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 2a, the court in the Member State addressed may, on application by the person against whom enforcement is sought:*
  - (a) *limit the enforcement proceedings to protective measures; or*
  - (b) *make enforcement conditional on the provision of such security as it shall determine; or*
  - (c) *suspend, either wholly or in part, the enforcement proceedings.*
2. *The competent authority in the Member State addressed shall, on application by the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.*

*Section 2a*  
*Refusal of recognition and enforcement*

*Subsection 1*  
*Refusal of recognition*



Article 48

1. *On application by any interested party, the recognition of a judgment shall ■ be refused:*
  - (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State *addressed*;
  - (b) where *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 when it was possible for him to do so;

- (c) if *the judgment* is irreconcilable with a judgment given ■ between the same parties in the Member State *addressed*;
- (d) if *the judgment* is irreconcilable with an earlier judgment given 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 *addressed*;
- (e) *if the judgment conflicts with:*
  - (i) *Sections 3, 4 and 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract or the injured party, the consumer or the employee was the defendant; or*
  - (ii) *Section 6 of Chapter II.*

2. *In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.*

3. *Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.*
4. *The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.*

## I

### *Subsection 2*

#### *Refusal of enforcement*

##### *Article 50a*

*The enforcement of a judgment shall, on application by the person against whom enforcement is sought, be refused on one of the grounds referred to in Article 48.*

Article 51

1. The application for *refusal of enforcement* shall be submitted to the court █ of the Member State *addressed as communicated* by that Member State to the Commission in accordance with *point (d) of Article 87*.
2. *The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.*
- 2a. *The applicant shall provide the court with a copy of the judgment and, where necessary, a translation or transliteration of the judgment.*

*The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents.*

**2b.** *The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.*

■

Article 54

*The court shall decide on the application for refusal of enforcement without delay.*

■

## Article 56

1. The decision on the application for *refusal of enforcement* may be appealed against by either party.
2. The appeal is to be lodged with the court of the Member State *addressed as communicated* by that Member State to the Commission in accordance with *point (e) of Article 87*.



## Article 57

The *decision* given on the appeal may *only* be contested by *an appeal where the court seised of the further appeal has been communicated* by the Member State concerned to the Commission in accordance with *point (f) of Article 87*.



Article 59

1. The court *to* which *an application for refusal of enforcement is submitted or the court which hears* an appeal **■** lodged under Article 56 or Article 57 *may* stay the proceedings if *an ordinary appeal has been lodged against the judgment* in the Member State of origin *or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.*
  
2. *Where the judgment was given in Ireland, Cyprus or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.*



Section 3

Common provisions



## Article 64

Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State *addressed*.

## *Article 64a*

*The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.*



## Article 66

1. If a judgment contains a measure or an order which is not known in *the law of* the Member State *addressed, that measure or order* shall, *as far as* possible, *be adapted* to one known *in the law of that Member State* which has equivalent effects attached to it and pursues similar aims and interests.

*The adaptation shall not lead to effects going beyond those provided for in the law of the Member State of origin.*

*1a. Any party may challenge the adaptation of the measure or order before a court.*

*1b. If necessary, the party invoking recognition or seeking enforcement may be required to provide a translation or a transliteration of the judgment.*

#### Article 67

A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State *addressed only if* the amount of the payment ■ has ■ been finally determined by the *court* of origin.

#### Article 68

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State *addressed*.

## Article 69

1. When a *translation or a transliteration* is required under this Regulation, such *translation or transliteration* shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where *the recognition of a judgment given in another Member State* is invoked or an application is made, in accordance with the law of that Member State.
2. For the purposes of the forms referred to in *Articles 64a* and *71a*, *translations or transliterations* may also be into any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept.
3. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.

CHAPTER IV  
AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 70

1. An authentic instrument which is enforceable in *the* Member State *of origin* shall be enforced in the other Member States **■** . *Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (ordre public) in the Member State addressed.*

*The provisions of Section 2, Subsection 2 of Section 2a, and Section 3 of Chapter III shall apply as appropriate to authentic instruments.*

2. The *authentic* instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin. **■**

**■**

## Article 71

A court settlement which is enforceable in the Member State of origin shall be enforced in the other Member States under the same conditions as authentic instruments. ■

### *Article 71a*

*The competent authority of the Member State of origin shall issue, at the request of any interested party, the certificate using the form set out in Annex II containing a summary of the enforceable obligation recorded in the authentic instrument or of the agreement between the parties recorded in the court settlement.*

## CHAPTER V GENERAL PROVISIONS

### Article 72

No legalisation or other similar formality shall be required *for documents issued in a Member State* in the context of this Regulation.

### Article 73

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.
2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

### Article 74

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:
  - (a) statutory seat, or
  - (b) central administration, or
  - (c) principal place of business.

2. For the purposes of *Ireland, Cyprus and* the United Kingdom ■ ‘statutory seat’ means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.
3. In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

#### Article 75

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Member State who are being prosecuted in the criminal courts of another Member State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Member States.

## Article 76

1. The jurisdiction specified in *point 2 of Article 6* and Article 11 in actions on a warranty or guarantee or in any other third-party proceedings may be resorted to in the Member States *mentioned in the list established by the Commission in accordance with point (b) of Article 88(1) and Article 88(2)* only in so far as permitted under national law. A person *domiciled in another Member State* may be *invited to join the proceedings before* the courts of those Member States pursuant to the rules **■** on third-party notice *referred to in the aforementioned list*.

**■**

2. Judgments given in *a Member State* by virtue of *point 2 of Article 6* or Article 11 shall be recognised and enforced **■** in accordance with Chapter III *in any other Member State*. Any effects which judgments given in *the Member States mentioned in the list referred to in paragraph 1* may have, *according to the law of those Member States*, on third parties by application of **■** paragraph 1 shall **■** be recognised in *all* Member States.



- 2a. *The Member States mentioned in the list referred to in paragraph 1 shall, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC<sup>1</sup> (hereinafter referred to as: 'the European Judicial Network') provide information on how to determine, in accordance with their national law, the effects of the judgments referred to in the second sentence of paragraph 2.*

CHAPTER VI  
TRANSITIONAL PROVISIONS

Article 77

1. This Regulation shall apply only to legal proceedings instituted, to documents formally drawn up or registered as authentic instruments *and to court settlements approved or concluded on or after* the date of   application thereof.
2. *Notwithstanding Article 92, Regulation (EC) No 44/2001 shall continue to govern legal proceedings instituted, documents formally drawn up or registered as authentic instruments and court settlements approved or concluded before the date of application of this Regulation which fall within the scope of that Regulation.*

---

<sup>1</sup> *OJ L 174, 27.6.2001, p. 25.*

CHAPTER VII  
***RELATIONSHIP WITH OTHER INSTRUMENTS***

Article 78

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in instruments of the Union or in national legislation harmonised pursuant to such instruments.

Article 79

1. This Regulation shall, as between the Member States, supersede the **1968** Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the Treaty ***on the Functioning of the European Union***.
2. In so far as this Regulation replaces the provisions of the **1968** Brussels Convention between ***the*** Member States, any reference to ***that*** Convention shall be understood as a reference to this Regulation.

## Article 80

Subject to Articles 81 and 82, this Regulation shall, as between *the* Member States, supersede the conventions that cover the same matters as those to which this Regulation applies. In particular, the conventions mentioned in *the list established by the Commission in accordance with point (c) of Article 88(1) and Article 88(2)* shall be superseded.

## Article 81

1. The conventions referred to in Article 80 shall continue to have effect in relation to matters to which this Regulation does not apply.
2. They shall continue to have effect in respect of judgments given, authentic instruments *formally drawn up or registered and court settlements approved or concluded* before *the date of entry into force of Regulation (EC) No 44/2001*.

## Article 82

1. This Regulation shall not affect any conventions to which the Member States are parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.
2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:
  - (a) this Regulation shall not prevent a court of a Member State ■ which is party to a convention on a particular matter ■ from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not party to that convention. The court hearing the action shall, in any event, apply Article 28 of this Regulation;
  - (b) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation *on* recognition and enforcement of judgments may be applied.

#### Article 83

This Regulation shall not affect agreements by which Member States ■ , prior to the entry into force of ■ Regulation (*EC*) No 44/2001, *undertook* pursuant to Article 59 of the 1968 Brussels Convention ■ not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third *State* where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

Article 84

1. This Regulation shall not affect the application of the *2007 Lugano* Convention **■**.
- 1a. This Regulation shall not affect the application of the 1958 New York Convention.*
- 1b. This Regulation shall not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which cover matters governed by this Regulation.*

CHAPTER VIII  
FINAL PROVISIONS

**■**

## Article 86

The Member States shall provide, within the framework of the European Judicial Network **■** with a view to making *the information* available to the public, a description of national rules and procedures concerning enforcement, including authorities competent for enforcement, *and* information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods.

*The* Member States shall keep this information permanently updated.

## Article 87

By ... <sup>\*</sup>, the Member States shall communicate to the Commission:

**■**

---

\* *OJ: Please insert date - 12 months before the date of application of the Regulation.*

- (d) the courts to which the application for *refusal of enforcement is* to be submitted pursuant to Article 51(1);
- (e) the courts with which an appeal against the decision on the application for *refusal of enforcement* is to be lodged pursuant to Article 56(2);
- (f) the courts with which *any* further appeal is to be lodged pursuant to Article 57;
- (g) the languages accepted for translations of the forms as referred to in Article **69(2)**.

The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network.

#### Article 88

1. The Member States shall notify the Commission of:
  - (a) *the rules of national jurisdiction referred to in Articles 4(2) and 4a(2),*



*(b) the rules on third-party notice referred to in Article 76, and*

*(c) the conventions referred to in Article 80.*

2. *The Commission shall, on the basis of the notifications by the Member States, establish the corresponding lists.*
3. *The Member States shall notify the Commission of any subsequent changes to those lists. The Commission shall amend the lists accordingly.*
4. *The Commission shall publish the lists and any subsequent amendments in the Official Journal of the European Union.*
5. *The Commission shall make all information notified in accordance with paragraphs 1 and 3 publicly available through any other appropriate means, in particular through the European Judicial Network.*

Article 89

*The Commission shall be empowered to adopt delegated acts in accordance with Article 90 concerning the amendment of Annexes I and II.*

Article 90

*-1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*

*-1a. The power to adopt delegated acts referred to in Article 89 shall be conferred on the Commission for an indeterminate period of time from ... \**

1. The delegation of power referred to in *Article 89* may be revoked at any time by the European Parliament or by the Council. A decision *to revoke* shall put an end to the delegation of the *power* specified in that decision. It shall take effect *the day following the publication of the decision in the Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of *any* delegated acts already in force. ■

---

\* *OJ: Please insert date - the date of entry into force of the Regulation.*

- 1a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
- 1b. A delegated act adopted pursuant to Article 89 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.*

#### *Article 91a*

*By ....\* the Commission shall present a report to the European Parliament, the Council and 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 amendments to the Regulation.*

---

\* *OJ: Please insert date - seven years after the date of application of the Regulation.*

## Article 92

■ This Regulation shall repeal Regulation (EC) No 44/2001. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table *set out* in *Annex III*.

## Article 93

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*It shall apply from ...\**, with the exception of Articles 87 and 88, which shall apply from

...\*\*

---

\* *OJ: Please insert date - 24 months after the entry into force of the Regulation.*

\*\* *OJ: Please insert date - 12 months before the date of application of the Regulation.*

This Regulation shall be binding in its entirety and directly applicable in *the* Member States *in accordance with the Treaties*.

■

Done at

*For the European Parliament*

*For the Council*

*The President*

*The President*

ANNEX I

**CERTIFICATE CONCERNING A JUDGMENT IN CIVIL AND COMMERCIAL  
MATTERS**

***Article 64a* of Regulation \_\_\_ of the European Parliament and of the Council on  
jurisdiction and the recognition and enforcement of judgments in civil and commercial  
matters**

1. COURT OF ORIGIN

1.1. Name:

1.2. Address:

1.2.1. Street and number/PO box:

1.2.2. Place and postal code:

1.2.3. Member State:

AT  BE  BG  CY  CZ  DE  EE  EL  ES  FI  FR  HU  IE  IT  LT  
 LU  LV  MT  NL  PL  PT  RO  SE  SI  SK  UK

1.3. Telephone ■ :

1.4. *Fax:*

1.5. *E-mail (if available):*

2. CLAIMANT(S)<sup>1</sup>

2.1. Surname and given name(s)/name of company or organisation:

2.2. *Identification number (if applicable and if available):*

2.3. *Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):*

2.4. Address:

2.4.1. Street and number/PO box:

2.4.2. Place and postal code:

---

<sup>1</sup> *Add the number of claimants necessary if the judgment concerns more than one claimant.*

2.4.3. Country:

*AT*  *BE*  *BG*  *CY*  *CZ*  *DE*  *EE*  *EL*  *ES*  *FI*  *FR*  *HU*  *IE*  *IT*   
*LT*  *LU*  *LV*  *MT*  *NL*  *PL*  *PT*  *RO*  *SE*  *SI*  *SK*  *UK*  *Other (please specify (ISO-code))*

2.5. *E-mail (if available):*

3. DEFENDANT(S)<sup>1</sup>

3.1. Surname and given name(s)/name of company or organisation:

3.2. *Identification number (if applicable and if available):*

3.3. *Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):*

3.4. Address:

---

<sup>1</sup> *Add the number of defendants necessary if the judgment concerns more than one defendant.*



3.4.1. Street and number/PO box:

3.4.2. Place and postal code:

3.4.3. Country:

*AT*  *BE*  *BG*  *CY*  *CZ*  *DE*  *EE*  *EL*  *ES*  *FI*  *FR*  *HU*  *IE*  *IT*   
*LT*  *LU*  *LV*  *MT*  *NL*  *PL*  *PT*  *RO*  *SE*  *SI*  *SK*  *UK*  *Other (please specify (ISO-code))*

3.5. *E-mail (if available):*

4. THE JUDGMENT

4.1. Date (*dd/mm/yyyy*) of the judgment:

4.2. *Reference number of the judgment:*

█

4.3. *The judgment was given in default of appearance:*

4.3.1.  *No*

4.3.2.  *Yes (please indicate the date (dd/mm/yyyy) on which the document instituting the proceedings or an equivalent document was served on the defendant):*

4.4. *The judgment is enforceable in the Member State of origin without any further conditions having to be met:*

4.4.1.  *Yes (please indicate the date (dd/mm/yyyy) on which the judgment was declared enforceable, if applicable):*

█

4.4.2.  *Yes, but only against the following person(s) (please specify):*

█

4.4.3.  *Yes, but limited to part(s) of the judgment (please specify):*

█

4.4.4.  *The judgment does not contain an enforceable obligation*

█

4.5. *As of the date of issue of the certificate, the judgment has been served on the defendant(s):*

4.5.1.  *Yes (please indicate the date of service (dd/mm/yyyy) if known):*

4.5.1.1. *The judgment was served in the following language(s):*

*BG*  *ES*  *CS*  *DE*  *ET*  *EL*  *EN*  *FR*  *GA*  *IT*  *LV*  *LT*  *HU*  
 *MT*  *NL*  *PL*  *PT*  *RO*  *SK*  *SL*  *FI*  *SV*  *Other (please specify (ISO-code))*

**I**

4.5.2.  *Not to the knowledge of the court*<sup>1</sup>

4.6. *Terms of the judgment and interest:*

4.6.1. *Judgment on a monetary claim*<sup>2</sup>

4.6.1.1. *Short description of the subject-matter of the case:*

4.6.1.2. *The court has ordered*

..... *(surname and given name(s)/name of company or  
organisation)*<sup>3</sup>

*to make a payment to:*

..... *(surname and given name(s)/name of company or  
organisation)*

4.6.1.2.1. *If more than one person has been held liable for one and the  
same claim, the whole amount may be collected from any one of  
them:*

---

<sup>1</sup> *If the judgment has not been served on the person(s) against whom enforcement is sought between the date of issue of the certificate and the date on which the enforcement proceedings are initiated in the Member State addressed, the judgment must accompany the certificate when, in accordance with Article 42a, the latter is served on the person(s) against whom enforcement is sought.*

<sup>2</sup> *If the judgment only concerns costs relating to a claim which has been decided in an earlier judgment, leave point 4.6.1 blank and go to point 4.7.*

<sup>3</sup> *If more than one person has been ordered to make a payment, add the number of persons necessary.*

4.6.1.2.1.1.  *Yes*

4.6.1.2.1.2.  *No*

**4.6.1.3. Currency:**

*Euro (EUR)*  *Bulgarian lev (BGN)*  *Czech koruna (CZK)*   
*Hungarian forint (HUF)*  *Lithuanian litas (LTL)*  *Latvian lats (LVL)*   
*Polish zloty (PLN)*  *Pound Sterling (GBP)*  *Romanian leu (RON)*   
*Swedish krona (SEK)*  *Other (please specify (ISO code)):*

**4.6.1.4. Principal amount:**

4.6.1.4.1.  *Amount to be paid in one sum*

4.6.1.4.2.  *Amount to be paid in instalments<sup>1</sup>*

---

<sup>1</sup> *Add the number of instalments necessary.*

<i>Due date (dd/mm/yyyy)</i>	<i>Amount</i>

**4.6.1.4.3.  Amount to be paid regularly**

**4.6.1.4.3.1.  per day**

**4.6.1.4.3.2.  per week**

**4.6.1.4.3.3.  other (state frequency):**

**4.6.1.4.3.4. From date (dd/mm/yyyy) or event:**

**4.6.1.4.3.5. If applicable, until (date (dd/mm/yyyy) or event):**

**4.6.1.5. Interest, if applicable**

**4.6.1.5.1. Interest:**

**4.6.1.5.1.1.**  *Not specified in the judgment*

**4.6.1.5.1.2.**  *Yes, specified in the judgment as follows:*

**4.6.1.5.1.2.1.** *Amount:*

*or*

**4.6.1.5.1.2.2.** *Rate ... %*

**4.6.1.5.1.2.3.** *Interest due from ... (date (dd/mm/yyyy)  
or event) to ... (date (dd/mm/yyyy) or event)<sup>1</sup>*

**4.6.1.5.2.**  *Statutory interest (if applicable) to be calculated in  
accordance with (please specify relevant statute):*

**4.6.1.5.2.1.** *Interest due from ..... (date  
(dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy)  
or event)<sup>1</sup>*

---

<sup>1</sup> *Add the number of periods necessary if more than one period.*

4.6.1.5.3.  *Capitalisation of interest (if applicable, please specify):*

4.6.2. *Judgment ordering a provisional, including a protective, measure:*

4.6.2.1. *Short description of the subject-matter of the case and the measure ordered:*

4.6.2.2. *The measure was ordered by a court having jurisdiction as to the substance of the matter*

4.6.2.2.1.  *Yes*

4.6.3. *Other type of judgment:*

4.6.3.1. *Short description of the subject-matter of the case and the ruling by the court:*

4.7. Costs<sup>1</sup>

4.7.1. Currency:

---

<sup>1</sup> *This point also covers situations where the costs are awarded in a separate judgment.*



Euro (EUR)  Bulgarian lev (BGN)  Czech koruna (CZK)  Hungarian forint (HUF)  Lithuanian litas (LTL)  Latvian lats (LVL)  Polish zloty (PLN)  Pound Sterling (GBP)  Romanian leu (RON)  Swedish krona (SEK)  Other (please specify (ISO code)):

**4.7.2. *The following person(s) against whom enforcement is sought has/have been ordered to bear the costs:***

**4.7.2.1. *Surname and given name(s)/name of company or organisation:<sup>1</sup>***

**4.7.2.2. *If more than one person has been ordered to bear the costs, the whole amount may be collected from any one of them:***

**4.7.2.2.1.  *Yes***

**4.7.2.2.2.  *No***

**4.7.3. *The costs recovery of which is sought are as follows:<sup>2</sup>***

---

<sup>1</sup> ***Add the number of persons necessary.***

<sup>2</sup> ***In the event that the costs may be recovered from several persons, please add the necessary breakdown for each person separately.***

- 4.7.3.1.  *The costs have been fixed in the judgment by way of a total amount (please specify amount):*
- 4.7.3.2.  *The costs have been fixed in the judgment by way of a percentage of total costs (please specify percentage of total):*
- 4.7.3.3.  *Liability for the costs has been determined in the judgment and the exact amounts are as follows:*
- 4.7.3.3.1.  *Court fees:*
- 4.7.3.3.2.  *Lawyers' fees:*
- 4.7.3.3.3.  *Cost of service of documents:*
- 4.7.3.3.4.  *Other:*
- 4.7.3.4.  *Other (please specify):*

**4.7.4. Interest on costs:**

**4.7.4.1.  Not applicable**

**4.7.4.2.  Interest specified in the judgment**

**4.7.4.2.1.  Amount:**

*or*

**4.7.4.2.2.  Rate ... %**

**4.7.4.2.2.1. Interest due from ..... (date (dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy) or event)<sup>1</sup>**

**4.7.4.3.  Statutory interest (if applicable) to be calculated in accordance with (please specify relevant statute):**

---

<sup>1</sup> **Add the number of periods necessary if more than one period.**

**4.7.4.3.1. Interest due from ..... (date (dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy) or event)<sup>1</sup>**

**4.7.4.4.  Capitalisation of interest (if applicable, please specify):**

<b>Done at: ...</b> <b>Signature and/or stamp of the court of origin:</b>
--

---

<sup>1</sup> ***Add the number of periods necessary if more than one period.***

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ANNEX II

**CERTIFICATE CONCERNING AN AUTHENTIC INSTRUMENT/COURT  
SETTLEMENT<sup>1</sup> IN CIVIL AND COMMERCIAL MATTERS**

***Article 71a* of Regulation \_\_\_ of the European Parliament and of the Council on  
jurisdiction and the recognition and enforcement of judgments in civil and commercial  
matters**

1. COURT OR COMPETENT AUTHORITY ISSUING THE CERTIFICATE
  - 1.1. Name:
  - 1.2. Address:
    - 1.2.1. Street and number/PO box:
    - 1.2.2. Place and postal code:
    - 1.2.3. Member State:

---

<sup>1</sup> *Delete as appropriate throughout the certificate.*

AT  BE  BG  CY  CZ  DE  EE  EL  ES  FI  FR  HU  IE  IT  LT  
 LU  LV  MT  NL  PL  PT  RO  SE  SI  SK  UK

1.3. Telephone  :

1.4. *Fax:*

1.5. *E-mail (if available):*

2. AUTHENTIC INSTRUMENT

2.1. *Authority which has drawn up the authentic instrument (if different from the authority issuing the certificate)*

2.1.1. *Name and designation of authority:*

2.1.2. *Address:*

2.2. *Date (dd/mm/yyyy) on which the authentic instrument was drawn up by the authority referred to in point 2.1:*

**I**

- 2.3. *Reference number of the authentic instrument (if applicable):*
- 2.4. *Date (dd/mm/yyyy) on which the authentic instrument was registered in the Member State of origin (to be filled in only if the date of registration determines the legal effect of the instrument and this date is different from the date indicated in point 2.2):*

2.4.1. *Reference number in the register (if applicable):*

3. *COURT SETTLEMENT*

- 3.1. *Court which approved the court settlement or before which the court settlement was concluded (if different from the court issuing the certificate)*

3.1.1. *Name of court:*

3.1.2. *Address:*



3.2. *Date (dd/mm/yyyy) of the court settlement:*

3.3. *Reference number of the court settlement:*

4. *PARTIES TO THE AUTHENTIC INSTRUMENT/COURT SETTLEMENT:*

4.1. *Name(s) of creditor(s) (surname and given name(s)/name of company or organisation)<sup>1</sup>:*

4.1.1. *Identification number (if applicable and if available):*

4.1.2. *Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):*

4.2. *Name(s) of debtor(s) (surname and given name(s)/name of company or organisation)<sup>2</sup>:*

4.2.1. *Identification number (if applicable and if available):*

---

<sup>1</sup> *Add the number of creditors necessary.*

<sup>2</sup> *Add the number of creditors necessary.*

**4.2.2. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):**

**4.3. Name of other parties, if any (surname and given name(s)/name of company or organisation)<sup>1</sup>**

**4.3.1. Identification number (if applicable and if available):**

**4.3.2. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):**

**5. ENFORCEABILITY OF THE AUTHENTIC INSTRUMENT/COURT SETTLEMENT IN THE MEMBER STATE OF ORIGIN**

**5.1. The authentic instrument/court settlement is enforceable in the Member State of origin**

**5.1.1.  Yes**

---

<sup>1</sup> **Add the number of other parties necessary (if any).**

**5.2. Terms of the authentic instrument/court settlement and interest**

**5.2.1. Authentic instrument/court settlement relating to a monetary claim**

**5.2.1.1. Short description of the subject matter:**

**5.2.1.2. Under the authentic instrument/court settlement**

..... (surname and given name(s)/name of company or  
organisation)<sup>1</sup>

*has to make a payment to:*

..... (surname and given name(s)/name of company or  
organisation)

**5.2.1.2.1. If more than one person has been held liable for one and the  
same claim, the whole amount may be collected from any one of  
them:**

**5.2.1.2.1.1.  Yes**

**5.2.1.2.1.2.  No**

---

<sup>1</sup> ***If more than one person has been ordered to make a payment, add the number of  
persons necessary.***

**5.2.1.3. Currency:**

- Euro (EUR)*  *Bulgarian lev (BGN)*  *Czech koruna (CZK)*   
*Hungarian forint (HUF)*  *Lithuanian litas (LTL)*  *Latvian lats (LVL)*   
*Polish zloty (PLN)*  *Pound Sterling (GBP)*  *Romanian leu (RON)*   
*Swedish krona (SEK)*  *Other (please specify (ISO code)):*

**5.2.1.4. Principal amount:**

5.2.1.4.1.  *Amount to be paid in one sum*

5.2.1.4.2.  *Amount to be paid in instalments<sup>1</sup>*

<i>Due date (dd/mm/yyyy)</i>	<i>Amount</i>

---

<sup>1</sup> *Add the number of instalments necessary.*

**5.2.1.4.3.  Amount to be paid regularly**

**5.2.1.4.3.1.  per day**

**5.2.1.4.3.2.  per week**

**5.2.1.4.3.3.  other (state frequency):**

**5.2.1.4.3.4. From date (dd/mm/yyyy) or event:**

**5.2.1.4.3.5. If applicable, until .....(date (dd/mm/yyyy) or event)**

**5.2.1.5. Interest, if applicable**

**5.2.1.5.1. Interest:**

**5.2.1.5.1.1.  Not specified in the authentic instrument/court settlement**

5.2.1.5.1.2.  *Yes, specified in the authentic instrument/court settlement as follows:*

5.2.1.5.1.2.1. *Amount:*

*or*

5.2.1.5.1.2.2. *Rate ... %*

5.2.1.5.1.2.3. *Interest due from ..... (date (dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy) or event)<sup>1</sup>*

5.2.1.5.2.  *Statutory interest (if applicable) to be calculated in accordance with (please specify relevant statute):*

5.2.1.5.2.1. *Interest due from ..... (date (dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy) or event)<sup>1</sup>*

5.2.1.5.3.  *Capitalisation of interest (if applicable, please specify):*

---

<sup>1</sup> *Add the number of periods necessary if more than one period.*

5.2.2. Authentic instrument/court settlement relating to a non-monetary enforceable obligation:

*5.2.2.1. Short description of the enforceable obligation*

*5.2.2.2. The obligation referred to in point 5.2.2.1. is enforceable against the following person(s)<sup>1</sup> (surname and given name(s)/name of company or organisation):*

*Done at: ...*

*Signature and/or stamp of the court or competent authority issuing the certificate:*

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<sup>1</sup> *Add the number of persons necessary if more than one person.*

I



**ANNEX III**

Correlation Table

Regulation (EC) No 44/2001	This Regulation
Article 1(1)	Article 1(1)
Article 1(2), introductory words	Article 1(2), introductory words
Article 1(2), <i>points</i> (a) to (d)	Article 1(2), <i>points</i> (a) to (d)
_____	Article 1(2), <i>point</i> (e)
_____	<i>Article 1(2), point (f)</i>
Article 1(3)	■ _____
_____	Article 2
Article 2	Article 3
Article 3	Article 4
Article 4	<i>Article 4a</i>
■	■
■	_____
Article 5, introductory words	Article 5, introductory words
Article 5, <i>point</i> (1)	Article 5, <i>point</i> (1)
Article 5, <i>point</i> (2)	_____
Article 5, <i>points</i> (3) and (4)	Article 5, <i>points</i> (3) and (4)
_____	Article 5, <i>point</i> (4a)
Article 5, <i>points</i> (5) to (7)	Article 5, <i>points</i> (5) to (7)

Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10
Article 11	Article 11
Article 12	Article 12
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16	Article 16
Article 17	Article 17
Article 18	Article 18
Article 19, <i>points (1) and (2)</i>	Article 19, <i>point (1)</i>
_____	<i>Article 19, point (2)</i>
Article 20	Article 20
Article 21	Article 21
Article 22 ■	Article 22 ■

Article 23(1) <i>and</i> (2)	Article 23(1) <i>and</i> (2)
_____	█
█	█
█	█
Article 23(3)	_____
Article 23(4) <i>and</i> (5)	Article 23(3) <i>and</i> (4)
█ _____	Article 23(5)
<b>Article 24</b>	Article 24(1)
_____	Article 24(2)
_____	█
Article 25	Article 27
Article 26	Article 28
█	█
Article 27(1)	Article 29(1)
_____	Article 29(2)
Article 27(2)	Article 29(3)
_____	█

Article 28	Article 30
_____	█
Article 29	Article 32(1)
_____	Article 32(2)
_____	<b>Article 32(2a)</b>
_____	<b>Article 32(2b)</b>
Article 30	Article 33(1), <b>points</b> (a) and (b)
_____	Article 33(1), second <b>subparagraph</b>
_____	Article 33(2) █
_____	Article 34
_____	Article <b>34a</b>
Article 31	Article 36
Article 32	Article 2, <b>point</b> (a)
<b>Article 33</b>	Article <b>38a</b>
_____	█
_____	Article 39
_____	Article <b>39b</b>
_____	Article 40

_____	Article 41
_____	Article 42
_____	Article <b>42a</b>
_____	Article 44
<b>Article 34</b>	Article <b>48(1), points (a) to (d)</b>
<b>Article 35(1)</b>	Article <b>48(1), point (e)</b>
Article 35(2)	Article <b>48(2)</b>
Article 35(3)	Article 48(3)
<b>█</b>	<b>Article 48(4)</b>
Article 36	Article 64
Article 37(1)	Article <b>39a, point (a)</b>
Article 38	_____
Article 39	<b>█</b> _____
Article 40	_____
Article 41	<b>█</b> _____
Article 42	<b>█</b> _____
Article 43	<b>█</b> _____
Article 44	<b>█</b> _____

Article 45	█ _____
Article 46	█ _____
Article 47	█ _____
Article 48	█ _____
█ _____	Article 50a
█ _____	Article 51
_____	Article 54
█ _____	Article 56
█ _____	<i>Article 57</i>
█ _____	Article 59
█ _____	Article 66
Article 49	Article 67
Article 50	█ _____
Article 51	Article 68
Article 52	█ _____
<i>Article 53</i>	█ _____
<i>Article 54</i>	Article 64a
Article 55(1)	█ _____

Article 55(2)	Article 39(2), Article 51(2a) and Article 69
█ _____	█ _____
Article 56	Article 72
Article 57(1)	Article 70(1)
Article 57(2)	_____
Article 57(3)	Article 70(2)
Article 57(4)	Article 70(3) and Article 71a
Article 58	Article 71 and Article 71a
Article 59	Article 73
█ _____	_____
Article 60	Article 74
Article 61	Article 75
Article 62	Article 2a
Article 63	_____
Article 64	_____
Article 65	Article 76(1) and (2)
_____	Article 76(2a)
█ _____	█ _____

Article 66	Article 77
Article 67	Article 78
Article 68	Article 79
Article 69	Article 80
Article 70	Article 81
Article 71	Article 82
Article 72	Article 83
_____	Article 84
Article 73	<i>Article 91a</i>
<i>Article 74(1)</i>	<i>Article 87, first paragraph, points (d), (e) and (f), and Article 88(1), point (a)</i>
<i>Article 74(2)</i>	Article 89
_____	█ _____
█ _____	█ _____
█ _____	█ _____
_____	█ _____



_____	Article 90
_____	█ _____
_____	Article 92
Article 75	_____
Article 76	Article 93
<i>Annex V</i>	<i>Annex I and Annex II</i>
<i>Annex VI</i>	<i>Annex II</i>
_____	<i>Annex III</i>
█ _____	█ _____
█ _____	█ _____
█ _____	█ _____

Or. en

## EXPLANATORY STATEMENT

Regulation No 44/2001, with its predecessor the Brussels Convention, is one of the most successful pieces of EU legislation; it laid the foundations for a European judicial area, has served citizens and businesses well by promoting legal certainty and predictability of decisions and is used as a reference and a tool by other instruments. The recast of this Regulation is therefore of considerable importance. The rapporteur is content that agreement has been reached with the co-legislator along the following lines.

### 1. Abolition of *exequatur*

In place of *exequatur*, the Commission proposes that a judgment enforceable in the Member State of origin is to be enforceable and enforced elsewhere in the EU upon production of an authentic copy and a certificate in the prescribed form issued by the court of origin, without any intermediate procedure. Thereafter, enforcement is to proceed as if the judgment were given by the courts of the Member State of enforcement.

If the party against whom enforcement is sought did not enter an appearance in the proceedings leading to judgment, it may apply to the courts of the Member State of origin to review the judgment on the ground that either (a) it was not served with the document instituting the proceedings in sufficient time and in such a way as to enable it to arrange for its defence, or (b) it was prevented from contesting the claim owing to “force majeure or extraordinary circumstances without any fault on his part”, unless it failed to challenge the judgment when it was possible for it to do so.

In addition, the party against whom enforcement is sought may apply to the courts of the Member State of enforcement for a refusal of enforcement if enforcement would not be permitted by the fundamental principles underlying the right to a fair trial.

The Commission is proposing to abolish the present right to challenge recognition or enforcement of a Member State judgment on the ground of manifest incompatibility with the enforcing/recknowledging Member State's public policy and replace it by the limited “fair trial” ground. Furthermore, with one very narrow exception, no review of the jurisdiction of the court of origin would be permitted, even in the limited circumstances currently envisioned by the Brussels I Regulation (non-compliance with consumer, insurance or exclusive jurisdiction requirements).

The Committee is of the view that a substantive or procedural public policy exception seems to be still necessary. Such an exception might be required by Member States' international obligations, and both the Rome I and Rome II Regulations contain exceptions for public policy and overriding mandatory provisions. A Member State before which proceedings are brought is entitled to preserve its fundamental values; therefore, equally, it must be the case for a Member State in which the enforcement of a judgment is sought.

However, the Commission proposes that there should be two categories of judgment in which a declaration of enforceability must still be obtained by the enforcing party and served on the opposing party, subject to the latter's right of appeal on limited grounds identical to those to

currently be found in Article 34 of the current Brussels I Regulation, namely judgments concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation, and judgments in collective redress proceedings concerning compensation for harm caused by unlawful business practices which meet certain conditions.

The Committee on Legal Affairs considers that for reasons of legal certainty it would be better to have no exemptions. This position has also found support in the Council.

## **2. Extension of the jurisdiction rules to disputes involving defendants domiciled outside the EU**

The Commission is proposing that the Regulation's jurisdictional rules be applied with mandatory effect to third-country defendants, thereby displacing the Member States' existing grounds of jurisdiction in such cases. In order to compensate for the resulting reduced access to the courts in many Member States and for the non-availability of the general domicile-based ground of jurisdiction, the Commission is also proposing that the courts of a Member State where moveable assets belonging to the defendant are located are to have jurisdiction, provided that (1) no other Member State court has jurisdiction under the preceding rules of the Regulation, (2) "the value of the property is not disproportionate to the value of the claim", and (3) the dispute has a "sufficient connection" with the Member State of the court seised.

On an exceptional basis, it is proposed that there should be a *forum necessitatis*, i.e. the right to bring proceedings before a Member State court with which the dispute has a "substantial connection", if "the right to a fair trial or the right of access to justice so requires" and if no other Member State court has jurisdiction under the preceding rules in the Regulation. In particular, proceedings may be brought under these circumstances (a) if proceedings would be impossible or cannot reasonably be brought or conducted in a third State with which the dispute is closely connected, or (b) if a judgment given in a third State would not be entitled to recognition and enforcement in the Member State of the court seised and such recognition and enforcement is necessary for the claimant's rights to be satisfied.

The Committee adheres to the position expressed in Parliament's resolution on the Green Paper that the question whether the rules of the Regulation should be extended in this way requires wide-ranging consultation and political debate. At this juncture, it is therefore proposed that rules be included in the Regulation to introduce only a partial reflexive effect for disputes in the field of employment, consumer and insurance contracts, in order to protect the weaker party in those situations.

## **3. Choice-of-court agreements**

The enhancement of the effectiveness of choice-of-court agreements by stipulating that the court chosen by the parties to resolve their dispute should always have priority, regardless of whether it was first or second seised seems to be a viable solution. Article 32(2) provides that 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 have no jurisdiction over the dispute until such time as the court or courts designated in the agreement decline jurisdiction. Moreover, the *lis pendens* provision set out in Article 29 of the proposed

Regulation is expressed to be without prejudice to Article 32(2). Recital 19 refers to the need to improve the effectiveness of choice-of-court agreements in order to "avoid abusive litigation tactics", before going on to say that the Regulation should grant priority to the court designated in the agreement to decide on its jurisdiction, regardless of whether it is first or second seised. In addition, Article 23(1) now qualifies the conferral of jurisdiction upon the chosen court by words "unless the agreement is null and void as to its substantive validity under the law of that Member State".

#### **4. Arbitration agreements**

The Commission is of the view that the effectiveness of arbitration agreements should be improved in order to give full effect to the will of the parties. In particular, it should be the case where the agreed or designated seat of arbitration is in a Member State. It recommends special rules aimed at avoiding parallel proceedings and abusive litigation tactics in those circumstances.

Regarding this point, the Committee adheres to the position taken by Parliament in its resolution on the Green Paper: arbitration is satisfactorily dealt with by the 1958 New York Convention and the 1961 Geneva Convention on International Commercial Arbitration. All Member States are parties to the above mentioned conventions; therefore the exclusion of arbitration from the scope of the Regulation should be preserved. Recital 11 and following above clarify this.

#### **5. Other questions**

The Committee acknowledges that improvements seem to have been made with regard to preliminary measures.

The Committee can support the proposal to enable Member State courts to stay proceedings in a *lis pendens* situation in which the court of a non-Member State is first seised of an action involving the same parties and the same cause of action.

#### **6. Conclusion**

In conclusion, the Committee on Legal Affairs is satisfied with the compromise reached with Council, as it corresponds to Parliament's position in all major points. The recast Regulation irons out some of the difficulties encountered over the last decade in this field, and the abolition of *exequatur* for all civil and commercial judgments is a significant step forward in access to justice for citizens and businesses.

**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels, 8 March 2011

**OPINION**

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)  
COM(2010)0748 of 14.12.2010 – 2010/0383(COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 13 January and 11 February 2011 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings<sup>1</sup>, an examination of the proposal for a regulation of the European Parliament and of the Council recasting Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) As regards the explanatory memorandum, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.

2) The following parts of the recast text should have been identified by using the grey-shaded

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<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

type generally used for marking substantive changes:

- in the first citation, the words "*and (e)*";
- the second sentence of Recital 10;
- in Article 47(1), the words "*concerning matters referred to in Article 37(3)*".

3) In Article 28(2), the reference made to "*the provisions of paragraph 2*" should be adapted so as to read as a reference made to "*the provisions of paragraph 1*".

4) In Article 47(2), the words "*Articles 50 to 63*" should be adapted so as to read "*Articles 50 to 65, 67, 68 and 72*".

5) In Article 64, the words "*given in a Member State*" and the words "*in the Member State in which recognition, enforceability or enforcement is sought*" should have been identified with adaptation arrows.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing texts, without any change in their substance.

C. PENNERA  
Jurisconsult

H. LEGAL  
Jurisconsult

L. ROMERO REQUENA  
Director General

10.11.2011

## **OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS**

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (COM(2010)0748 – C7-0433/2010 – 2010/0383(COD))

Rapporteur: Evelyn Regner

### **SHORT JUSTIFICATION**

Calls for the requirement of a new section on jurisdiction over industrial actions, to be introduced in the Regulation. In the past, ECJ cases, especially the "Viking-case" showed that there is some scope for forum shopping for court jurisdictions. Due to lack of a jurisdiction for industrial actions, a British court was appointed to decide over an industrial action that took place in Finland. Courts in Member States without any relation to the industrial action make decisions in civil law. This is against the spirit and the objectives of this regulation. The courts of the Member States with the closest connection to the industrial action - that's naturally the Member State where the action has been taken or took place - should have the competence to decide in those cases.

Calls for the requirement for exequatur to be abolished, but considers that before abolishing exequatur it has to be guaranteed that it is balanced by stringent safeguards, which are sufficiently capable of protecting the rights of the judgment debtor and which ensure that fundamental rights are respected to a full extent;

Considers in the meantime that the Community rules on exclusive jurisdiction with regard to rights in immovable property or tenancies of immovable property could be extended to proceedings brought in a third State; jurisdiction rules for consumers and employees shall also be applicable with regard to third-state companies;

### **AMENDMENTS**

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

## **Amendment 1**

### **Proposal for a regulation Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) Regulation (EC) No 44/2001 entered into force in March 2002. Eight years later, the Commission has reviewed its operation in practice and considered necessary amendments to the instrument. This recast will improve access to justice, inter alia by making it possible for employees to bring actions against multiple defendants in the employment area under Article 6(1). That possibility existed under the 1968 Brussels Convention. Its reinsertion in the Regulation will benefit employees who wish to bring proceedings against joint employers established in different Member States.***

## **Amendment 2**

### **Proposal for a regulation Recital 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***(1b) Jurisdiction in matters concerning industrial action is hereby created in order to avoid forum shopping and to ensure consistency with 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>; the competent court should be the court of the Member State in which the industrial action takes place.***

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



### **Amendment 3**

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

#### **Article 22 – point 1 – point aa (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) in proceedings concerning industrial action which takes place in a given Member State, the courts of that Member State shall have jurisdiction;***

*Justification*

*According to recital 7 of Rome II, there should be coherence between these 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.*

## PROCEDURE

<b>Title</b>	Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)		
<b>References</b>	COM(2010)0748 – C7-0433/2010 – 2010/0383(COD)		
<b>Committee responsible</b> Date announced in plenary	JURI 18.1.2011		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	EMPL 15.9.2011		
<b>Rapporteur(s)</b> Date appointed	Evelyn Regner 7.7.2011		
<b>Discussed in committee</b>	12.9.2011	5.10.2011	7.11.2011
<b>Date adopted</b>	7.11.2011		
<b>Result of final vote</b>	+: -: 0:	20 15 0	
<b>Members present for the final vote</b>	Edit Bauer, Jean-Luc Bennahmias, Pervenche Berès, Philippe Boulland, Milan Cabrnoch, Alejandro Cercas, Ole Christensen, Frédéric Daerden, Karima Delli, Frank Engel, Richard Falbr, Marian Harkin, Roger Helmer, Liisa Jaakonsaari, Ádám Kósa, Veronica Lope Fontagné, Elizabeth Lynne, Thomas Mann, Elisabeth Morin-Chartier, Siiri Oviir, Konstantinos Poupakis, Sylvana Rapti, Elisabeth Schroedter, Jutta Steinruck, Traian Ungureanu, Andrea Zaroni		
<b>Substitute(s) present for the final vote</b>	Georges Bach, Raffaele Baldassarre, Edite Estrela, Julie Girling, Richard Howitt, Ria Oomen-Ruijten, Antigoni Papadopoulou, Emilie Turunen		
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Catherine Bearder		

## PROCEDURE

<b>Title</b>	Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)		
<b>References</b>	COM(2010)0748 – C7-0433/2010 – 2010/0383(COD)		
<b>Date submitted to Parliament</b>	14.12.2010		
<b>Committee responsible</b> Date announced in plenary	JURI 18.1.2011		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	EMPL 15.9.2011		
<b>Rapporteur(s)</b> Date appointed	Tadeusz Zwiefka 28.2.2011		
<b>Discussed in committee</b>	24.5.2011	11.7.2011	22.11.2011
<b>Date adopted</b>	11.10.2012		
<b>Result of final vote</b>	+: 20	–: 0	0: 0
<b>Members present for the final vote</b>	Luigi Berlinguer, Sebastian Valentin Bodu, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Gerald Häfner, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka		
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Eva Lichtenberger, Axel Voss		
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Sylvie Guillaume, Salvatore Tatarella		
<b>Date tabled</b>	15.10.2012		