

## II

(Preparatory Acts)

## COMMISSION

**Proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters**

(1999/C 376 E/01)

COM(1999) 348 final — 1999/0154(CNS)

(Submitted by the Commission on 7 September 1999)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. In order to establish progressively such an area, the Community is to adopt, amongst other things, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market.
- (2) Differences between national rules governing jurisdiction and 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 simplify the formalities for rapid and simple recognition and enforcement of judgments are essential.
- (3) This area is within the field of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.
- (4) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore only be achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (5) On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the EC Treaty, concluded the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters<sup>(1)</sup> (‘the

Brussels Convention’). Work has been undertaken for the revision of that Convention, which is part of the *acquis communautaire* and has been extended to all the new Member States, and the Council has approved the content of the revised text. Continuity in the results achieved in that revision should be ensured.

- (6) In order to attain the objective of free movement 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 Community legal instrument which is binding and directly applicable.
- (7) The scope of this Regulation must cover all the main civil and commercial matters. The matters excluded from its scope must be as limited as possible.
- (8) There must be a link between proceedings to which this Regulation applies and the territory of the Member States bound by this Regulation. Common rules should accordingly apply, in principle, when the defendant is domiciled in one of those Member States.
- (9) A defendant domiciled in a third country may be subject to the rules of conflict of jurisdiction applicable in the territory of the State of the court seised, and a defendant domiciled in a Member State not bound by this Regulation must remain subject to the Brussels Convention. For the purposes of the free movement of judgments, judgments given on the basis of these rules must be recognised and enforced throughout the Community in accordance with this Regulation.
- (10) The rules of jurisdiction must be highly predictable and founded on the principle jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking 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.

<sup>(1)</sup> See consolidated text in OJ C 27, 26.1.1998, p. 1.

- (11) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction in view of the close link between the court and the action or in order to facilitate the sound administration of justice.
- (12) In relation to insurance, employment and consumer contracts, the weaker party should be protected and there should be an exception from the general rule allowing that party in appropriate cases to bring the action in the courts for his domicile.
- (13) Account must be taken of the growing development of the new communication technologies, particularly in relation to consumers; whereas, in particular, electronic commerce in goods or services by a means accessible in another Member State constitutes an activity directed to that State. Where that other State is the State of the consumer's domicile, the consumer must be able to enjoy the protection available to him when he enters into a consumer contract by electronic means from his domicile.
- (14) The autonomy of the parties to a contract other than an employment, insurance or consumer contract to determine the courts having jurisdiction must be respected. Contractual clauses electing jurisdiction between parties with unequal negotiating strength must, however, be regulated.
- (15) The necessary flexibility must be provided for in the general rules of this Regulation in order to take account of the specific procedural rules of certain Member States. Certain provisions of the Protocol annexed to the Brussels Convention should be incorporated in this Regulation.
- (16) In the interests of the harmonious administration of justice in the Community, it is necessary to ensure that irreconcilable judgments will not be given in two Member States which have jurisdiction. There must be a clear and automatic mechanism for resolving cases of *lis pendens* and related actions and, to obviate problems flowing from national differences as to the determination of the date on which a case is regarded as pending, that date should be defined autonomously.
- (17) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.
- (18) By virtue of the same principle of mutual trust, the procedure for enforcement in one Member State of a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable must be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility of automatically raising any of the grounds for non-enforcement provided for by this Regulation.
- (19) However, respect for the rights of the defence means that the defendant must be able to seek redress, in an adversarial procedure, against the judgment given if he believes one of the grounds for non-recognition to be present. Redress procedures must also be available to the claimant where his application for a declaration of enforceability has been rejected.
- (20) Continuity between the Brussels Convention and this Regulation must be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Community<sup>(1)</sup> and the 1971 Protocol must remain applicable to cases already pending when this Regulation enters into force.
- (21) In accordance with Articles 1 and 2 of the Protocols on the position of the United Kingdom and Ireland and the position of Denmark<sup>(2)</sup>, those Member States are not taking part in the adoption of this Regulation. This Regulation is accordingly not binding on the United Kingdom, Ireland or Denmark and is not applicable to them.
- (22) Since the Brussels Convention remains in force in relations between the Member States that are bound by this Regulation and those that are not, there must be clear rules governing the relationship between this Regulation and the Brussels Convention.
- (23) Likewise for the sake of consistency, this Regulation should not affect rules governing jurisdiction and the recognition of judgments contained in specific Community instruments.
- (24) 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.
- (25) No later than five years after the date of the entry into force of this Regulation, the Commission must review its application and propose such amendments as may appear necessary,

<sup>(1)</sup> See consolidated text in OJ C 27, 26.1.1998, p. 1 and p. 28.

<sup>(2)</sup> OJ C 340, 10.11.1997, p. 99 and p. 101.

HAS ADOPTED THIS REGULATION:

CHAPTER I

**SCOPE**

*Article 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.

This Regulation shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
3. social security;
4. arbitration.

CHAPTER II

**JURISDICTION**

Section 1

**General provisions**

*Article 2*

Subject to the provisions of this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

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 Member State.

The domicile of a company or legal person shall be determined in accordance with Article 57.

The expression 'Member State' means, unless otherwise provided, a Member State bound by this Regulation.

*Article 3*

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.

In particular the national rules of jurisdiction listed in Annex I shall not be applicable as against them.

*Article 4*

If the defendant is domiciled in a third country, the jurisdiction of the courts of each Member State shall, subject to the provisions of Articles 22 and 23, be determined by the law of that Member State.

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 jurisdiction there in force, and in particular those specified in Annex I, in the same way as the nationals of that Member State.

If the defendant is domiciled in a Member State not bound by this Regulation, jurisdiction shall be governed by the Brussels Convention in the version in force in that Member State.

Section 2

**Special jurisdiction**

*Article 5*

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

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
  - (b) 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 maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or there is a risk of it occurring;
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.

Without prejudice to more favourable national provisions, persons domiciled in a Member State who are prosecuted in a criminal court of a Member State of which they do not have the nationality for an offence committed involuntarily may be defended by persons empowered so to act, even if they do not enter an appearance in person. However, the court seised may order the defendant to appear in person; if he does not enter an appearance, recognition or enforcement of the judgment given on the civil action without the person concerned having the possibility of arranging for his defence may be refused in the other Member States;

5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
6. 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.

The first subparagraph 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 that 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.

The jurisdiction conferred by the first subparagraph shall not be available in Germany or in Austria. A person domiciled in another Member State may be sued in the courts:

- of Germany, pursuant to Articles 68, 72, 73 and 74 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices,
- of Austria, pursuant to Article 21 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices;

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 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 4 and Article 5(5).

##### Article 9

An insurer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled, or
2. in another Member State, in the case of actions brought by the policy-holder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled, or
3. if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

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 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

In respect of liability insurance, the insurer may, if the law of the court permits it, be joined in proceedings which the injured party had brought against the insured.

The provisions of Articles 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

If the law governing such direct actions provides that the policy-holder or the insured may be joined as a party to the action, the court seised by virtue of the second subparagraph shall have jurisdiction over them.

The jurisdiction conferred by this Article shall not be available in Germany or in Austria. A person domiciled in another Member State may be sued in the courts:

- of Germany, pursuant to Articles 68, 72, 73 and 74 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices,
- of Austria, as provided by Article 21 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices.

#### Article 12

Without prejudice to the provisions of the third paragraph of Article 11, 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 policy-holder, the insured or a beneficiary.

The provisions of this section shall not affect the right to bring a counterclaim 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 on jurisdiction:

1. which is entered into after the dispute has arisen, or
2. which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this section, or
3. which is concluded between a policy-holder 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 policy-holder 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 risks referred to in point 5 of Article 13 are the 'large risks' within the meaning of Article 5(d) of Council Directive 73/239/EEC <sup>(1)</sup> and any risk or interest connected therewith.

#### Section 4

##### Jurisdiction over consumer contracts

#### Article 15

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

1. it is a contract for the sale of goods on instalment credit terms; or
2. 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
3. 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 countries including that Member State, and the contract falls within the scope of such activities.

<sup>(1)</sup> OJ L 228, 16.8.1973, p. 3.

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.

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

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 in the courts for the place where the consumer is domiciled.

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.

The first and second paragraph 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 entered into by 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 confers 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

In matters relating to individual contracts of employment, jurisdiction shall be determined by this section, without prejudice to Article 4 and Article 5(5).

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

An employer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled; or
2. in another Member State:
  - (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or
  - (b) 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.

#### Article 20

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

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 on jurisdiction which is entered into after the dispute has arisen, or 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 shall have exclusive jurisdiction, regardless of domicile:

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 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 and models, or other similar rights required to be deposited or registered, 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 international convention deemed to have taken place;

Without prejudice to the powers 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 sole jurisdiction, irrespective of domicile, over the registration and validity of a European patent granted by that State;

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

If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any dispute which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise.

Such an 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.

Any communication by electronic means which can provide a durable record of the agreement shall be deemed to be in writing.

Where an agreement conferring jurisdiction is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

Agreements conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13 and 17 or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

#### Article 24

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.

#### Section 8

### Examination as to jurisdiction and admissibility

#### Article 25

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 26

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.

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.

National provisions transposing Council Directive ... on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters shall apply in place of the second paragraph if the document instituting the proceedings or an equivalent document had to be transmitted to another Member State in accordance with those provisions.

Until such time as national provisions transposing the Directive referred to in the third paragraph enter into force, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted to another Member State in accordance with that Convention.

#### Section 9

##### *Lis pendens* — related actions

###### Article 27

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.

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 28

Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

Where these actions are pending at first instance, any court other than the court first seised 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 the consolidation thereof.

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 29

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.

###### Article 30

For the purposes of this section, a court shall be deemed to be seised:

1. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or
2. 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 plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

#### Section 10

##### Provisional, including protective, measures

###### Article 31

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 State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

#### CHAPTER III

##### RECOGNITION AND ENFORCEMENT

###### Article 32

For the purposes of this Regulation, '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 the determination of costs or expenses by an officer of the court.

In Sweden, in summary proceedings for an injunction to pay (betalningsföreläggande) and assistance (handräckning), the words 'judge', 'court' and 'tribunal' shall include the public enforcement service (kronofogdemyndighet).



## Section 1

**Recognition***Article 33*

A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in sections 2 and 3 of this Chapter, apply for a decision that the judgment is recognised.

If an incidental question of recognition is raised in a court of a Member State, that court shall have jurisdiction to rule on the existence of one of the grounds for non-recognition provided for by Articles 41 and 42.

## Section 2

**Enforcement***Article 34*

A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

*Article 35*

The application shall be submitted to the court or competent authority appearing in the list in Annex II.

The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought or to the place of enforcement.

*Article 36*

The procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.

The applicant must give an address for service of process within the area of jurisdiction of the court or competent authority applied to. However, if the law of the Member State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

The second paragraph shall not apply where the competent authority is an administrative authority.

The documents referred to in Article 50 shall be attached to the application.

*Article 37*

The judgment shall be declared enforceable immediately on completion of the formalities provided for in Article 50 without any review of the grounds of non-enforcement set out in Articles 41 and 42. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

*Article 38*

The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.

The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

*Article 39*

The decision on the application for a declaration of enforceability may be appealed against by either party.

The appeal shall be lodged with the court appearing in the list in Annex III.

The appeal shall be dealt with in accordance with the rules governing procedure in adversarial proceedings.

If the party against whom enforcement is sought fails to appear before the court before which the appeal has been brought, Article 26 shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.

An appeal against the declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the period for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

*Article 40*

The judgment given on the appeal may be contested only by the proceedings referred to in Annex IV.

*Article 41*

The court with which an appeal is lodged under Article 39 or Article 40 shall give its decision without delay. It shall refuse or revoke a declaration of enforceability only on one of the following grounds:

1. if the declaration of enforceability is manifestly contrary to public policy in the Member State addressed;

2. where it 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;
3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State addressed;
4. if it is irreconcilable with an earlier judgment given in another Member State or in a third country 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.

Under no circumstances may the judgment of the Member State of origin be reviewed as to its substance.

#### Article 42

The court with which an appeal is lodged under Article 39 or Article 40 shall refuse or revoke a declaration of enforceability if the provisions of sections 3, 4 and 6 of Chapter II have been infringed.

In its examination of the grounds of jurisdiction referred to in the first paragraph, the court with which the appeal is lodged shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

Without prejudice to the first paragraph, the jurisdiction of the court of the Member State of origin may not be reviewed; the public-policy consideration referred to in Article 41(1) shall not affect the rules relating to jurisdiction.

#### Article 43

The court with which an appeal is lodged under Article 39 or Article 40 may, on the application of the party against whom enforcement is sought, 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.

That court may also make enforcement conditional on the provision of such security as it shall determine.

#### Article 44

When a judgment must be declared enforceable in accordance with this Regulation, the applicant may avail himself of provisional, including protective, measures in accordance with the law of the Member State addressed without a declaration of enforceability under Article 37 being required.

The declaration of enforceability shall carry with it the power to proceed to any protective measures.

During the time specified for an appeal pursuant to the fifth paragraph of Article 39 against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

#### Article 45

Where a judgment has been given in the Member State of origin in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or the competent authority shall give it for one or more of them.

An applicant may request a declaration of enforceability limited to parts of a judgment.

#### Article 46

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.

#### Article 47

An applicant who, in the State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedure provided for in this section, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State addressed.

#### Article 48

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 in which enforcement is sought.

#### Article 49

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State in which enforcement is sought.

### Section 3

#### Common provisions

#### Article 50

A party seeking recognition or applying for a declaration of enforceability of a judgment shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.

A party applying for a declaration of enforceability of a judgment shall also produce the certificate referred to in Article 51, without prejudice to Article 52.

#### Article 51

The court or competent authority of a Member State where the judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V.

#### Article 52

If the certificate provided for by Article 51 is not produced, the competent court or authority may specify a time for its production or accept equivalent documents or, if it considers that it has sufficient information before it, dispense with production thereof.

If the court or competent authority so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Member States.

#### Article 53

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 50, or in respect of a document appointing a representative *ad litem*.

### CHAPTER IV

#### AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

#### Article 54

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Member State shall, in another Member State, be declared enforceable there, on application made in accordance with the procedures provided for in Articles 34 to 49. The court with which an appeal is lodged under Article 39 or 40 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is contrary to public policy in the Member State addressed.

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

Section 3 of Title III shall apply as appropriate.

The competent authority of a Member State where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI.

#### Article 55

A settlement which has been approved by a court in the course of proceedings and is enforceable in the Member State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments. The competent court or authority of a Member State in which a court settlement was approved shall issue, at the request of any interested party, a certificate using the standard form in Annex V.

Arrangements relating to maintenance obligations concluded before administrative authorities or authenticated by them shall also be regarded as authentic instruments within the meaning of the first paragraph of Article 54.

### CHAPTER V

#### GENERAL PROVISIONS

#### Article 56

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. 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 the latter Member State.

#### Article 57

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 statutory seat, central administration, or principal place of business.

### CHAPTER VI

#### TRANSITIONAL PROVISIONS

#### Article 58

This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force.

However, judgments given after the date of entry into force of this Regulation in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Chapter III if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II, or in the Brussels Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

## CHAPTER VII

## RELATIONS WITH OTHER INSTRUMENTS

## Article 59

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 Community instruments or in national legislation harmonised pursuant to such instruments.

## Article 60

This Regulation shall, as between the Member States, supersede the Brussels Convention of 1968.

However, the Brussels Convention shall always be applicable:

1. where the defendant is domiciled in a Member State not bound by this Regulation and Articles 16 and 17 of the Brussels Convention confer jurisdiction on the courts of that State;
2. in matters of *lis pendens* and related actions as referred to in Articles 21 and 22 of the Brussels Convention, where claims are made in a Member State not bound by this Regulation and a Member State that is so bound.

Judgments given in a Member State, whether or not bound by this Regulation, by a court which based its jurisdiction on the Brussels Convention shall be recognised and enforced in the Member States bound by this Regulation in accordance with Chapter III of this Regulation.

## Article 61

Subject to Article 58, second paragraph, and Articles 62 and 63, this Regulation shall, as between Member States, supersede the following conventions and treaty concluded between two or more of them:

- the Convention between Belgium and France on jurisdiction and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Paris on 8 July 1899,
- the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 28 March 1925,

- the Convention between France and Italy on the enforcement of judgments in civil and commercial matters, signed at Rome on 3 June 1930,
- the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 9 March 1936,
- the Convention between Belgium and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments relating to maintenance obligations, signed at Vienna on 25 October 1957,
- the Convention between Germany and Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on 30 June 1958,
- the Convention between the Netherlands and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17 April 1959,
- the Convention between Germany and Austria on the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed at Vienna on 6 June 1959,
- the Convention between Belgium and Austria on the reciprocal recognition and enforcement of judgments, arbitral awards and authentic instruments in civil and commercial matters, signed at Vienna on 16 June 1959,
- the Convention between Greece and Germany for the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed in Athens on 4 November 1961,
- the Convention between Belgium and Italy on the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at Rome on 6 April 1962,
- the Convention between the Netherlands and Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on 30 August 1962,
- the Convention between the Netherlands and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at The Hague on 6 February 1963,

- the Convention between France and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Vienna on 15 July 1966,
- the Convention between Spain and France on the recognition and enforcement of judgment arbitration awards in civil and commercial matters, signed at Paris on 28 May 1969,
- the Convention between Luxembourg and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Luxembourg on 29 July 1971,
- the Convention between Italy and Austria on the recognition and enforcement of judgments in civil and commercial matters, of judicial settlements and of authentic instruments, signed at Rome on 16 November 1971,
- the Convention between Spain and Italy regarding legal aid and the recognition and enforcement of judgments in civil and commercial matters, signed at Madrid on 22 May 1973,
- the Convention between Finland, Iceland, Norway, Sweden and Denmark on the recognition and enforcement of judgments in civil matters, signed at Copenhagen on 11 October 1977,
- the Convention between Austria and Sweden on the recognition and enforcement of judgments in civil matters, signed at Stockholm on 16 September 1982,
- the Convention between Spain and the Federal Republic of Germany on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Bonn on 14 November 1983,
- the Convention between Austria and Spain on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Vienna on 17 February 1984,
- the Convention between Finland and Austria on the recognition and enforcement of judgments in civil matters, signed at Vienna on 17 November 1986,

and

- the Treaty between Belgium, the Netherlands and Luxembourg in jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 24 November 1961, in so far as it is in force.

#### Article 62

The Treaty and the conventions referred to in Article 61 shall continue to have effect in relation to matters to which this Regulation does not apply.

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Regulation.

#### Article 63

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. Those conventions are the following:

- Convention on the grant of European patents, signed at Munich on 5 October 1973;
- Warsaw Convention of ...
- ...

With a view to its uniform interpretation, the first paragraph shall be applied in the following manner:

1. this Regulation shall not prevent a court of a Member State which is a 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 a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Regulation;
2. 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 which concern the procedure for recognition and enforcement of judgments may be applied.

#### Article 64

This Regulation shall not affect agreements by which Member States undertook prior to the entry into force of this Regulation pursuant to Article 59 of the 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 country 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.

## CHAPTER VIII

## FINAL PROVISIONS

## Article 65

No later than five years after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.

## Article 66

The Member States shall notify the Commission of the texts of their legislative provisions amending either the provisions of

their legislation listed in Annex I or the courts or competent authorities indicated in Annexes II and III. The Commission shall adapt the Annexes concerned accordingly.

## Article 67

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

## ANNEX I

The rules of jurisdiction referred to in Article 3, second paragraph, (2) and 4(2) are the following:

- in Belgium: Article 15 of the Civil Code (Code civil — Burgerlijk Wetboek) and Article 638 of the Judicial Code (Code judiciaire — Gerechtelijk Wetboek),
- in the Federal Republic of Germany: Article 23 of the Code of Civil Procedure (Zivilprozessordnung),
- in Greece, Article 40 of the Code of Civil Procedure (Κώδικας πολιτικής δικονομίας),
- in France: Articles 14 and 15 of the Civil Code (Code civil),
- in Italy: Articles 3 and 4 of Act 218 of 31 May 1995,
- in Luxembourg: Articles 14 and 15 of the Civil Code (Code civil),
- in Austria: Article 99 of the Court Jurisdiction Act (Jurisdiktionsnorm),
- in the Netherlands: Articles 126(3) and 127 of the Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering),
- in Portugal: Article 65(1)(c), Article 65(2) and Article 65A(c) of the Code of Civil Procedure (Código de Processo Civil) and Article 11 of the Code of Labour Procedure (Código de Processo de Trabalho),
- in Finland: the second, third and fourth sentences of the first paragraph of Section 1 of Chapter 10 of the Code of Judicial Procedure (oikeudenkäymiskaari/rättegångsbalken),
- in Sweden: the first sentence of the first paragraph of Section 3 of Chapter 10 of the Code of Judicial Procedure (rättegångsbalken).

*ANNEX II*

The courts or competent authorities to which the applications referred to in Article 35 may be addressed are the following:

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*ANNEX III*

The courts to which appeals referred to in Article 39 may be addressed are the following:

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*ANNEX IV*

The proceedings which may be brought pursuant to Article 40 are the following

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, an appeal in cassation,
- in Germany, a 'Rechtsbeschwerde',
- in Austria, a 'Revisionsrekurs',
- in Portugal, an appeal on a point of law,
- in Finland, an appeal to the 'korkein oikeus/högsta domstolen',
- in Sweden an appeal to the 'Högsta domstolen'.

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ANNEX V

**Certificate referred to in Articles 51 and 55 of Council Regulation (EC) No ...**

(English, Inglès, anglais ...)

- 1. Country of origin .....
- 2. Court or authority issuing the certificate
  - 2.1. Name .....
  - 2.2. Address .....
  - 2.3. Tel./Fax/E-mail .....
- 3. Court which delivered the judgment/approved the court settlement
  - 3.1. Type of court .....
  - 3.2. Place of court .....
- 4. Judgment/court settlement
  - 4.1. Date .....
  - 4.2. Reference number .....
  - 4.3. The Parties to the judgment/court settlement
    - 4.3.1. Name(s) of plaintiff(s) .....
    - 4.3.2. Name(s) of defendant(s) .....
    - 4.3.3. Name(s) of other party(ies), if any .....
  - 4.4. Judgment was given in default of appearance
    - 4.4.1. Date of service of the document instituting the proceedings .....
  - 4.5. Text of the order as annexed to this certificate
- 5. Names of parties to whom legal aid has been granted .....

The judgment/court settlement is enforceable in the State of origin (Articles 24 and 55 of the Regulation) against:

Name: .....

Done at ....., date .....

Signature and/or stamp





ANNEX VI

**Certificate referred to in Article 54 of Council Regulation (EC) No ...**

(English, Inglès, anglais ...)

- 1. Country of origin .....
- 2. Court or authority issuing the certificate
  - 2.1. Name .....
  - 2.2. Address .....
  - 2.3. Tel./Fax/E-mail .....
- 3. Authority which has given authenticity to the instrument
  - 3.1. Authority involved in the drawing up of the authentic instrument (if applicable)
    - 3.1.1. Name and designation of authority .....
    - 3.1.2. Place of authority .....
  - 3.2. Authority which has registered the authentic instrument (if applicable)
    - 3.2.1. Type of authority .....
    - 3.2.2. Place of authority .....
- 4. Authentic instrument
  - 4.1. Description of the instrument .....
  - 4.2. Date
    - 4.2.1. on which the instrument was drawn up .....
    - 4.2.2. if different: on which the instrument was registered .....
  - 4.3. Reference number .....
  - 4.4. Parties to the instrument
    - 4.4.1. Name of the creditor .....
    - 4.4.2. Name of the debtor .....
- 5. Text of the enforceable obligation as annexed to this certificate .....

The authentic instrument is enforceable against the debtor in the State of origin (Article 54 of the Regulation)

Name: .....

Done at ....., date .....

Signature and/or stamp

