

Brussels, 21 April 2009

## **Report and Green paper on the review and application of regulation (ec) no 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters**

*On 21 April 2009, the Commission adopted a report and a green paper on the functioning of the existing rules on jurisdiction of the courts and the recognition and enforcement of foreign judgments. It concludes that time has come to achieve a free circulation of judgments in civil and commercial matters in the European Union on the basis of mutual recognition of judgments among Member States.*

### **Background**

In 1968, the Member States of the European Community concluded an international agreement on the basis of Article 220 EC Treaty on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This Convention, known as the "1968 Brussels Convention",<sup>1</sup> aimed at providing the legal support for the good functioning of the internal market. It aims at addressing two key questions which arise in the event of a dispute involving natural or legal persons from different Member States

- The courts of which Member States shall have jurisdiction to rule on the dispute;
- How the judgment given by that courts be recognised and enforced in the other Member States.

In 2000, the rules of the Convention were modernised and transformed into a Community Regulation. Today, Regulation 44/2001 ("Brussels I")<sup>2</sup> is the matrix of European judicial cooperation in civil and commercial matters. It is a key instrument for the establishment of a European judicial area and the good functioning of the internal market.

The Regulation covers the civil and commercial field, i.e. patrimonial disputes such as all kind of contracts and civil liability for damages. For example, when a German and an Polish company conclude a construction contract in which they designate the courts of Warsaw to deal with any dispute arising under their contract, the Brussels I Regulation ensures that the choice for the Warsaw courts will be respected, even if, for instance, the building is to be constructed in Berlin; and that the judgment given by the Polish courts will be recognised and enforced everywhere in the European Union.

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<sup>1</sup> OJ C 27, 26.1.1998, p. 1.

<sup>2</sup> OJ L 12, 16.1.2001, p.1.

The Brussels I Regulation does not only cover business relationships; it also lays down protective jurisdiction rules for weaker parties in contracts such as consumers, employees and insured and contains exclusive jurisdiction rules in a limited number of matters such as real property and certain industrial property rights. The Regulation strikes a proper balance between the interests of the various parties involved in a cross-border dispute, by identifying the jurisdiction which is most appropriate to solve the dispute.

The European Court of Justice has jurisdiction to deliver preliminary rulings on the interpretation of both the 1968 Brussels Convention and the Regulation. Up to today, almost 150 rulings have been given, which have to a great extent ensured a uniform application of the Regulation in the Member States.

The Regulation applies in all Member States. The United Kingdom and Ireland have opted in into the Brussels I Regulation. As for Denmark, the European Community and Denmark have concluded a parallel agreement which ensures the application of the provisions of the Regulation in Denmark as of 1 July 2007.<sup>3</sup>

Finally, similar rules are in place with some EEA countries: the 1988 Lugano Convention governing the same subject matter binds the Member States, including Denmark, on the one hand and Iceland, Norway, and Switzerland on the other hand.<sup>4</sup> This latter convention will be replaced, in the near future, by a convention concluded by the Community, Denmark and the above-mentioned States.<sup>5</sup>

### **The report and green paper and their objective**

Art. 73 Regulation 44/2001 requires the Commission to evaluate the operation of the Regulation within five years after its entry into force. The adoption of the report has been postponed in order to allow an empirical and statistical study to be carried out on the operation of the Regulation in all the Member States. In addition, it was considered appropriate to take account of developments at international level, in particular the possibility that the Community concludes the Hague Convention on choice of court agreements, which concerns the scope of the Regulation. An impact study on this convention was carried out in 2008.

The empirical and statistical study carried out by an external contractor shows that the Regulation operates well and is highly appreciated by the courts and practitioners in the Member States. Nevertheless, some difficulties are reported which need to be addressed.

In addition, the political mandate issued by the European Council in the Tampere and Hague programs requires addressing the important political objective to achieve a free circulation of judgments within the internal market.

In this context, the report limits itself to presenting the outcome of the evaluation of the operation of the Regulation. Instead, the green paper outlines possible avenues for moving forward on the points raised in the report. In summary, the report and green paper address the following issues:

- The removal of the remaining obstacles to a free circulation of judgments, i.e. the removal of "*exequatur*"<sup>6</sup>

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<sup>3</sup> OJ L 299, 16.11.2005, p. 62.

<sup>4</sup> OJ L 319, 25.11.1988.

<sup>5</sup> OJ L 339, 21.12.2007, p. 1.

<sup>6</sup> In the Member State where enforcement is sought they are still a judicial procedure to get the decision enforced.

- The protection of European citizens and companies in case of disputes with parties domiciled in third States, in particular by ensuring equal access to the courts of the Member States and equal protection against judgments given by the courts of third States against European defendants;
- Finally, certain imperfections in the application of certain rules of the Regulation, such as avoiding parallel proceedings in different Member States and ensuring the sound application of contractual agreements as to which courts will deal with the case in the Union.

The report and the green paper aim at launching a broad public consultation of civil society and Member States on the possible ways to deal with the issues referred to above. The deadline for consultation is 30 June 2009. The Commission's work programme foresees that a proposal for revision of the Regulation may be adopted by the end of 2009.