

Procedure file

Basic information		
CNS - Consultation procedure Regulation	1999/0154(CNS)	Procedure completed
Civil and commercial judicial cooperation, enforcement of judgments: Brussels I, Lugano Conventions		
See also 2009/2140(INI) Repealed by 2010/0383(COD)		
Subject 7.40.02 Judicial cooperation in civil and commercial matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs and Internal Market		23/09/1999
		ELDR WALLIS Diana	
	Committee for opinion	Rapporteur for opinion	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		25/10/1999
		PSE HAZAN Adeline	
Council of the European Union	Council configuration	Meeting	Date
	Telecommunications	2325	22/12/2000
	Justice and Home Affairs (JHA)	2314	30/11/2000
	Justice and Home Affairs (JHA)	2251	27/03/2000
European Commission	Commission DG	Commissioner	
	Justice and Consumers		

Key events			
14/07/1999	Legislative proposal published	COM(1999)0348	Summary
07/10/1999	Committee referral announced in Parliament		
27/03/2000	Debate in Council	2251	
04/09/2000	Vote in committee		Summary
04/09/2000	Committee report tabled for plenary, 1st reading/single reading	A5-0253/2000	
20/09/2000	Debate in Parliament		
21/09/2000	Decision by Parliament	T5-0401/2000	Summary

26/10/2000	Modified legislative proposal published	COM(2000)0689	Summary
22/12/2000	Act adopted by Council after consultation of Parliament		
22/12/2000	End of procedure in Parliament		
16/01/2001	Final act published in Official Journal		

Technical information

Procedure reference	1999/0154(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
	See also 2009/2140(INI) Repealed by 2010/0383(COD)
Legal basis	EC Treaty (after Amsterdam) EC 061
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/12132

Documentation gateway

Legislative proposal	COM(1999)0348 OJ C 376 28.12.1999, p. 0001 E	14/07/1999	EC	Summary
Economic and Social Committee: opinion, report	CES0233/2000 OJ C 117 26.04.2000, p. 0006	01/03/2000	ESC	
Committee report tabled for plenary, 1st reading/single reading	A5-0253/2000 OJ C 146 17.05.2001, p. 0004	04/09/2000	EP	
Text adopted by Parliament, 1st reading/single reading	T5-0401/2000 OJ C 146 17.05.2001, p. 0019-0094	21/09/2000	EP	Summary
Modified legislative proposal	COM(2000)0689 OJ C 062 27.02.2001, p. 0243 E	26/10/2000	EC	Summary
Follow-up document	SEC(2006)1341	24/10/2006	EC	Summary
Non-legislative basic document	COM(2009)0174	22/04/2009	EC	Summary

Additional information

European Commission	EUR-Lex
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Final act

Regulation 2001/44 OJ L 012 16.01.2001, p. 0001 Summary
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Civil and commercial judicial cooperation, enforcement of judgments: Brussels I, Lugano Conventions

PURPOSE : to harmonise the rules of private international law in the Member States relating to jurisdiction and to improve and speed up the recognition and enforcement of judgments in civil and commercial matters. CONTENT : this proposal for a Regulation is based on the the new

measures of the Treaty of Amsterdam relating to judicial cooperation in civil matters (Article 67 of the EC Treaty). The Regulation will replace and bring up to date the contents of the 1968 Brussels Convention on jurisdiction, recognition and enforcement of these judgments in civil and commercial matters by ensuring the continuity of results obtained in the framework of its negotiation. This Convention has not yet come into force in all the Member States as only a minority of them have ratified it. Like the Convention that it aims to replace, the Regulation has the same essential structure and basic principles, and seeks to : - introduce uniform modern standards for jurisdiction in civil and commercial matters and - simplify the formalities governing the rapid and automatic recognition and enforcement of the relevant judgements by a simple and uniform procedure. The proposed Regulation closely corresponds to the Brussels Convention and the results and negotiations in the ad hoc working party for the revision of the Brussels and Lugano Conventions, which it takes over to a substantial extent. The chief innovations following the work done by the working party are in the following areas : - the concept of the domicile of the natural persons is maintained, but there is now an autonomous definition of the seat of a legal person in place of a reference to the rules of private international law of the State in which jurisdiction is exercised; - the alternative jurisdiction has been reframed. The place of performance of the obligation underlying the claim will now be given an autonomous definition in two categories of situation: the sale of goods and the provision of services; - the material scope of the provisions governing consumer contracts has been extended so as to offer consumers better protection, notably in the field of electronic commerce; - to make the lis pendens rules more effective, the Regulation provides an autonomous definition of the date on which a case is "pending"; - the procedure for recognition and enforcement has been modified in order to improve the time taken for the declaration of enforceability and therefore the enforcement of judgments for the creditor.?

Civil and commercial judicial cooperation, enforcement of judgments: Brussels I, Lugano Conventions

The committee adopted the report (under the consultation procedure) by Diana WALLIS (ELDR, UK) significantly amending the Commission proposal to convert the 1968 Brussels Convention on the recognition and enforcement of judgements in civil and commercial matters into a regulation. The committee decided by one vote to change the jurisdiction clause so as to allow a company to choose jurisdiction so that it may only be sued where it has its registered office. Websites must, however, warn consumers about this. Other amendments called for an extensive use of extrajudicial dispute resolution, arguing that the judicial system was inappropriate for consumer claims relating to transactions concluded on-line, especially where the parties were domiciled in different Member States, in view of the costs and delays entailed thereby and the stigma often associated with going to court. It was further suggested that extrajudicial dispute resolution schemes should be accredited and that the grant of trust marks by national authorities, trade and consumer associations and, possibly, the Commission itself should be conditional upon the site in question providing for an extrajudicial dispute resolution system accredited under a scheme approved by the Commission. ?

Civil and commercial judicial cooperation, enforcement of judgments: Brussels I, Lugano Conventions

In adopting the European Parliament's report, drafted by Diana WALLIS (ELDR, UK), a number of amendments to the Commission's initial proposal were agreed. The Commission's original clause on jurisdiction was retained, but an amendment was adopted that would restrict the right of consumers to sue foreign suppliers of goods or providers of services in their jurisdiction to 'active' Internet sites, i.e. sites which target the consumer's Member State. Further amendments call for the extensive use of extra-judicial dispute resolution so that the judicial system is considered inappropriate for consumer claims relating to transactions concluded on-line, especially where the parties are domiciled in different States, in view of the costs and delays entailed thereby and the stigma often associated with going to court. It is also suggested that extra-judicial dispute resolution schemes should be accredited and that the grant of trust marks by national authorities, trade and consumer associations and, possibly, the Commission itself should be conditional upon the site in question providing for an extra-judicial resolution system accredited under a scheme approved by the Commission.?

Civil and commercial judicial cooperation, enforcement of judgments: Brussels I, Lugano Conventions

This amended proposal is adopted in response to amendments voted on by Parliament. The Commission can accept a number of Parliament's amendments. The amendments accepted in whole or in part aim to: - take into account of the special position of the United Kingdom and Ireland; - treat authentic instruments in the same way as judicial decisions, in terms of automatic recognition; - limit the multiplicity of courts having jurisdiction in insurance matters, the purpose of which is to enable an insurer to be sued in the courts for the place where the policy holder, the insured or a beneficiary is domiciled, regardless of the nature of the insurance contract (individual or group). The Commission can accept part of this amendment. The possibility offered to the policy-holder of suing in the courts for the place where he is domiciled, regardless of the nature of the contract, is already provided for in the Brussels Convention and there is no need to withdraw it, which would be a retrograde step. But the Commission can accept that the extension of the protection of the courts to the insured person and the beneficiary be confined to situations where the contract is an individual contract, in order to avoid undesirable multiplication of courts having jurisdiction; - take account of the Regulation's impact on small business in the report, however, the Commission cannot accept the second part of the amendment which provides that this report should be made within two years rather than five. The Commission states that it would be impossible, given the duration of judicial procedures in the Member States, to accumulate the necessary statistics and number of judgements under the Regulation to prepare the report; - provide a time-lag between adoption and entry into force of the regulation. On the other hand, the Commission cannot accept the amendments relating to: - the addition of a new Article 17a (authorisation of clauses referring to consumer disputes to a non-judicial-settlement body); - Article 15 (definition of consumer contracts covered by the rules on jurisdiction in Article 16); - the insertion of a new Article 55a concerning the enforceability of settlements agreed within an alternative dispute-settlement scheme.?

Civil and commercial judicial cooperation, enforcement of judgments: Brussels I, Lugano

Conventions

PURPOSE: to adopt measures relating to judicial cooperation in civil matters which are necessary for the sound operation of the internal market. **COMMUNITY MEASURE:** Council Regulation 44/2001/EC on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. **CONTENT:** In order to obtain the objective of free movement of judgements in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgements be governed by a Community legal instrument which is binding and directly applicable. To this end, the main provisions of the Regulation relate to civil and commercial matters whatever the jurisdiction. However, the Regulation does not apply to fiscal, customs and administrative matters. It shall not apply to the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession, bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, legal arrangements, compositions and analogous proceedings, social security or arbitration. The Regulation contains provisions relating to general competencies, special competencies, competencies in relation to insurance, work contracts and certain exclusive competencies. Furthermore, it includes rules concerning prorogation of jurisdiction, examination as to jurisdiction and admissibility, *lis pendens* (related actions), and provisional (including protective measures). In conclusion, the Regulation provides for questions related to the recognition and execution of decisions, legal acts, judicial transactions, general, transitional and final measures and finally, the relationship with other instruments. **ENTRY INTO FORCE:** 01.03.2002?

Civil and commercial judicial cooperation, enforcement of judgments: Brussels I, Lugano Conventions

This document constitutes a Staff Paper forming an annex to the Green Paper on improving the efficiency of the enforcement of judgments in the European Union, with specific reference to the attachment of bank accounts. It is intended to provide additional background information on the questions raised and, on the different approaches of Member States' legal systems towards them.

The attachment of bank accounts exists in practically all Member States and can be a powerful weapon against bad debtors. However, while debtors are today able to move their monies almost instantaneously out of accounts known to their creditors into other accounts in the same or another Member State, creditors are not able to block these movements of monies with the same swiftness. Although provisional remedies, which secure the future enforcement of a monetary claim by freezing bank accounts, are available in all Member States, the current legislation does not ensure that such remedies are recognised and enforced throughout the EU. The paper points out that the Brussels I Regulation does not provide adequate remedies. A consistency of approach amongst the Member States as regards the attachment of bank accounts might also help to avoid potentially discriminatory effects where remedies in different Member States create disparity in outcomes quite apart from the potential, and probably actual, effects on the functioning of the Internal Market.

The paper goes on to look at the possibility of creating a European system for the attachment of bank accounts. This would allow a creditor in certain circumstances to secure the payment of a sum of money due to him by preventing the removal or transfer of funds held to the credit of his debtor in one or several bank accounts within the territory of the EU. The attachment order under this system would be a protective measure issued by a court in summary proceedings which would only allow a creditor to block funds, not to effect their transfer.

The decision whether or not to put forward a legislative proposal for the attachment of bank accounts will be subject to an impact assessment in which will be analysed the extent of the problems of cross-border debt recovery and the likely effectiveness of possible alternatives to a European instrument. An obvious alternative to Community action would be to maintain the status quo; another might be to abolish the *exequatur* procedure for attachment orders without at the same time establishing common standards for the procedure of granting attachment orders. The possibilities outlined in the Green Paper and Staff Paper are not intended to prejudice the result of the impact assessment.

There are two different possibilities for creating a European system for the attachment of bank accounts: one would consist of designing a new European procedure which would be available to citizens and companies in addition to existing national procedures for banking seizures. Alternatively, Member States' national rules on the attachment of bank accounts could be harmonised by way of a European Directive which would guarantee that the same standards for the granting of an attachment order apply throughout the EU. In this case, the rules on provisional and protective measures in Regulation Brussels I would need to be amended in order to ensure that an attachment order issued in one Member State is recognised and enforced in all other Member States.

The creation of a new European procedure would have the advantage that it would supplement the existing remedies under national law without requiring Member States to substantially modify their national enforcement systems. Given the wide divergence of these systems, this solution might be preferable. On the other hand, the Commission's approach to juxtaposing self-standing European procedures with procedures under national law has been criticised for creating an overcomplicated system of remedies which would hamper rather than encourage individuals and businesses to exercise their rights. One solution to this situation would obviously be to create a European procedure which would not only be available for the attachment of bank accounts situated in a Member State other than the one where the order was issued but also for the attachment of bank accounts situated in the same Member State.

Irrespective of the type of instrument chosen, a Commission proposal on the attachment of bank accounts would have to deal with a number of issues which are discussed in more detail in the paper. These include clarification of the procedure for obtaining an attachment order, defining the amount and possible limits of the attachment order, and assessment of the effects of the order and procedural safeguards for the debtor.

The paper describes the procedure for obtaining an attachment order, and details possible features, including circumstances where a creditor can apply for an attachment order, the conditions of issue, the details of account information required and jurisdictional issues. It also discusses the effects of an attachment order, including how and when the attachment order should become effective; how the defendant might be adequately protected during the procedure; what impact the attachment order will have on other creditors and their possible ranking and finally, how an attachment order can become "executory", so that, after the court has made an order on the merits, the claimant can receive payment out of the attached account.