Implementation and review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I)

2009/2140(INI) - 22/04/2009 - Non-legislative basic document

PURPOSE: to present a Commission report on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels I").

CONTENT: Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It lays down uniform rules to settle conflicts of jurisdiction and facilitate the free circulation of judgments, court settlements and authentic instruments in the European Union. It replaced the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by several conventions on the accession of new Member States to that Convention.

This report has been prepared in accordance with Article 73 of the Regulation, on the basis of a general study commissioned by the Commission on the practical application of the Regulation. It aims at presenting to the European Parliament, the Council and the European Economic and Social Committee an assessment on the application of the Regulation. It is **accompanied by a Green Paper** which makes some suggestions on possible ways forward with respect to the points raised in this report. Both documents serve as the basis for a public consultation on the operation of the Regulation.

As regards the **application of the Regulation in general**, the report notes that in most Member States, there is no systematic collection of statistical data on the application of the Regulation.

A distinction must be made between the jurisdiction rules on the one hand and the rules on recognition and enforcement of judgments on the other hand. In general, the Regulation is mostly applied in economic centres and border regions. The jurisdiction rules generally apply in a relatively small number of cases, ranging from less than 1% of all civil cases to 16% in border regions.

The rules on recognition and enforcement are more frequently applied but it has not been possible to obtain comprehensive data on the number of declarations of enforceability delivered by the courts. The numbers range from very low (e.g. 10 declarations in 2004 in Portugal) to higher (e.g. 420 declarations in 2004 in Luxembourg) with again a peak in border regions (e.g. 301 declarations in the courts of the Landgericht Traunstein in Germany, located near the Austrian border).

In general, the **Regulation is considered to be a highly successful instrument**, which has facilitated cross-border litigation through an efficient system of judicial cooperation based on comprehensive jurisdiction rules, coordination of parallel proceedings, and circulation of judgments. The system of judicial cooperation laid down in the Regulation has successfully adapted to the changing institutional environment (from intergovernmental cooperation to an instrument of European integration) and to new challenges of modern commercial life. As such, it is highly appreciated among practitioners.

This general satisfaction with the operation of the Regulation does not exclude that **the functioning of the Regulation may be improved in the following areas**:

- the abolition of exequatur;
- the operation of the Regulation in the international legal order;
- choice of court (the law applicable to choice of court agreements, choice of court and *lis pendens*; the Hague Convention on choice of court agreements);
- the operation of the rules concerning industrial property;
- the application of the *lis pendens* and related actions rules of the Regulation;
- provisional measures remain an area where the diversity in the national procedural laws of the Member States makes the free circulation of such measures difficult;
- the interface between the Regulation and arbitration (arbitration falls outside the scope of the Regulation).

In addition to the main points addressed above, the following issues have been raised: scope; jurisdiction ; recognition and enforcement.