Jurisdiction, recognition and enforcement of judgments in civil and commercial matters. Recast

2010/0383(COD) - 20/11/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 567 votes to 28, with 6 abstentions, amendments to the proposal for a Regulation of the European Parliament and of the Council concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The Parliament adopted its position at first reading following the ordinary legislative procedure. The amendments adopted at plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the proposal as follows:

Field of application: the Regulation shall not apply to the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii). Also excluded from its field of application: rights in property arising out of a relationship deemed by the law applicable to have comparable effects to marriage; wills and succession, including maintenance obligations arising by reason of death.

Arbitration agreements: the Regulation should not apply to arbitration. Nothing in this Regulation should prevent the courts of a Member State, when seised of an action in a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration, from staying or dismissing the proceedings, or from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with their national law.

The Regulation does not affect the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958, which takes precedence over this Regulation.

Common rules of jurisdiction: there must be a connection between proceedings to which this Regulation applies and the territory of the Member States. Common rules of jurisdiction should, in principle, apply **when the defendant is domiciled in a Member State**.

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.

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 the autonomy of the parties, certain rules of jurisdiction in this Regulation should apply regardless of the defendant's domicile.

Recovery of cultural objects: the owner of a cultural object as defined in Council Directive 93/7/EEC should be able to initiate proceedings as regards a civil claim for the recovery, based on ownership, of such a cultural object in the courts for the place where the cultural object is situated at the time the court is seised.

Choice-of-court agreement: 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 or that of the designated courts must be included the conflict-of-laws rules of that Member State .

Lis pendens: in order to enhance the effectiveness of exclusive choice-of-court agreements and to avoid abusive litigation tactics, the text underlines the necessity to provide for an exception to the general *lis pendens* rule in order to deal satisfactorily with a particular situation in which concurrent proceedings may arise.

In this regard, it states that the Regulation **will leave the jurisdiction designated in the agreement as a priority** to decide on its jurisdiction, whether entered first or second.

Recognition and enforcement:

- Judgments given in a Member State should be recognised in all Member States **without the need for any special procedure**. 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

- 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** .

- In order to inform the person against whom enforcement is sought of the enforcement of a judgment given in another Member State, a **certificate concerning a judgment in civil and commercial matters**, if necessary accompanied by the judgment, should be served on that person in reasonable time before the first enforcement measure.

- 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. 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.

- The person against whom enforcement is sought should be able to apply for **refusal of the recognition or enforcement of a judgment** if he considers one of the grounds for refusal of 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. The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present.

- The **provisional or protective measures** ordered by a court having jurisdiction as to the substance of the matter should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement.

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

Notification: the Member States must inform the Commission about the rules of jurisdiction foreseen in the Regulation. The Commission shall, on the basis of the notifications by the Member States, establish the corresponding lists and make all information notified publicly available, in particular, through the European Judicial Network.

Report: no later than seven years after the entry into force of the Regulation the Commission shall present a report 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 amendment of this Regulation.