

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Repealed by 2010/0383(COD) See also 2009/2140(INI)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

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

Key events			
Date	Event	Reference	Summary
14/07/1999	Legislative proposal published	COM(1999)0348 	Summary
07/10/1999	Committee referral announced in Parliament		
27/03/2000	Debate in Council		

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
Amendments and repeals	Repealed by 2010/0383(COD) See also 2009/2140(INI)
Legal basis	EC Treaty (after Amsterdam) EC 061
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/12132

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0253/2000 OJ C 146 17.05.2001, p. 0004	04/09/2000	
Text adopted by Parliament, 1st reading/single reading		T5-0401/2000 OJ C 146 17.05.2001, p. 0019-0094	21/09/2000	Summary
European Commission				
Document type	Reference	Date	Summary	
Legislative proposal	COM(1999)0348  OJ C 376 28.12.1999, p. 0001 E	14/07/1999	Summary	
Modified legislative proposal	COM(2000)0689  OJ C 062 27.02.2001, p. 0243 E	26/10/2000	Summary	
Follow-up document	SEC(2006)1341 	24/10/2006	Summary	

Follow-up document	COM(2009)0174 	22/04/2009	Summary
Other institutions and bodies			
Institution/body	Document type	Reference	Summary
EESC	Economic and Social Committee: opinion, report	CES0233/2000 OJ C 117 26.04.2000, p. 0006	01/03/2000

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Final act	
Regulation 2001/0044 OJ L 012 16.01.2001, p. 0001	Summary

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

1999/0154(CNS) - 24/10/2006 - Follow-up document

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.

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

1999/0154(CNS) - 26/10/2000 - Modified legislative proposal

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

1999/0154(CNS) - 30/11/2000

The Council reached political agreement on the draft regulation which should be adopted before the end of December 2000, following finalisation of the text and once the Netherlands delegation has lifted its parliamentary scrutiny reservation. If so, it is planned that the Regulation will come into force on 1 March 2002. Ministers agreed to a statement on Article 15, concerning consumer contracts. This statement pays particular attention to the application of Article 15 to electronic commerce. Denmark did not participate in the adoption of the Regulation, by virtue of the protocol concerning it annexed to the Amsterdam Treaty. However, Denmark has expressed an interest in the conclusion of an agreement allowing it to apply the rules laid down in this Regulation.

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

1999/0154(CNS) - 21/09/2000 - Text adopted by Parliament, 1st reading/single reading

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

1999/0154(CNS) - 22/04/2009 - Follow-up document

The Commission presents a 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.

Council Regulation (EC) No 44/2001 is the matrix of European judicial cooperation in civil and commercial matters. It replaced the 1968 Brussels Convention and 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.

This report has been prepared in accordance with Article 73 of the Regulation, on the basis of a general study commissioned by the Commission, and 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.

General evaluation of the Regulation: 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. However, this general satisfaction with the operation of the Regulation does not exclude that the functioning of the Regulation may be improved.

The report also evaluates the following specific points of the Regulation:

The abolition of exequatur: the main objective of the revision of the Regulation should be the abolition of the exequatur procedure in all matters covered by the Regulation. The general study shows that, when the application is complete, first instance proceedings before the courts in the Member States tend to last, on average, from 7 days to 4 months. When, however, the application is incomplete, proceedings last longer. Applications are often incomplete and judicial authorities ask for additional information, in particular translations. Most applications for a declaration of enforceability are successful (between 90% and 100%). Only between 1 and 5% of the decisions are appealed.

The operation of the Regulation in the international legal order: the absence of harmonised rules on subsidiary jurisdiction causes an unequal access to justice for Community citizens. This is particularly the case in situations where a party would not get a fair hearing or adequate protection before the courts of third States. Moreover, the absence of common rules determining jurisdiction against third State defendants may jeopardise the application of mandatory Community legislation. In addition, the absence of common rules on the effect of third State judgments in the Community may in certain Member States lead to situations where third State judgments are recognised and enforced even where such judgments are in breach of mandatory Community law. Finally, the absence of harmonised rules determining the cases where the courts of the Member States can decline their jurisdiction on the basis of the Regulation in favour of the courts of third States generates a great deal of confusion and uncertainty.

Choice of court: concerns have been voiced that the Regulation would not sufficiently protect exclusive choice of court agreements. These follow from the possibility that one party to such an agreement seizes the courts of a Member State in violation of the choice of court agreement, thereby obstructing proceedings before the chosen court insofar as the latter are brought subsequently to the first proceedings. The resulting parallel proceedings may lead to delays which are detrimental to the proper functioning of the internal market. Parallel proceedings equally create additional costs and uncertainty. The Commission has proposed to sign the Hague Convention on choice of court agreements. The Convention will apply in all cases where at least one of the parties resides in a Contracting State other than an EU Member State, whereas the Regulation applies where at least one party is domiciled in a Member State. Under the Convention, the court designated by the agreement may proceed notwithstanding parallel proceedings being brought elsewhere. Any other court should suspend or dismiss proceedings except in a number of limited situations defined in the Convention.

Industrial property: the report highlights two main difficulties. The first difficulty concerns the operation of the *lis pendens* rule. Industrial property litigation is one of the areas where parties have attempted to pre-empt the exercise of jurisdiction by a competent court by starting proceedings before another court which usually, though not always, lacks jurisdiction, preferably in a State where the proceedings to decide on the jurisdiction issue and/or on the merits take a long time. The second difficulty is the impossibility to bring consolidated proceedings against several infringers of a European patent where the infringers belong to a group of companies and act in accordance with a coordinated policy. The obligation to bring proceedings in each of the jurisdictions concerned would entail high costs for the victims and hamper an efficient handling of the claims;

Lis pendens and related actions: with respect to exclusive jurisdiction under the Regulation, it should be reflected whether the need arises to improve the existing *lis pendens* rule in general in order to prevent abusive procedural tactics and ensure a good administration of justice in the Community. With respect to the rule on related actions, the requirement that both actions must be pending before the courts and the reference to national law for the conditions of consolidation of related actions hampers an effective consolidation of proceedings at Community level. It is currently not possible on the basis of the Regulation to group actions, in particular actions of several plaintiffs against the same defendant, before the courts of one Member State, whereas such consolidation is frequently needed. Lastly, it may be appropriate to clarify the definition of the moment in time when proceedings are considered to be pending for purposes of the *lis pendens* and related actions rules;

Provisional measures: 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, particularly with respect to: (i) protective measures ordered without the defendant being summoned to appear and which are intended to be enforced without prior service of the defendant; (ii) protective orders aimed at obtaining information and evidence; (iii) the application of the conditions set by the Court of Justice in Cases C-391/95 (*Van Uden*) and C-99/96 (*Mietz*) for the issuance of provisional measures ordered by a court which does not have jurisdiction on the substance of the matter;

The interface between the Regulation and arbitration: arbitration falls outside the scope of the Regulation given that the recognition and enforcement of arbitral agreements and awards is governed by the 1958 New York Convention, to which all Member States are parties. Despite the broad scope of the exception, the Regulation has in specific instances been interpreted so as to support arbitration and the recognition/enforcement of arbitral awards. Even though the New York Convention is generally perceived to operate satisfactorily, parallel court and arbitration proceedings arise when the validity of the arbitration clause is upheld by the arbitral tribunal but not by the court.

In addition to the issues examined above, the report notes that far as scope is concerned, no substantial practical problems have been reported beside the arbitration point discussed above.

Furthermore, with respect to the notion of "domicile", the report shows that no difficulties arise in practice when the courts apply their national concept of "domicile" on the basis of this Regulation.

In its [resolution](#) of 18 December 2008, the European Parliament has called on the Commission to address the question of the free circulation of authentic instruments. The general study also reports difficulties in the free circulation of penalties. Lastly, the study shows some ways to limit the costs of enforcement proceedings.

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

1999/0154(CNS) - 22/12/2000 - Final act

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

1999/0154(CNS) - 14/07/1999 - Legislative proposal

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.