Basic information

2009/2140(INI) INI - Own-initiative procedure	Procedure completed
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) See also Regulation (EC) No 44/2001 1999/0154(CNS) **Subject** 7.40.02 Judicial cooperation in civil and commercial matters 8.50.01 Implementation of EU law	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	ZWIEFKA Tadeusz (PPE)	02/09/2009

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2969	2009-10-23

European Commission

Commission DG	Commissioner
Justice and Consumers	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
22/04/2009	Non-legislative basic document published	COM(2009)0174	Summary
19/10/2009	Committee referral announced in Parliament		
23/10/2009	Debate in Council		Summary
23/06/2010	Vote in committee		Summary
29/06/2010	Committee report tabled for plenary	A7-0219/2010	

06/09/2010	Debate in Parliament		
07/09/2010	Decision by Parliament	T7-0304/2010	Summary
07/09/2010	Results of vote in Parliament		
07/09/2010	End of procedure in Parliament		

Technical information

Procedure reference	2009/2140(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Implementation
Amendments and repeals	See also Regulation (EC) No 44/2001 1999/0154(CNS)
Legal basis	Rules of Procedure EP 148-p2
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/00888

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE439.997	27/04/2010	
Amendments tabled in committee		PE441.266	12/05/2010	
Committee report tabled for plenary, single reading		A7-0219/2010	29/06/2010	
Text adopted by Parliament, single reading		T7-0304/2010	07/09/2010	Summary

European Commission

Document type	Reference	Date	Summary
Document attached to the procedure	COM(2009)0175	21/04/2009	Summary
Non-legislative basic document	COM(2009)0174	22/04/2009	Summary
Commission response to text adopted in plenary	SP(2010)7906	08/02/2011	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	SE_PARLIAMENT	COM(2009)0175	22/06/2009	

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) - 21/04/2009 - Document attached to the procedure

This Green Paper accompanies the Report from the Commission on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Its purpose is to launch a broad consultation among interested parties on possible ways to improve the operation of the Regulation with respect to the points raised in the Report.

1) The abolition of all intermediate measures to recognise and enforce foreign judgments ("exequatur"): the existing exequatur procedure in the Regulation simplified the procedure for recognition and enforcement of judgments compared to the previous system under the 1968 Brussels Convention. Nevertheless, it is difficult to justify, in an internal market without frontiers, that citizens and businesses have to undergo the expenses in terms of costs and time to assert their rights abroad.

If applications for declarations of enforceability are almost always successful and recognition and enforcement of foreign judgments is very rarely refused, aiming for the objective of abolishing the exequatur procedure in all civil and commercial matters should be realistic. In practice, this would apply principally to contested claims. The abolition of exequatur should, however, be accompanied by the necessary safeguards.

The Green Paper asks the following questions:

- In the internal market, should all judgments in civil and commercial matters circulate freely, without any intermediate proceedings (abolition of exequatur)?
- If so, should some safeguards be maintained in order to allow for such an abolition of exequatur? And if so, which ones?

2) The operation of the Regulation in the international legal order: the good functioning of an internal market and the Community's commercial policy both on the internal and on the international level require that equal access to justice on the basis of clear and precise rules on international jurisdiction is ensured not only for defendants but also for claimants domiciled in the Community.

The jurisdictional needs of persons in the Community in their relations with third States' parties are similar. A common approach would strengthen the legal protection of Community citizens and economic operators and guarantee the application of mandatory Community legislation.

- In order to extend the personal scope of the jurisdiction rules to defendants domiciled in third States, it should be considered to what extent the special jurisdiction rules of the Regulation, with the current connecting factors, could be applied to third State defendants.
- In addition, it should be reflected to what extent it is necessary and appropriate to create additional jurisdiction grounds for disputes involving third State defendants ("subsidiary jurisdiction").
- The existing rules at national level pursue an important objective of ensuring access to justice; it should be reflected which uniform rules might be appropriate.
- Lastly, it should be considered to what extent an extension of the scope of the jurisdiction rules should be accompanied by common rules on the effect of third State judgments. A harmonisation of the effect of third State judgments would enhance legal certainty, in particular for Community defendants who are involved in proceedings before the courts of third States. A common regime of recognition and enforcement of third State judgments would permit them to foresee under which circumstances a third State judgment could be enforced in any Member State of the Community, in particular when the judgment is in breach of mandatory Community law or Community law provides for exclusive jurisdiction of Member States' courts.

3) Choice of court: agreements on jurisdiction by the parties should be given the fullest effect, not the least because of their practical relevance in international commerce. It should therefore be considered to what extent and in which way the effect of such agreements under the Regulation may be strengthened, in particular in the event of parallel proceedings.

The Green Paper envisages the advantages and inconveniences of several possible solutions to enhance the effectiveness of the choice of court agreements in the Community, such as:

- to release the court designated in an exclusive choice-of-court agreement from its obligation to stay proceedings under the lis pendens rule;
- to reverse the priority rule insofar as exclusive choice of court agreements are concerned;
- to maintain the existing lis pendens rule may, but a direct communication and cooperation between the two courts could be envisaged, combined, for instance, with a deadline for the court first seized to decide on the question of jurisdiction and an obligation to regularly report to the court second seized on the progress of the proceedings;
- to exclude the application of the lis pendens rule in situations where the parallel proceedings are proceedings on the merits on the one hand and proceedings for (negative) declaratory relief on the other hand or at least to ensure a suspension of the running of limitation periods with respect to the claim on the merits in case the declaratory relief fails;
- to address the uncertainty surrounding the validity of the agreement, for instance, by prescribing a standard choice of court clause, which could at the same time expedite the decision on the jurisdiction question by the courts.

4) Industrial property: the possibility to effectively enforce or challenge industrial property rights in the Community is of fundamental importance for the good functioning of the internal market.

The Commission has proposed the creation of an integrated jurisdictional system through the establishment of a unified European patent litigation system which would be entitled to deliver judgments on the validity and the infringement of European and future Community patents for the entire territory of the internal market. In addition, on 20 March 2009, the Commission adopted a Recommendation to the Council concerning the negotiating directives for the conclusion of an international agreement involving the Community, its Member States and other Contracting States of the European Patent Convention.

Pending the creation of the unified patent litigation system, certain shortcomings of the current system may be identified and addressed in the context of Regulation (EC) No 44/2001.

- With respect to the coordination of parallel infringement proceedings, it could be envisaged to strengthen the communication and interaction between the courts seized in parallel proceedings and/or to exclude the application of the rule in the case of negative declaratory relief.
- With respect to the coordination of infringement and invalidity proceedings, several solutions to counter "torpedo" practices have been proposed in the general study. It is hereby referred to the study for those solutions. However, the problems may be dealt with by the creation of the unified patent litigation system, in which case modifications of the Regulation would not be necessary.
- If it is considered opportune to provide for a consolidation of proceedings against several infringers of the European patent where the infringers belong to a group of companies acting in accordance with a coordinated policy, a solution might be to establish a specific rule allowing infringement proceedings concerning certain industrial property rights against several defendants to be brought before the courts of the Member State where the defendant coordinating the activities or otherwise having the closest connection with the infringement is domiciled.

The Green Paper asks the question about the shortcomings in the current system of patent litigation which should be considered to be the most important to be addressed in the context of Regulation 44/2001 and which of the above solutions should be considered appropriate in order to enhance the enforcement of industrial property rights.

5) Lis pendens and related actions: with respect to the general operation of the lis pendens rule, it should be reflected whether the current problems might not be addressed by strengthening the communication and interaction between the courts seized in parallel proceedings and/or the exclusion of the application of the rule in the case of negative declaratory relief.

The Green Paper asks: (i) how the coordination of parallel proceedings (lis pendens) before the courts of different Member States may be improved? (ii) Whether a consolidation of proceedings by and/or against several parties should be provided for at Community level on the basis of uniform rules?

6) Provisional measures: the report describes several difficulties with respect to the free circulation of provisional measures.

- With respect to ex parte measures, it might be appropriate to clarify that such measures can be recognised and enforced on the basis of the Regulation if the defendant has the opportunity to contest the measure subsequently, particularly in the light of Article 9(4) of Directive 2004/48 /EC.
- As regards the allocation of jurisdiction for provisional measures ordered by a court which does not have jurisdiction on the substance of the matter may be approached differently than it is today under the existing case law of the Court of Justice.
- In addition, if the Member State whose courts have jurisdiction as to the substance of the matter were empowered to discharge, modify or adapt a provisional measure granted by the courts of a Member State having jurisdiction on the basis of Article 31, the "real connecting link" requirement could be abandoned.
- With respect to the required guarantee of repayment of an interim payment, it might be desirable to specify that the guarantee should not necessarily consist of a provisional payment or bank guarantee.

Lastly, if exequatur is abolished, Article 47 of the Regulation should be adapted.

The Green Paper asks whether the free circulation of provisional measures may be improved.

7) The interface between the Regulation and arbitration: arbitration is a matter of great importance to international commerce. Arbitration agreements should be given the fullest possible effect and the recognition and enforcement of arbitral awards should be encouraged. The 1958 New York Convention is generally perceived to operate satisfactorily and is appreciated among practitioners. It would therefore seem appropriate to leave the operation of the Convention untouched or at least as a basic starting point for further action. This should not prevent, however, addressing certain specific points relating to arbitration in the Regulation, not for the sake of regulating arbitration, but in the first place to ensure the smooth circulation of judgments in Europe and prevent parallel proceedings.

In this context, the Green Paper asks which actions should be considered appropriate at Community level:

- to strengthen the effectiveness of arbitration agreements;
- to ensure a good coordination between judicial and arbitration proceedings;
- to enhance the effectiveness of arbitration awards?

The Green Paper deals with **other issues** such as:

Scope (maintenance matters should be added to the list of exclusions, following the adoption of Regulation (EC) No 4/2009 on maintenance).

Jurisdiction: in light of theimportance of domicile as the main connecting factor to define jurisdiction, it should be considered whether an autonomous concept could be developed.

Further, it should be considered to what extent it may be appropriate to create a non-exclusive jurisdiction based on the situs of moveable assets as far as rights *in rem* or possession with respect to such assets are concerned.

In maritime matters, it should be reflected to what extent a consolidation of proceedings aimed at setting up a liability fund and individual liability proceedings on the basis of the Regulation might be appropriate.

With respect to consumer credit, it should be reflected whether it might be appropriate to align the wording of Articles 15(1)(a) and (b) of the Regulation to the definition of consumer credit of Directive 2008/48/EC.

With respect to the ongoing work in the Commission on collective redress, it should be reflected whether specific jurisdiction rules are necessary for collective actions.

Recognition and enforcement: it should be reflected to what extent it might be appropriate to address the question of the free circulation of authentic instruments. Further, the free circulation of judgments ordering payments by way of penalties might be improved by ensuring that the amount fixing the penalty is set, either by the court of origin or by an authority in the Member State of enforcement. It should also be considered to what extent the Regulation should not only permit the recovery of penalties by the creditor, but also those which are collected by the court or fiscal authorities.

Lastly, access to justice in the enforcement stage could be improved by establishing a uniform standard form, available in all official Community languages, which contains an extract of the judgment.

The Commission calls on all interested persons to send their comments on the points addressed below and any other useful contributions, **no later than 30 June 2009**.

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.

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) - 23/10/2009

The Council took note of a report on the application of Regulation 44/2001/EC on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels I" Regulation).

Mutual recognition of judgments is considered the cornerstone of judicial cooperation between EU Member States.

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) - 07/09/2010 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution on the implementation and review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Comprehensive concept for private international law: Parliament encourages the Commission to review the interrelationship between the different regulations addressing jurisdiction, enforcement and applicable law. It considers that for this purpose, the terminology in all subject-matters and all the concepts and requirements for similar rules in all subject-matters should be unified and harmonised (e.g. lis pendens, jurisdiction clauses, etc.) and the final aim might be a comprehensive **codification of private international law**.

Abolition of *exequatur*: Members call for the requirement for exequatur to be abolished, but consider that this must be balanced by **appropriate safeguards designed to protect the rights of the party against whom enforcement is sought**. They consider that provision must be made for an exceptional procedure available in the Member State in which enforcement is sought. They take the view that the grounds for an application under this exceptional procedure should be respected. These are set out in the resolution. The resolution also states that there must be a harmonised procedural time-frame for the exceptional procedure so as to ensure that it is conducted as expeditiously as possible, and that it must be ensured that the steps which may be taken by way of enforcement until the time-limit for applying for the exceptional procedure has expired or the exceptional procedure has been concluded are not irreversible. Members are particularly concerned that a foreign judgment should not be enforced if it has not been properly served on the judgment debtor. They argue that not only must there be a requirement for a certificate of authenticity as a procedural aid so as to guarantee recognition, but also that there should be a standard form for that certificate.

Authentic instruments: Members consider that authentic instruments should not be directly enforceable without any possibility of challenging them before the judicial authorities in the State in which enforcement is sought. They take the view therefore that the exceptional procedure to be introduced should not be limited to cases where enforcement of the instrument is manifestly contrary to public policy in the State addressed since it is possible to conceive of circumstances in which an authentic act could be irreconcilable with an earlier judgment and the validity (as opposed to the authenticity) of an authentic act can be challenged in the courts of the State of origin on grounds of mistake, misrepresentation, etc. even during the course of enforcement.

Scope of the Regulation: the resolution considers that maintenance obligations within the scope of Regulation No 4/2009/EC should be excluded from the scope of the Regulation, but reiterates that the final aim should be a comprehensive body of law encompassing all subject-matters. **Parliament strongly opposes the (even partial) abolition of the exclusion of arbitration from the scope**. It further considers that a paragraph should be added providing that a judgment shall not be recognised if, in giving its decision, the court in the Member State of origin has, in deciding a question relating to the validity or extent of an arbitration clause, disregarded a rule of the law of arbitration in the Member State in which enforcement is sought, unless the judgment of that Member State produces the same result as if the law of arbitration of the Member State in which enforcement is sought had been applied.

Choice of court: Members advocate, as a solution to the problem of 'torpedo actions', releasing the court designated in a choice-of-court agreement from its obligation to stay proceedings under the lis pendens rule. They consider that this should be coupled with a requirement for any disputes on jurisdiction to be decided expeditiously as a preliminary issue by the chosen court and backed up by a recital stressing that party autonomy is paramount. A new provision dealing with the **opposability of choice-of-court agreements against third parties** should be added to the Regulation. Members lay down provisions on this issue which may be contained in this new measure.

Forum non conveniens: Parliament proposes a solution so as to allow the courts of a Member State having jurisdiction as to the substance to stay proceedings if they consider that a court of another Member State or of a third country would be better placed to hear the case, or a specific part

thereof, thus enabling the parties to bring an application before that court or to enable the court seised to transfer the case to that court with the agreement of the parties.

Operation of the Regulation in the international legal order: the resolution considers, on the one hand, that the question whether the rules of the Regulation should be given reflexive effect has not been sufficiently considered and that it would be premature to take this step without much study, wide-ranging consultations and political debate, in which Parliament should play a leading role, and encourages the Commission to initiate this process. Parliament considers, on the other hand, that, in view of the existence of large numbers of bilateral agreements between Member States and third countries, questions of reciprocity and international comity, the problem is a global one and a solution should also be sought in parallel in the Hague Conference through the resumption of negotiations on an international judgments convention. It urges the Commission to explore the extent to which the 2007 Lugano Convention could serve as a model and inspiration for such an international judgments convention. Parliament considers in the meantime that the Community rules on exclusive jurisdiction with regard to rights in rem in immovable property or tenancies of immovable property could be extended to proceedings brought in a third State.

Definition of domicile of natural and legal persons: Parliament takes the view that an autonomous European definition (ultimately applicable to all European legal instruments) of the domicile of natural persons would be desirable, in order in particular to avoid situations in which persons may have more than one domicile. It rejects a uniform definition of the domicile of companies within the Brussels I Regulation, since a definition with such far-reaching consequences should be discussed and decided within the scope of a developing European company law.

Members recall to the issue the **interest rates** and **industrial property** in the context of the Regulation.

The resolution also lays down the following:

- **jurisdiction over individual contracts of employment**: Parliament calls on the Commission to consider, having regard to the case-law of the Court of Justice, whether a solution affording greater legal certainty and suitable protection for the more vulnerable party might not be found for employees who do not carry out their work in a single Member State (e.g. long distance lorry drivers, flight attendants);
- **rights of the personality**: Parliament considers that, in order to mitigate the alleged tendency of courts in certain jurisdictions to accept territorial jurisdiction where there is only a weak connection with the country in which the action is brought, a recital should be added to clarify that, in principle, the courts of that country should accept jurisdiction only where there is a sufficient, substantial or significant link with that country;
- **provisional measures**: in order to ensure better access to justice, orders aimed at obtaining information and evidence or at preserving evidence should be covered by the notion of provisional and protective measures. Members believe that the Regulation should establish jurisdiction for such measures at the courts of the Member State where the information or evidence sought is located, in addition to the jurisdiction of the courts having jurisdiction with respect to the substance. They reject the Commission's idea that the court seised of the main proceedings should be able to discharge, modify or adapt provisional measures granted by a court from another Member State since this would not be in the spirit of the principle of mutual trust established by the Regulation.

Other questions: Members consider, on account of the special difficulties of private international law, the importance of Union conflicts-of-law legislation for business, citizens and international litigators and the need for a consistent body of case-law, that it is time to **set up a special chamber within the Court of Justice to deal with references for preliminary rulings relating to private international law**.

It should be noted that a draft alterative resolution proposed by the S&D group was rejected in plenary.