Brussels I Regulation (Regulation 1215/2012)

European Commission
DG Justice and Consumers
Unit A1 – Civil Justice

Disclaimer: These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Regulation (EC) No 1215/2012 on jurisdiction and the recognition and enforcement of judgements service in civil and commercial matters (known as “Brussels I (recast”)

https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1539158192124&uri=CELEX:32012R1215

Introduction

- Replaces Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments service in civil and commercial matters; Regulation 44/2001 replaced the 1968 Brussels Convention;
- Applies to proceedings instituted on or after 10 January 2015;
- Major change: **abolition of exequatur** in the Member State addressed (declaration of enforceability of judgment prior to enforcement)
- System is based on mutual trust

Subject matter

The Regulation determines which Member State courts have **jurisdiction** in a cross-border civil or commercial cases in the European Union

The Regulation determines conditions and procedures following which the judgments issued in Member State are **recognized and enforced** in other Member States (covers also authentic instruments and court settlements)

Does not govern recognition and enforcement of judgments from **third States** - national laws of the Member States apply

Scope of application (I)

Civil and commercial matters

Exceptions:

-Revenue, customs or administrative matters

-Status or legal capacity of natural persons,

-Rights in property arising out of a matrimonial relationship

-Wills and successions

-Bankruptcy

Scope of application (II)

Regulation applies to determine jurisdiction in actions against the **defendants domiciled in the EU.**

Some exceptions:

- choice of court agreements for EU courts
- disputes involving weaker parties (consumer, employee): Regulation applies even if a defendant (trader or employer) is domiciled in a third State
- exclusive jurisdiction.

Jurisdiction

1. General rule: **domicile of the defendant (Art. 4).** Domicile: Art. 62 and 63.

2. Alternative special rules , such as:

   -for contracts-place of performance of contractual obligations (Art. 7)

   -for torts-place where harmful event occured in action for damages (tort) (Art. 7)

   -for 'weaker parties'-domicile of the consumer, insured and employee in certain matters relating to consumer, insurance and employment contracts (Art. 10, 17, 20)

3. Exclusive jurisdiction (Art. 24), such as:

   Rights *in rem* in or tenancies of immovable property

   Registration and validity of patents or trademarks

4. Jurisdiction based on the **choice of court agreement** and defendant's apperance

Lis pendens rules

- If proceedings concerning the same dispute and between the same parties are brought in two Member States **court first seized gets priority** (Art. 29).

- Court second seized **must** decline jurisdiction once the first court has considered itself competent.

- However, the court first seised has to say its proceedings once the court designated under the **choice of court agreement** is seised; the latter has priority to decide on its jurisdiction.

- Rules on related actions (Art. 30)

Recognition

Aim: to achieve a rapid and simple recognition and enforcement

No special procedure for recognition (recognition is automatic) and no review of a substance

***Refusal** only on the basis of (Art. 45):*

- **Public policy**
- **Default judgment without adequate notice**
- **Irreconcilability of judgments**
- **Protective and exclusive jurisdiction rules not respected**

Enforcement (I)

Decisions given in one Member State are automatically enforceable in another Member State **without the need for any intermediate procedure** (no declaration of enforceability (*exequatur*)). (Art. 39)

Subject to the provisions of the Regulation, the procedure for the enforcement is governed by the law of the Member State addressed. (Art. 41)

Enforcement (II)

Procedure:

- application by the creditor to competent enforcement authority (Art. 42) to proceed with enforcement and completion of certain formalities (copy of the judgment, certificate to be produced)

- service of the certificate (and judgment, if not yet served) to the other party prior to the first enforcement measure (Art. 43) who can apply to the court for refusal of enforcement on the **same grounds** as for refusal of recognition

Adaptation (Art. 54) of the measure, if necessary.

Enforcement (III)

Refusal only on the basis of (Art. 45):

- Public policy
- Default judgment without adequate notice
- Irreconcilability of judgments
- Protective and exclusive jurisdiction rules not respected

Enforcement (IV)

The court decides on the application for refusal of enforcement without delay

That decision may be appealed by either parties

The decision on appeal may be further contested by an appeal, if provided by national laws

The courts for application for refusal and for appeal notified to the Commission

Authentic instruments and court settlements: Art. 58 and 59

European Commission

Notification obligations for the Member States

Courts for applications for refusal of enforcement, for appeals, etc (Articles 75 and 76)

Information published on the e-Justice Portal

Certificates under the Regulation

Certificate concerning a judgment (Annex I)

Certificate concerning an authentic instrument/court settlement (Annex II)

Application of the Regulation

Guidance: the European Court of Justice judgments

Practice Guide on the application of the Regulation in employment disputes, adopted in the framework of the EJN

Practice guide on Jurisdiction and applicable law in international consumer contracts, adopted in the framework of the EJN

1968 Brussels Convention

Brussels I Regulation (44/2001) replaced the 1968 Brussels Convention

Convention remains applicable to those territories of the Member States which are exempted from the application of the EU law (thus, also from the Brussels I Regulation)

2007 Lugano Convention (I)

- Contracting Parties: Switzerland, Norway, Iceland, EU and Denmark

- It is the successor to the 1988 Lugano Convention

- Closely modelled on the Brussels I Regulation, 44/2001. The structure is consequently based on the principles of the Regulation (jurisdiction, recognition and enforcement)

- CJEU Opinion 1/03: EU exclusive competencies

2007 Lugano Convention (II)

- Major difference with Regulation 1215/2012: exequatur (the declaration of enforceability) is necessary under the 2007 Lugano Convention
- Convention is open to accession by 3rd States
- the Court of Justice has jurisdiction to give rulings on the interpretation of the Convention as regards its application by the courts of the Member States
-JURE database: https://eur-lex.europa.eu/collection/n-law/jure.html