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THE EUROPEAN UNION**

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LIMITE

**JUSTCIV 326
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NOTE

from :	Presidency
to :	Coreper
No prev. doc.:	16398/11 JUSTCIV 292 CODEC 1896
No. Cion prop. :	18101/10 JUSTCIV 239 CODEC 1587
Subject :	Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) - Political guidelines for the future work

1. By letter of 17 December 2010 the Commission transmitted to the Council and to the European Parliament a proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast).
2. The United Kingdom and Ireland have made the notification under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and will therefore take part in the adoption and application of the proposed Regulation.

3. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption of the proposed Regulation and will not be bound by it or subject to its application, without prejudice of the possibility for Denmark of applying the amendments to Regulation (EC) No 44/2001 pursuant to Article 3 of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters done on 19 October 2005.
4. The Working Party on Civil Law Matters (Brussels I) has examined the proposed Regulation at regular meetings since the transmission of the Commission proposal.
5. The proposed Regulation is subject to the ordinary legislative procedure. The time is not yet ripe for formal negotiations with the European Parliament with a view to reaching a first reading agreement, but informal contacts have been held for information purposes.
6. The discussions have allowed considerable progress to be made on the text, in particular on Chapters III and IV. In the light of the result of those discussions, the Presidency is of the opinion that it would be possible to have some political guidelines on a number of key issues relating to recognition and enforcement adopted by the Council in order to pave the way for substantial progress to be made on the proposed Regulation.
7. To that end, the Presidency wishes to submit some draft political guidelines to Coreper inviting it to examine these with a view to subsequent submission to the JHA Council in December.

8. Coreper II is invited:

- (a) to examine the draft political guidelines set out in the Annex, and
 - (b) to agree to submit the political guidelines to the Council (Justice and Home Affairs) on 13 and 14 December 2011 for approval.
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I. Introduction

1. At present, the Brussels I Regulation provides that a judgment given in a Member State is recognised in other Member States without any procedure being required. As regards enforceability, the Brussels I Regulation provides for the mandatory declaration of enforceability. This means that, in order to have a judgment enforced in another Member State, the applicant must launch in the Member State addressed prior to enforcement a specific procedure to establish that the judgment is enforceable. The declaration of enforceability is granted on completion of the formalities, but the declaration of enforceability can be contested and, if that is the case, the court has to assess whether the grounds of refusal of recognition provided for in the current Regulation apply.

This procedure for the declaration of enforceability involves delays in the enforcement, sometimes significant delays, and additional costs. Such costs and delays relating to enforcement do not allow economic actors to take full advantage of the internal market.

2. The European Council, in the Stockholm Programme in 2009, stated that the process of removing all intermediate measures (*exequatur*) should continue. It considered also that the abolition of the *exequatur* procedure should be accompanied by a series of guarantees.
3. The recast of the Brussels I Regulation should be an opportunity to make progress in this area, especially through the abolition of *exequatur* which would mean the removal of the remaining obstacles to the free circulation of judgments within the EU in line with the principle of mutual recognition. This simplified scheme would allow businesses and citizens of the Union to reduce costs and time spent on the enforcement of a judgment.

4. While broad agreement appears to be emerging on the most salient elements of the recognition and enforcement of judgments on the basis of proposals submitted by the Presidency, some questions still remain open and will be subject to further discussions. This is the case, for instance, of the expiry of the time limit for enforcing a judgment. Consideration of these questions must be continued.

II. Proposed Guidelines

A. General principles

5. It is proposed that, in the future Regulation, judgments given in a Member State and enforceable in that State will be enforceable in another Member State without the need to obtain a declaration of enforceability.
6. In the light of the safeguards set out below, the abolition of *exequatur* should cover judgments given in all civil and commercial matters falling within the scope of the future Regulation without any need for exceptions.
7. Therefore, a party who wishes to enforce in a Member State a judgment given in another Member State should be able to go directly to the competent enforcement authorities in the Member State addressed. The competent enforcement authorities should proceed to the enforcement of the judgment without, at that stage, any control of the grounds of refusal specified in the future Regulation. It should be possible to challenge enforcement only by way of applying for refusal of enforcement.
8. It should be possible to challenge recognition on the basis of the same grounds specified in the future Regulation.

9. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of refusal of recognition of a judgment given in another Member State, that court should decide on that question.
10. In any case, any interested party should have the right to apply for a decision that none of the grounds of refusal of recognition specified in the future Regulation are applicable or for a decision that the recognition must be refused on the basis of those grounds.
11. Provisional, including protective, measures should also be eligible for automatic enforceability in so far as they are issued by a court having jurisdiction on the merits after a procedure in the Member State of origin in which the defendant was summoned to appear. On the other hand, provisional, including protective, measures granted as a result of proceedings in which the defendant was not summoned to appear (*ex parte* measures) should not benefit from the automatic enforceability proposed in the future Regulation.
12. With regard to judgments which order a payment by way of a penalty, they would be enforceable in the Member State addressed when the amount of the payment has been finally determined by the court of origin.
13. Authentic instruments and court settlements which are enforceable in one Member State should be enforced in other Member States under the same conditions as judgments, that is to say, without a declaration of enforceability. Enforcement of authentic instruments and court settlements falling within the scope of the future Regulation should be refused only if such enforcement would be manifestly contrary to public policy (*ordre public*) of the Member State addressed.

However, the level of mutual trust which has already been achieved in this field in existing instruments should not be disregarded. In particular, the relation between the future Regulation and Regulation (EC) No 805/2004 establishing a European Enforcement Order for uncontested claims should be further considered.

B. Procedure for enforcement

14. A judgment given in a Member State which is enforceable in the Member State addressed should be enforced there under the same conditions as a judgment given in that Member State.
15. In order to ensure smooth enforcement, the applicant should provide the competent enforcement authority with a copy of the judgment which satisfies the conditions necessary to establish its authenticity, accompanied by a certificate containing the elements necessary to allow enforcement in the Member State addressed issued in the Member State of origin using the form annexed to the future Regulation.
16. The competent authority responsible for the enforcement should be able to require a translation of that judgment only where it cannot proceed without a translation. In this case, the party seeking enforcement should be required to provide the translation.
17. The procedure for enforcement of judgments given in another Member State should be governed by the law of the Member State addressed without prejudice to the provisions relating to enforcement which are contained in the future Regulation.
18. There may be some measures or orders in the judgment to be enforced which are unknown under the law of the Member State addressed. In this case, the measure or order should be, to the extent possible, adapted in the Member State addressed to the measure or order known under the law of that Member State which has equivalent effects attached to it and pursues similar aims and interests. Such adaptation could not lead to a result going further than that envisaged by the law of the Member State of origin. Any party should have the right to challenge the adaptation of the measure in the Member State addressed.

C. Safeguards

19. Certain safeguards should be made available to the person against whom enforcement is sought; including remedies to prevent, in exceptional circumstances, that a judgment given in a Member State has effects in another Member State. Thus, any person against whom enforcement is sought should be able to invoke before a court of the Member State addressed, at the enforcement stage, the grounds of refusal of recognition or enforcement of a judgment specified in the future Regulation.
20. The list of grounds of refusal should be based on the current Brussels I Regulation.
21. The recognition or enforcement of a judgment should be refused in the following cases:
 - (a) if such recognition or enforcement is manifestly contrary to public policy (*ordre public*) in the Member State addressed;
 - (b) where the judgment was given in default of appearance, if the defendant was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless he failed to challenge the judgment when he was able to do so;
 - (c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;
 - (d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for recognition in the Member State addressed;

- (e) if the judgment conflicts with provisions of the future Regulation establishing jurisdiction in matters relating to insurance, to consumer contracts, and to individual contracts of employment, where the policyholder, the insured, the injured party, the beneficiary of the insurance contract, the consumer or the employee is the defendant, or establishing exclusive jurisdiction.
22. All the grounds of refusal of recognition or enforcement should be subject to control in the Member State addressed.
23. In this context, it should be clearly reaffirmed that a judgment given in a Member State may not under any circumstances be reviewed as to substance.
24. The simplified arrangement of enforcement without a need for a declaration of enforceability might postpone the moment in which the person against whom enforcement is sought will be informed that the judgment was given. In this context, further reflection should be carried out on how the person against whom enforcement is sought could be informed of the judgment.
25. The procedure for refusal of enforcement shall, in so far as it is not covered by the future Regulation, be governed by the law of the Member State addressed.
26. A party wishing to challenge enforcement of a judgment given in another Member State should be able to invoke grounds of refusal provided for in the future Regulation, to the extent possible, in the same procedure in which such party would invoke national grounds of refusal of enforcement¹ which apply independently of the international nature of the case. It must be clearly spelled out that the latter grounds of refusal of enforcement under the law of the Member State addressed should apply only in so far as they are not incompatible with the grounds listed in the future Regulation.

¹ For instance, the debtor's discharge of his debt at the time of enforcement.

27. In order to contest enforcement, the applicant should submit to the court a copy of the judgment which satisfies the conditions necessary to establish its authenticity and, if needed, a translation and/or a transliteration of the judgment. The judgment or its translation and/or transliteration should not be required if it has already been provided to the court.
28. The parties should be able to appeal against the decision on the existence or absence of the grounds of refusal of recognition or enforcement. The decision given on the appeal may only be contested by the appeal notified to the Commission by the Member States.
29. The future Regulation should provide specific rules to stay, in well defined cases, the enforcement proceedings in the Member State addressed on application by the person against whom enforcement is sought. This should be the case in the following situations:
- (a) in the event of suspension of the enforceability of the judgment in the Member State of origin;
 - (b) either wholly or in part, in the event of an application for refusal of enforcement of a judgment.
30. Furthermore, in the event of an application for refusal of enforcement of a judgment given in another Member State, the enforcement proceedings may be limited to protective measures, or be made conditional on the provision of a security.