



Compendium of European Union Legislation on Judicial Cooperation in Civil and Commercial Matters



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Luxembourg: Publications Office of the European Union, 2013

ISBN 978-92-79-29634-5

doi:10.2838/98345

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Printed in Belgium

PRINTED ON ELEMENTAL CHLORINE-FREE BLEACHED PAPER (ECF)

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Foreword

European civil justice legislation — fourteen years on

In 1999, the Amsterdam Treaty brought judicial cooperation in civil law matters into the scope of the European Union. Effective judicial cooperation in civil matters between the EU Member States had however started earlier. The Brussels Convention of 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as well as the Rome Convention of 1980 on the law applicable to contractual obligations, had already initiated this process at the international level.

In 1999 the European Council also held a special meeting at Tampere in Finland, decisively laying out the practical basis for enhanced judicial cooperation. It declared that ‘in a genuine European area of justice individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States’ and that it was crucial to establish an area ‘where people can approach courts and authorities in any Member State as easily as in their own’.

Fourteen years later, the European Union has given itself a large number of essential instruments in the area of European civil, commercial and family law. European rules on jurisdiction, recognition and enforcement of judgments, or on applicable law or judicial cooperation have by now permeated the day-to-day practice of most legal practitioners. Judges and lawyers are increasingly confronted with cases involving a cross-border element, as the principle of free movement of goods, services and persons has boosted the number of trans-European transactions and the mobility of European citizens.

No legal practitioner today can afford to ignore EU legal developments any more or to turn a blind eye to the European rules governing civil law. This Compendium will therefore be an invaluable tool for all those involved in cross-border disputes.

Viviane Reding

Vice-President

Justice, Fundamental Rights and Citizenship

Introduction

European law is increasingly affecting our everyday lives

Within the European Union, with the proliferation of exchanges between Member States, people are travelling more and more to buy products or services, to work or study, to marry or retire.

Situations involving people who do not live in the same State are undoubtedly becoming more frequent, and with them the possibility of cross-border judicial conflicts.

Before these conflicts can be settled, a number of questions will arise: Which judge will have jurisdiction? Which national law will apply? How will the necessary documents be served from one State to another? Can legal aid be obtained in another country?

Next, we will also need to know what formalities are necessary for a judgment to be recognised, declared enforceable or enforced in another Member State. How can these procedures be made faster and more effective?

The formation of a European judicial area is an attempt to answer these questions. Several initiatives emerged in the 1960s — the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, for example — but a great deal still remained to be done. In the autumn of 1999, European Union Heads of State and Government met at Tampere in Finland to lay the foundations for the area of freedom, security and justice in Europe provided for in the Treaty of Amsterdam.

On that occasion, they stated that, 'In a genuine European Area of Justice individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States.'

They also confirmed their commitment to creating a genuine area of justice ‘where people can approach courts and authorities in any Member State as easily as in their own’.

At the European Council in The Hague in November 2004, the Council attached great importance to the continued development of judicial cooperation on civil matters and full implementation of the mutual recognition programme adopted in 2000. This work continues now in the framework of the 2009 Stockholm Programme.

Under the Treaty of Amsterdam it has become possible to use EU legislative instruments — regulations, directives and decisions — in the field of civil justice. This is important to citizens, who can now, for example, directly invoke European regulations in court.

In this context, various instruments have already been adopted, the full versions of which can be found in this Compendium. If you would like more information, particularly on the plans and proposals of the European Commission, you can also visit the website of the European Judicial Network in civil and commercial matters at <http://ec.europa.eu/civiljustice>.

This Compendium has been produced to give you ready access to the principal texts that have already been adopted in the field of judicial cooperation on civil matters.

It is, in fact, the duty of all legal professionals to know these instruments, apply them and make them known to the people concerned — in short, to bring them to life.

The sole purpose of the Compendium you have before you is to help you to do this.

The Tampere European Council, conclusions of the Presidency

PRESIDENCY CONCLUSIONS

TAMPERE EUROPEAN COUNCIL

15 AND 16 OCTOBER 1999

The European Council held a special meeting on 15 and 16 October 1999 in Tampere on the creation of an area of freedom, security and justice in the European Union. At the start of proceedings an exchange of views was conducted with the President of the European Parliament, Mrs Nicole Fontaine, on the main topics of discussion.

The European Council is determined to develop the Union as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam. The European Council sends a strong political message to reaffirm the importance of this objective and has agreed on a number of policy orientations and priorities which will speedily make this area a reality.

The European Council will place and maintain this objective at the very top of the political agenda. It will keep under constant review progress made towards implementing the necessary measures and meeting the deadlines set by the Treaty of Amsterdam, the Vienna Action Plan and the present conclusions. The Commission is invited to make a proposal for an appropriate scoreboard to that end. The European Council underlines the importance of ensuring the necessary transparency and of keeping the European Parliament regularly informed. It will hold a full debate assessing progress at its December meeting in 2001.

In close connection with the area of freedom, security and justice, the European Council has agreed on the composition, method of work and practical arrangements (attached in the annex) for the body entrusted with drawing up a draft Charter of fundamental rights of the European Union. It invites all parties involved to ensure that work on the Charter can begin rapidly.

The European Council expresses its gratitude for the work of the outgoing Secretary-General of the Council, Mr. Jürgen Trumpf, and in particular for his contribution to the development of the Union following the entry into force of the Treaty of Amsterdam.

Given that one of the focal points of the Union's work in the years ahead will be to strengthen the common foreign and security policy, including developing a European security and defence policy, the European Council expects the new Secretary-General of the Council and High Representative for the CFSP, Mr. Javier Solana, to make a key contribution to this objective. Mr. Solana will be able to rely on the full backing of the European Council in exercising his powers according to Article 18(3) of the Treaty so he can do full justice to his tasks. His responsibilities will include co-operating with the Presidency to ensure that deliberations and action in foreign and security policy matters are efficiently conducted with the aim of fostering continuity and consistency of policy on the basis of the common interests of the Union.

TOWARDS A UNION OF FREEDOM, SECURITY AND JUSTICE:

THE TAMPERE MILESTONES

1. From its very beginning European integration has been firmly rooted in a shared commitment to freedom based on human rights, democratic institutions and the rule of law. These common values have proved necessary for securing peace and

developing prosperity in the European Union. They will also serve as a cornerstone for the enlarging Union.

2. The European Union has already put in place for its citizens the major ingredients of a shared area of prosperity and peace: a single market, economic and monetary union, and the capacity to take on global political and economic challenges. The challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. It is a project which responds to the frequently expressed concerns of citizens and has a direct bearing on their daily lives.

3. This freedom should not, however, be regarded as the exclusive preserve of the Union's own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes. These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union.

4. The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the

integration into our societies of those third country nationals who are lawfully resident in the Union.

5. The enjoyment of freedom requires a genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own. Criminals must find no ways of exploiting differences in the judicial systems of Member States. Judgements and decisions should be respected and enforced throughout the Union, while safeguarding the basic legal certainty of people and economic operators. Better compatibility and more convergence between the legal systems of Member States must be achieved.

6. People have the right to expect the Union to address the threat to their freedom and legal rights posed by serious crime. To counter these threats a common effort is needed to prevent and fight crime and criminal organisations throughout the Union. The joint mobilisation of police and judicial resources is needed to guarantee that there is no hiding place for criminals or the proceeds of crime within the Union.

7. The area of freedom, security and justice should be based on the principles of transparency and democratic control. We must develop an open dialogue with civil society on the aims and principles of this area in order to strengthen citizens' acceptance and support. In order to maintain confidence in authorities, common standards on the integrity of authorities should be developed.

8. The European Council considers it essential that in these areas the Union should also develop a capacity to act and be regarded as a significant partner on the international scene. This requires close co-operation with partner countries and

international organisations, in particular the Council of Europe, OSCE, OECD and the United Nations.

9. The European Council invites the Council and the Commission, in close co-operation with the European Parliament, to promote the full and immediate implementation of the Treaty of Amsterdam on the basis of the Vienna Action Plan and of the following political guidelines and concrete objectives agreed here in Tampere.

A. A COMMON EU ASYLUM AND MIGRATION POLICY

10. The separate but closely related issues of asylum and migration call for the development of a common EU policy to include the following elements.

I. Partnership with countries of origin

11. The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development.

12. In this context, the European Council welcomes the report of the High Level Working Group on Asylum and Migration set up by the Council, and agrees on the continuation of its mandate and on the drawing up of further Action Plans. It considers as a useful contribution the first action plans drawn up by that Working Group, and approved by the Council, and invites the Council and the Commission to report back on their implementation to the European Council in December 2000.

II. A Common European Asylum System

13. The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.

14. This System should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. To that end, the Council is urged to adopt, on the basis of Commission proposals, the necessary decisions according to the timetable set in the Treaty of Amsterdam and the Vienna Action Plan. The European Council stresses the importance of consulting UNHCR and other international organisations.

15. In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. The Commission is asked to prepare within one year a communication on this matter.

16. The European Council urges the Council to step up its efforts to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States. The European Council believes that consideration should be given to making some form of financial reserve available in situations of mass influx of refugees for temporary protection. The Commission is invited to explore the possibilities for this.

17. The European Council urges the Council to finalise promptly its work on the system for the identification of asylum seekers (Eurodac).

III. Fair treatment of third country nationals

18. The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.

19. Building on the Commission Communication on an Action Plan against Racism, the European Council calls for the fight against racism and xenophobia to be stepped up. The Member States will draw on best practices and experiences. Co-operation with the European Monitoring Centre on Racism and Xenophobia and the Council of Europe will be further

strengthened. Moreover, the Commission is invited to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty on the fight against racism and xenophobia. To fight against discrimination more generally the Member States are encouraged to draw up national programmes.

20. The European Council acknowledges the need for approximation of national legislations on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin. It requests to this end rapid decisions by the Council, on the basis of proposals by the Commission. These decisions should take into account not only the reception capacity of each Member State, but also their historical and cultural links with the countries of origin.

21. The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence. The European Council endorses the objective that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident.

IV. Management of migration flows

22. The European Council stresses the need for more efficient management of migration flows at all their stages. It calls for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration, and for the prevention of all forms of trafficking in human beings. A common active policy on visas and false documents should be further developed, including closer co-operation between EU consulates in third countries and, where necessary, the establishment of common EU visa issuing offices.

23. The European Council is determined to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants. It urges the adoption of legislation foreseeing severe sanctions against this serious crime. The Council is invited to adopt by the end of 2000, on the basis of a proposal by the Commission, legislation to this end. Member States, together with Europol, should direct their efforts to detecting and dismantling the criminal networks involved. The rights of the victims of such activities shall be secured with special emphasis on the problems of women and children.

24. The European Council calls for closer co-operation and mutual technical assistance between the Member States' border control services, such as exchange programmes and technology transfer, especially on maritime borders, and for the rapid inclusion of the applicant States in this co-operation. In this context, the Council welcomes the memorandum of understanding between Italy and Greece to enhance co-operation between the two countries in the Adriatic and Ionian seas in combating organised crime, smuggling and trafficking of persons.

25. As a consequence of the integration of the Schengen acquis into the Union, the candidate countries must accept in full that acquis and further measures building upon it. The European Council stresses the importance of the effective control of the Union's future external borders by specialised trained professionals.

26. The European Council calls for assistance to countries of origin and transit to be developed in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings and to cope with their readmission obligations towards the Union and the Member States.

27. The Amsterdam Treaty conferred powers on the Community in the field of readmission. The European Council invites the Council to conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries. Consideration should also be given to rules on internal readmission.

B. A GENUINE EUROPEAN AREA OF JUSTICE

28. In a genuine European Area of Justice individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States.

V. Better access to justice in Europe

29. In order to facilitate access to justice the European Council invites the Commission, in co-operation with other relevant fora,

such as the Council of Europe, to launch an information campaign and to publish appropriate "user guides" on judicial co-operation within the Union and on the legal systems of the Member States. It also calls for the establishment of an easily accessible information system to be maintained and up-dated by a network of competent national authorities.

30. The European Council invites the Council, on the basis of proposals by the Commission, to establish minimum standards ensuring an adequate level of legal aid in cross-border cases throughout the Union as well as special common procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims, as well as maintenance claims, and on uncontested claims. Alternative, extra-judicial procedures should also be created by Member States.

31. Common minimum standards should be set for multilingual forms or documents to be used in cross-border court cases throughout the Union. Such documents or forms should then be accepted mutually as valid documents in all legal proceedings in the Union.

32. Having regard to the Commission's communication, minimum standards should be drawn up on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims.

VI. Mutual recognition of judicial decisions

33. Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial

protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities.

34. In civil matters the European Council calls upon the Commission to make a proposal for further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgement in the requested State. As a first step these intermediate procedures should be abolished for titles in respect of small consumer or commercial claims and for certain judgements in the field of family litigation (e.g. on maintenance claims and visiting rights). Such decisions would be automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement. This could be accompanied by the setting of minimum standards on specific aspects of civil procedural law.

35. With respect to criminal matters, the European Council urges Member States to speedily ratify the 1995 and 1996 EU Conventions on extradition. It considers that the formal extradition procedure should be abolished among the Member States as far as persons are concerned who are fleeing from justice after having been finally sentenced, and replaced by a simple transfer of such persons, in compliance with Article 6 TEU. Consideration should also be given to fast track extradition procedures, without prejudice to the principle of fair trial. The European Council invites the Commission to make proposals on this matter in the light of the Schengen Implementing Agreement.

36. The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable; evidence lawfully gathered by one Member State's authorities should be admissible before the courts of other Member States, taking into account the standards that apply there.

37. The European Council asks the Council and the Commission to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition. In this programme, work should also be launched on a European Enforcement Order and on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States.

VII. Greater convergence in civil law

38. The European Council invites the Council and the Commission to prepare new procedural legislation in cross-border cases, in particular on those elements which are instrumental to smooth judicial co-operation and to enhanced access to law, e.g. provisional measures, taking of evidence, orders for money payment and time limits.

39. As regards substantive law, an overall study is requested on the need to approximate Member States' legislation in civil matters in order to eliminate obstacles to the good functioning of civil proceedings. The Council should report back by 2001.

C. A UNIONWIDE FIGHT AGAINST CRIME

40. The European Council is deeply committed to reinforcing the fight against serious organised and transnational crime. The high level of safety in the area of freedom, security and justice presupposes an efficient and comprehensive approach in the fight against all forms of crime. A balanced development of unionwide measures against crime should be achieved while protecting the freedom and legal rights of individuals and economic operators.

VIII. Preventing crime at the level of the Union

41. The European Council calls for the integration of crime prevention aspects into actions against crime as well as for the further development of national crime prevention programmes. Common priorities should be developed and identified in crime prevention in the external and internal policy of the Union and be taken into account when preparing new legislation.

42. The exchange of best practices should be developed, the network of competent national authorities for crime prevention and co-operation between national crime prevention organisations should be strengthened and the possibility of a Community funded programme should be explored for these purposes. The first priorities for this co-operation could be juvenile, urban and drug-related crime.

IX. Stepping up co-operation against crime

43. Maximum benefit should be derived from co-operation between Member States' authorities when investigating cross-border crime in any Member State. The European Council calls for joint investigative teams as foreseen in the Treaty to be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism. The rules to be set up in

this respect should allow representatives of Europol to participate, as appropriate, in such teams in a support capacity.

44. The European Council calls for the establishment of a European Police Chiefs operational Task Force to exchange, in co-operation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions.

45. Europol has a key role in supporting unionwide crime prevention, analyses and investigation. The European Council calls on the Council to provide Europol with the necessary support and resources. In the near future its role should be strengthened by means of receiving operational data from Member States and authorising it to ask Member States to initiate, conduct or coordinate investigations or to create joint investigative teams in certain areas of crime, while respecting systems of judicial control in Member States.

46. To reinforce the fight against serious organised crime, the European Council has agreed that a unit (EUROJUST) should be set up composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to its legal system. EUROJUST should have the task of facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases, notably based on Europol's analysis, as well as of co-operating closely with the European Judicial Network, in particular in order to simplify the execution of letters rogatory. The European Council requests the Council to adopt the necessary legal instrument by the end of 2001.

47. A European Police College for the training of senior law enforcement officials should be established. It should start as a

network of existing national training institutes. It should also be open to the authorities of candidate countries.

48. Without prejudice to the broader areas envisaged in the Treaty of Amsterdam and in the Vienna Action Plan, the European Council considers that, with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as financial crime (money laundering, corruption, Euro counterfeiting), drugs trafficking, trafficking in human beings, particularly exploitation of women, sexual exploitation of children, high tech crime and environmental crime.

49. Serious economic crime increasingly has tax and duty aspects. The European Council therefore calls upon Member States to provide full mutual legal assistance in the investigation and prosecution of serious economic crime.

50. The European Council underlines the importance of addressing the drugs problem in a comprehensive manner. It calls on the Council to adopt the 2000-2004 European Strategy against Drugs before the European Council meeting in Helsinki.

X. Special action against money laundering

51. Money laundering is at the very heart of organised crime. It should be rooted out wherever it occurs. The European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime.

52. Member States are urged to implement fully the provisions of the Money Laundering Directive, the 1990 Strasbourg Convention and the Financial Action Task Force recommendations also in all their dependent territories.

53. The European Council calls for the Council and the European Parliament to adopt as soon as possible the draft revised directive on money laundering recently proposed by the Commission.

54. With due regard to data protection, the transparency of financial transactions and ownership of corporate entities should be improved and the exchange of information between the existing financial intelligence units (FIU) regarding suspicious transactions expedited. Regardless of secrecy provisions applicable to banking and other commercial activity, judicial authorities as well as FIUs must be entitled, subject to judicial control, to receive information when such information is necessary to investigate money laundering. The European Council calls on the Council to adopt the necessary provisions to this end.

55. The European Council calls for the approximation of criminal law and procedures on money laundering (e.g. tracing, freezing and confiscating funds). The scope of criminal activities which constitute predicate offences for money laundering should be uniform and sufficiently broad in all Member States.

56. The European Council invites the Council to extend the competence of Europol to money laundering in general, regardless of the type of offence from which the laundered proceeds originate.

57. Common standards should be developed in order to prevent the use of corporations and entities registered outside the jurisdiction of the Union in the hiding of criminal proceeds and in money laundering. The Union and Member States should make arrangements with third country offshore-centres to ensure efficient and transparent co-operation in mutual legal assistance

following the recommendations made in this area by the Financial Action Task Force.

58. The Commission is invited to draw up a report identifying provisions in national banking, financial and corporate legislation which obstruct international co-operation. The Council is invited to draw necessary conclusions on the basis of this report.

D. STRONGER EXTERNAL ACTION

59. The European Council underlines that all competences and instruments at the disposal of the Union, and in particular, in external relations must be used in an integrated and consistent way to build the area of freedom, security and justice. Justice and Home Affairs concerns must be integrated in the definition and implementation of other Union policies and activities.

60. Full use must be made of the new possibilities offered by the Treaty of Amsterdam for external action and in particular of Common Strategies as well as Community agreements and agreements based on Article 38 TEU.

61. Clear priorities, policy objectives and measures for the Union's external action in Justice and Home Affairs should be defined. Specific recommendations should be drawn up by the Council in close co-operation with the Commission on policy objectives and measures for the Union's external action in Justice and Home Affairs, including questions of working structure, prior to the European Council in June 2000.

62. The European Council expresses its support for regional co-operation against organised crime involving the Member States and third countries bordering on the Union. In this context it

notes with satisfaction the concrete and practical results obtained by the surrounding countries in the Baltic Sea region. The European Council attaches particular importance to regional co-operation and development in the Balkan region. The European Union welcomes and intends to participate in a European Conference on Development and Security in the Adriatic and Ionian area, to be organised by the Italian Government in Italy in the first half of the year 2000. This initiative will provide valuable support in the context of the South Eastern Europe Stability Pact.

ANNEX

COMPOSITION METHOD OF WORK AND PRACTICAL ARRANGEMENTS FOR THE BODY TO ELABORATE A DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS, AS SET OUT IN THE COLOGNE CONCLUSIONS

A. COMPOSITION OF THE BODY

(i) Members

(a) Heads of State or Government of Member States

Fifteen representatives of the Heads of State or Government of Member States.

(b) Commission

One representative of the President of the European Commission.

(c) European Parliament

Sixteen members of the European Parliament to be designated by itself.

(d) National Parliaments

Thirty members of national Parliaments (two from each national Parliament) to be designated by national Parliaments themselves.

Members of the Body may be replaced by alternates in the event of being unable to attend meetings of the Body.

(ii) Chairperson and Vice-Chairpersons of the Body

The Chairperson of the Body shall be elected by the Body. A member of the European Parliament, a member of a national Parliament, and the representative of the President of the European Council if not elected to the Chair, shall act as Vice-Chairpersons of the Body.

The member of the European Parliament acting as Vice-Chairperson shall be elected by the members of the European Parliament serving on the Body. The member of a national Parliament acting as Vice-Chairperson shall be elected by the members of national Parliaments serving on the Body.

(iii) Observers

Two representatives of the Court of Justice of the European Communities to be designated by the Court.

Two representatives of the Council of Europe, including one from the European Court of Human Rights.

(iv) Bodies of the European Union to be invited to give their views

The Economic and Social Committee

The Committee of the Regions

The Ombudsman

(v) Exchange of views with the applicant States

An appropriate exchange of views should be held by the Body or by the Chairperson with the applicant States.

(vi) Other bodies, social groups or experts to be invited to give their views

Other bodies, social groups and experts may be invited by the Body to give their views.

(vii) Secretariat

The General Secretariat of the Council shall provide the Body with secretariat services. To ensure proper coordination, close contacts will be established with the General Secretariat of the European Parliament, with the Commission and, to the extent necessary, with the secretariats of the national Parliaments.

B. WORKING METHODS OF THE BODY

(i) Preparation

The Chairperson of the Body shall, in close concertation with the Vice-Chairpersons, propose a work plan for the Body and perform other appropriate preparatory work.

(ii) Transparency of the proceedings

In principle, hearings held by the Body and documents submitted at such hearings should be public.

(iii) Working groups

The Body may establish *ad hoc* working groups, which shall be open to all members of the Body.

(iv) Drafting

On the basis of the work plan agreed by the Body, a Drafting Committee composed of the Chairperson, the Vice-Chairpersons and the representative of the Commission and assisted by the General Secretariat of the Council, shall elaborate a preliminary Draft Charter, taking account of drafting proposals submitted by any member of the Body.

Each of the three Vice-Chairpersons shall regularly consult with the respective component part of the Body from which he or she emanates.

(v) Elaboration of the Draft Charter by the Body

When the Chairperson, in close concertation with the Vice-Chairpersons, deems that the text of the draft Charter elaborated by the Body can eventually be subscribed to by all the parties, it shall be forwarded to the European Council through the normal preparatory procedure.

C. PRACTICAL ARRANGEMENTS

The Body shall hold its meetings in Brussels, alternately in the Council and the European Parliament buildings.

A complete language regime shall be applicable for sessions of the Body.

Programme of measures to implement the principle of mutual recognition

I

(Information)

COUNCIL

Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters

(2001/C 12/01)

INTRODUCTION

The Treaty of Amsterdam inserted into the Treaty establishing the European Community a new Title IV containing specific provisions on judicial cooperation in civil matters.

In order to lend impetus to this cooperation and to set precise guidelines therefor, the European Council meeting in Tampere on 15 and 16 October 1999 held that 'enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights'. It approved the principle of mutual recognition, which should become 'the cornerstone of judicial cooperation in both civil and criminal matters within the Union'.

In civil matters, the Tampere European Council advocated 'further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgment in the requested State'. 'As a first step these intermediate procedures should be abolished for titles in respect of small consumer or commercial claims and for certain judgments in the field of family litigation (e.g. on maintenance claims and visiting rights). Such decisions would be automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement. This could be accompanied by the setting of minimum standards on specific aspects of civil procedural law'.

It asked the Council and the Commission to adopt, by the end of 2000, a programme of measures to implement the principle of mutual recognition, and added that 'in this programme, work should also be launched on a European Enforcement Order and on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States'.

The Brussels Convention of 27 September 1968 lays down rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This Convention has undergone several amendments with the accession of new States to the Community⁽¹⁾ and is now in the process of being converted into a regulation⁽²⁾.

⁽¹⁾ A consolidated version of the Brussels Convention was published in OJ C 27 of 26 January 1998.

⁽²⁾ Usually referred to as the 'Brussels I' Regulation.

The Community has other major achievements to its credit: the 'Brussels II' Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, and the Regulation on insolvency proceedings⁽¹⁾.

The principle of mutual recognition of civil and commercial judgments between Member States is therefore not new. However, its implementation has had limited effect to date, for two main reasons. The first relates to the fact that many areas of private law do not come within the ambit of the existing instruments. This applies, for example, to family situations arising through relationships other than marriage, rights in property arising out of a matrimonial relationship, and succession.

The second reason lies with the fact that the existing texts retain certain barriers to the free movement of judicial decisions. The intermediate procedures enabling a ruling handed down in one Member State to be enforced in another are still too restrictive. Thus, despite the changes and simplifications it makes with regard to recognition and enforcement of judgments, the future Brussels I Regulation does not remove all the obstacles to the unhindered movement of judgments within the European Union.

Discussions on the subject were held at the informal meeting of Justice and Home Affairs Ministers in Marseilles on 28 and 29 July 2000.

The current programme of measures establishes objectives and stages for the work to be undertaken within the Union in the coming years to implement the principle of mutual recognition. It advocates the adoption of measures that can facilitate both the activity of economic agents and the everyday lives of citizens.

This programme contains measures that concern the recognition and enforcement in one Member State of a decision taken in another Member State, which implies that harmonised jurisdiction rules should be adopted, as was the case in the Brussels Convention and the Brussels II Regulation. It in no way prejudices work that will be undertaken in other areas under judicial cooperation in civil matters, particularly with regard to conflicts of law. The measures relating to harmonisation of conflict-of-law rules, which may sometimes be incorporated in the same instruments as those relating to jurisdiction, recognition and enforcement of judgments, actually do help facilitate the mutual recognition of judgments.

In the implementation of the measures advocated, account will be taken of the instruments adopted and ongoing work in other international forums.

The approach adopted to establish the programme is threefold:

- identifying the areas in which progress should be made,
- determining the nature, detailed procedures and scope of potential progress,
- fixing the stages for the progress to be made.

I. AREAS OF MUTUAL RECOGNITION

STATE OF PLAY

The 1968 Brussels Convention is the basic instrument. It covers all areas of civil and commercial law except for those which are expressly excluded from its scope, which are listed exhaustively in the text: the status or legal capacity of natural

persons, rights in property arising out of a matrimonial relationship, wills and succession; bankruptcy; social security; and arbitration. The scope will not be changed by the future Brussels I Regulation, which is to replace the Brussels Convention.

Supplementary instruments: the areas excluded from the scope of the Brussels Convention are not yet all covered by instruments supplementing the 1968 provisions.

⁽¹⁾ Council Regulations (EC) No 1347/2000 and (EC) No 1346/2000 of 29 May 2000 (OJ L 160, 30.6.2000).

The Brussels II Regulation of 29 May 2000 applies to civil proceedings relating to divorce, legal separation or marriage annulment and to civil proceedings relating to parental responsibility for the children of both spouses on the occasion of such matrimonial proceedings.

The following are therefore not covered, and remain outside the ambit of any instrument applicable between the Member States:

- certain aspects of divorce litigation or legal separation that are not covered by the Brussels II Regulation (particularly decisions concerning parental responsibility amending decisions taken at the time of the divorce or legal separation),
- family situations arising through relationships other than marriage,
- rights in property arising out of a matrimonial relationship,
- wills and succession.

The Regulation of 29 May 2000 on insolvency proceedings applies to collective proceedings which entail the partial or total divestment of the debtor and the appointment of a liquidator⁽¹⁾.

PROPOSALS

A. IN AREAS NOT YET COVERED BY EXISTING INSTRUMENTS

It is mainly in the area of family law that progress is needed. Legal instruments will be drawn up in both the following areas.

1. **International jurisdiction, recognition and enforcement of judgments relating to the dissolution of rights in property arising out of a matrimonial relationship, to property consequences of the separation of unmarried couples and to succession**

Rights in property arising out of a matrimonial relationship and succession were already featured among the priorities of the Vienna action plan (December 1998). The economic consequences of judgments delivered when matrimonial ties are loosened or dissolved, during the lifetime of the spouses, or on the death of a spouse, are clearly of major interest in the creation of a European Judicial Area. In this context it is possible that, when drawing up instruments, a distinction needs to be drawn between rights in property arising out of a matrimonial relationship and succession. In this respect the

relationship existing in Member States' law between rights in property arising out of a matrimonial relationship and succession will be examined.

The question of property consequences of the separation of unmarried couples will also be dealt with, so that all property aspects of family law can be examined.

2. **International jurisdiction, recognition and enforcement of judgments relating to parental responsibility and other non-property aspects of the separation of couples**

(a) *Family situations arising through relationships other than marriage*

Here it is a matter of supplementing the area covered by the Brussels II Regulation to take account of sociological reality: increasingly, couples are choosing to dispense with any matrimonial formalities, and there is a marked rise in the number of children born out of wedlock.

In order to take this new social reality into consideration, the scope of the Brussels II Regulation should be extended, by means of a separate instrument if necessary, notably to judgments concerning the exercise of parental responsibility with regard to the children of unmarried couples.

(b) *Judgments on parental responsibility other than those taken at the time of the divorce or separation*

The provisions of the Brussels II Regulation relate only to judgments in matrimonial proceedings. In view of the frequency and importance of judgments that are made subsequently and may modify the conditions under which parental responsibility is exercised, as fixed in judgments made at the time of the divorce or separation, it is necessary to apply to them the rules governing jurisdiction, recognition and enforcement contained in the Brussels II Regulation. This development must relate both to judgments concerning married couples and to those made in the context of the separation of unmarried couples.

In these new areas, which are not at present covered by any instrument, it will be useful to examine the legal situation in Member States' national law, as well as existing international instruments, in order to gauge the scope that should be given to any instruments that might be drawn up.

B. IN AREAS ALREADY COVERED BY EXISTING INSTRUMENTS

Here, the aim is to make the existing machinery work better by reducing or abolishing obstacles to the free movement of judicial decisions. The Tampere conclusions refer generally to all 'civil matters', but also stress that as a first step these

⁽¹⁾ This excludes insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, and collective investment undertakings.

intermediate procedures should be abolished for titles in respect of small consumer or commercial claims and for certain judgments in the field of family litigation (e.g. on maintenance claims and rights of access).

Thus, two areas are involved: family law on the one hand, more especially rights of access and maintenance claims, and commercial and consumer law on the other. These areas are thus identified as being priorities.

1. Rights of access

France has already tabled an initiative. It is designed to abolish the exequatur procedure for the cross-border exercise of rights of access arising from a judgment falling within the scope of the Brussels II Regulation.

2. Maintenance claims

This matter, expressly mentioned in the conclusions of the Tampere European Council, directly concerns the everyday lives of citizens in the same way as the previous matter. Although the guarantee of effective and rapid recovery of maintenance claims is indeed essential to the welfare of very large numbers of people in Europe, this does not necessarily imply that a separate legal instrument has to be drawn up. Maintenance creditors are already covered by provisions of the Brussels Convention and of the future Brussels I Regulation, but it would also be advisable in the long term to abolish the exequatur procedure for maintenance creditors, thus boosting the effectiveness of the means by which they safeguard their rights.

3. Uncontested claims

The abolition of exequatur for uncontested claims should feature among the Community's priorities.

The substance of the concept of 'uncontested claims' will be specified when the limits of the instruments drawn up in application of the programme are defined. At present, that concept generally covers situations in which a creditor, given the verifiable absence of any dispute by the debtor over the nature or extent of the debt, has obtained an enforcement order against that debtor.

The fact that an exequatur procedure can delay the enforcement of judgments concerning uncontested claims is a contradiction in terms. It fully justifies this area being the first in which exequatur is abolished. Rapid recovery of outstanding payments is an absolute necessity for business and is a constant concern for the economic sectors whose interest lies in the proper operation of the internal market.

4. Litigation on small claims

The concept of litigation on small claims referred to by the Tampere European Council covers various situations of varying degrees of importance that give rise to different procedures according to the Member State concerned. Discussions on simplifying and speeding up the settlement of cross-border litigation on small claims, in line with the Tampere conclusions, will also, through the establishment of specific common rules of procedure or minimum standards, facilitate the recognition and enforcement of judgments⁽¹⁾.

II. DEGREES OF MUTUAL RECOGNITION

STATE OF PLAY

Current degrees of mutual recognition

In areas not covered by existing instruments, recognition and enforcement of foreign judgments is governed by the law of the requested State and by existing international, bilateral or multilateral agreements on the subject.

In areas already covered, there are two degrees of mutual recognition.

The first degree still features today in the 1968 Brussels Convention and the Brussels II Regulation: recognition is automatic unless contested; a declaration of enforceability (exequatur) may be obtained upon application and can be refused on one of the grounds on the exhaustive list in the relevant instrument. This exequatur procedure is therefore less complex than would generally result from the application of national law.

The second degree resulted from the review of the Brussels and Lugano Conventions and will be implemented following adoption of the Brussels I Regulation, which is due to replace the 1968 Brussels Convention: the procedure for obtaining a declaration of enforceability is considerably streamlined; it is obtained on completion of certain formalities and can only be contested by the other party at the second stage (system of 'reversing the responsibility for action'). This streamlined exequatur will apply to all areas covered by the current 1968 Brussels Convention and to insolvency procedures covered by the Regulation of 29 May 2000.

⁽¹⁾ The Commission is preparing a comparative study of law in the area, based on a questionnaire addressed to the Member States.

PROPOSALS

Achieving further degrees of mutual recognition

A. MEASURES DIRECTLY AFFECTING MUTUAL RECOGNITION

1. Areas not covered by the existing instruments

The approach must be to follow a gradual method to reach the degree of mutual recognition currently achieved by the Brussels II Regulation, before attaining the degree achieved by the future Brussels I Regulation, and then to progress beyond it. However, it will be possible in certain cases to reach new degrees of mutual recognition directly, without any intermediate step.

2. Areas already covered by the existing instruments

In these areas, further progress should be made, with two series of measures.

(a) *First series of measures: further streamlining of intermediate measures and strengthening the effects in the requested State of judgments made in the State of origin*

- (i) Limiting the reasons which can be given for challenging recognition or enforcement of a foreign judgment (for example, removal of the test of public policy, taking account of cases in which this reason is currently used by the Member States' courts).
- (ii) Establishing provisional enforcement: the decision stating enforceability in the requested country would thus be enforceable on a provisional basis, despite the possibility of appeal.

Such a development requires an amendment of Article 47(3) of the draft Brussels I Regulation (Article 39(1) of the Brussels Convention).

- (iii) Establishing protective measures at European level will enable a decision given in one Member State to embrace the authorisation to take protective measures against the debtor's assets in the whole territory of the Union.

This possibility, which is currently not afforded by the draft Brussels I Regulation, would, for example, enable a person who has obtained judgment against a debtor in one Member State, in the event of the latter challenging recovery of his debt, to have

the debtor's property forthwith frozen in another Member State as a protective measure, without recourse to a further procedure. These measures would be without prejudice to the fact that certain types of property may not be seized under domestic law.

- (iv) Improving attachment measures concerning banks, e.g. by establishing a European system for the attachment of bank accounts: with a judgment certified as enforceable in the Member State of origin, measures could be taken in any other Member State, without exequatur and *ipso jure*, for attachment of the debtor's bank accounts. The judgment would become enforceable in the country of attachment, at least for the purposes of the latter, unless contested by the debtor.

(b) *Second series of measures: abolition of intermediate measures*

Abolition, pure and simple, of any checks on the foreign judgment by courts in the requested country allows national judgments to move freely throughout the Community. Each requested State treats these national judgments as if they had been delivered by one of its own courts.

In some areas, abolition of the exequatur might take the form of establishing a true European enforcement order, obtained following a specific, uniform and harmonised procedure⁽¹⁾ laid down within the Community.

B. MEASURES ANCILLARY TO MUTUAL RECOGNITION

1. Minimum standards for certain aspects of civil procedure

It will sometimes be necessary, or even essential, to lay down a number of procedural rules at European level, which will constitute common minimum guarantees intended to strengthen mutual trust between the Member States' legal systems. These guarantees will make it possible, *inter alia*, to ensure that the requirements for a fair trial are strictly observed, in keeping with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁽¹⁾ This might be either a uniform procedure laid down in a regulation, or a harmonised procedure set up by each Member State pursuant to a directive.

For each measure under consideration, the question of drawing up some of these minimum guarantees will be examined, in order to determine their usefulness and their role. In certain areas, and particularly where abolition of the exequatur is planned, drawing up such minimum guarantees may be a precondition for the desired progress.

If the establishment of minimum guarantees appears to be insufficient, discussions should be directed towards a certain degree of harmonisation of the procedures.

In order to take into account the fundamental principles of law recognised by Member States, measures aiming at the establishment of minimum guarantees or at a certain degree of harmonisation of procedures will be sought most particularly in the case of the mutual recognition of decisions relating to parental responsibility (including those concerning rights of access). Questions relating to the child's best interests and the child's place in the procedure will, *inter alia*, be discussed in this context.

In order to increase the certainty, efficiency and rapidity of service of legal documents, which is clearly one of the foundations of mutual trust between national legal systems, consideration will be given to harmonising the applicable rules or setting minimum standards.

If the parties to proceedings are able to adduce their arguments in a manner recognised as valid by all the Member States, this clearly increases confidence in the proper administration of justice at an early stage in the proceedings, making it easier to dispense with checks later on.

Such a development will take duly into account progress already made on account of the entry into force of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

2. Efficiency of measures providing for improved enforcement of decisions

Another series of ancillary measures would consist in seeking to make more efficient the enforcement, in the requested State, of judgments delivered in another Member State.

Some of these measures could concern more specifically debtors' assets. It would in fact be much easier to enforce judgments within the European Union if it were possible to obtain accurate information on the debtor's financial position. Measures could therefore be taken to enable precise identification of a debtor's assets in the territory of the Member States.

When devising measures of this kind, account should be taken of the impact they could have on data protection and the confidential nature of certain information as provided for in Member States' domestic law or in international law.

3. Improving judicial cooperation on civil matters in general

These would include measures conducive to implementation of the principle of mutual recognition, i.e. which would make for a climate of improved cooperation between national judicial authorities.

The establishment of the European Judicial Network on civil and commercial matters should accordingly feature in the programme of measures, as an ancillary measure⁽¹⁾.

Mention should also be made of an instrument for enhancing cooperation between Member States' courts on the taking of evidence in civil and commercial matters⁽²⁾.

Similarly, the programme includes the development of measures giving easier access to justice. Here, account will be taken of the follow-up to the Green Paper on legal aid submitted by the Commission in February 2000, with a view to taking initiatives with regard to legal aid in cross-border cases.

Likewise, it would seem particularly useful to make the public better informed on the rules on mutual recognition⁽³⁾.

Lastly, implementation of the mutual recognition principle may be facilitated through harmonisation of conflict-of-law rules.

III. STAGES

METHOD

It is always difficult to set deadlines for work to be achieved in the Community: deadlines which are too short are unrealistic, while those set too far ahead do not provide sufficient incentive for States. Progress should be made in stages, without any precise deadlines, but simply some broad guidelines.

⁽¹⁾ On 25 September 2000, the Commission submitted a proposal for a decision establishing a European Judicial Network in civil and commercial matters.

⁽²⁾ Germany has submitted a draft Regulation in this area.

⁽³⁾ Provisions on information to the public are contained in the Commission's proposal on the establishment of the European Judicial Network in civil and commercial matters.

1. The programme will be put in hand as from adoption of the Brussels I Regulation, which is the basic instrument for mutual recognition.
2. The programme distinguishes between the following four areas of action:
 - areas of civil and commercial law covered by the Brussels I Regulation,
 - areas of family law covered by the Brussels II Regulation, and family situations arising through relationships other than marriage,
 - rights in property arising out of a matrimonial relationship and the property consequences of the separation of unmarried couples,
 - wills and succession.
3. In each area stages are established with a view to making gradual progress. A stage is begun when the previous one has ended, at least as regards essentials (for example, Council agreement on an instrument, even if it has not yet been formally adopted for technical reasons); however, this requirement must not prohibit more rapid progress from being made in certain subjects.
4. Several initiatives may be taken at the same time in several areas.
5. Ancillary measures mentioned in the programme are taken whenever they seem necessary, in all areas and at all stages of the programme.

PROPOSALS

A. AREAS COVERED BY THE BRUSSELS I REGULATION

First stage

- European enforcement order for uncontested claims.
- Simplifying and speeding up the settlement of cross-border litigation on small claims.
- Abolition of exequatur for maintenance claims.

Second stage

Revision of the Brussels I Regulation:

- incorporation of previous developments,
- abolition of exequatur in other areas,

- measures to strengthen the effects in the requested State of judgments made in the State of origin (provisional enforcement, protective measures, including the attachment of bank accounts).

Third stage

Abolition of exequatur in the areas covered by the Brussels I Regulation.

B. AREA OF FAMILY LAW (BRUSSELS II AND FAMILY SITUATIONS ARISING THROUGH RELATIONSHIPS OTHER THAN MARRIAGE)⁽¹⁾

First stage

- Abolition of exequatur for judgments on rights of access⁽²⁾.
- Instrument relating to family situations arising through relationships other than marriage: adoption of the Brussels II Regulation's machinery. This may be a new instrument or a revision of the Brussels II Regulation, through extension of the latter's scope.
- Extending the scope of any instrument(s) adopted earlier to judgments modifying the conditions under which parental responsibility is exercised, as fixed in judgments made at the time of the divorce or separation.

Second stage

For every previously adopted instrument:

- application of the simplified procedures for recognition and enforcement of the Brussels I Regulation,
- measures to strengthen the effects in the requested State of the judgments made in the State of origin (provisional enforcement and protective measures).

Third stage

Abolition of exequatur for the areas covered by the Brussels II Regulation and for family situations arising through relationships other than marriage.

⁽¹⁾ It being specified that, with regard to measures concerning judgments on parental responsibility (including judgments on rights of access), the ancillary measures referred to in point II(B)(1) concerning consideration of the child's best interests and the child's place in the procedure should be taken into account.

⁽²⁾ Initiative already presented by France.

C. DISSOLUTION OF RIGHTS IN PROPERTY ARISING OUT OF A MATRIMONIAL RELATIONSHIP AND THE PROPERTY CONSEQUENCES OF THE SEPARATION OF UNMARRIED COUPLES

First stage

Drawing up of one or more instruments on jurisdiction, recognition and enforcement of judgments relating to rights in property arising out of a matrimonial relationship and the property consequences of the separation of unmarried couples: adoption of the Brussels II Regulation's machinery.

Second stage

Revision of the instrument(s) drawn up at the first stage:

- application of the simplified procedures for recognition and enforcement of the Brussels I Regulation,
- measures to strengthen the effects in the requested State of the judgments made in the State of origin (provisional enforcement and protective measures).

Third stage

Abolition of exequatur for the areas covered by the instrument(s) drawn up.

D. WILLS AND SUCCESSION

First stage

Drawing up of an instrument on jurisdiction, recognition and enforcement of judgments relating to wills and succession: adoption of the Brussels II Regulation's machinery.

Second stage

Revision of the instrument drawn up at the first stage:

- application of the simplified procedures for recognition and enforcement of the Brussels I Regulation,
- measures to strengthen the effects in the requested State of the judgments made in the State of origin (provisional enforcement and protective measures).

Third stage

Abolition of exequatur for the areas covered by the instrument drawn up.

E. ANCILLARY MEASURES

Two measures have already been proposed: their adoption would seem to be necessary as soon as the programme is launched:

- instrument on the taking of evidence;
- establishment of the European Judicial Network on civil and commercial matters.

Furthermore, for each area of the programme and at each stage, the following ancillary measures could be considered:

- minimum standards for civil procedure;
- harmonisation of rules on, or minimum standards for, the service of judicial documents;
- measures to facilitate the enforcement of judgments, including those allowing identification of a debtor's assets;
- measures for easier access to justice;
- measures for easier provision of information to the public;
- measures relating to harmonisation of conflict-of-law rules.

LAUNCHING, MONITORING AND COMPLETION OF THE PROGRAMME

The programme starts with the launching of work on the first stage in one or more areas. It continues by following the order of stages in each area, on the understanding that progress may be achieved more rapidly in one area than in another.

Five years after adoption of the programme, the Commission will submit to the Council and the Parliament a report on its implementation. The Commission will make any recommendations to the Council that it deems useful for the proper execution of the programme, indicating in particular those areas in which it considers that special efforts should be made.

The monitoring report drawn up by the Commission may also contain recommendations concerning measures which were not initially planned in the programme but which it seemed necessary to adopt subsequently.

The programme of measures is completed by the general abolition of exequatur.

Areas	Brussels I	Brussels II and family situations arising through relationships other than marriage	Rights in property arising out of a matrimonial relationship and the property consequences of the separation of an unmarried couple	Wills and succession	Ancillary measures
Measures	<p>First stage:</p> <p>European enforcement order for uncontested claims</p> <p>Small claims</p> <p>Abolition of exequatur for maintenance claims</p>	<p>First stage:</p> <p>Abolition of exequatur for judgments on rights of access</p> <p>Instrument on family situations arising through relationships other than marriage (separate instrument or revision of Brussels II)</p> <p>Extension of the scope of any instrument(s) adopted to judgments modifying the conditions under which parental responsibility is exercised, as fixed in judgments made at the time of the divorce or separation</p>	<p>First stage:</p> <p>Drafting of one or more instruments on mutual recognition with regard to rights in property arising out of a matrimonial relationship and the property consequences of the separation of unmarried couples: adoption of the Brussels II machinery</p>	<p>First stage:</p> <p>Drafting of an instrument on mutual recognition with regard to wills and succession: adoption of the Brussels II machinery</p>	<p>Instrument on the taking of evidence</p> <p>Establishment of the European Judicial Network on civil and commercial matters</p> <p>Minimum standards of civil procedure</p> <p>Harmonisation of rules on, or minimum standards for, the service of judicial documents</p> <p>Measures to facilitate the enforcement of judgments, including those allowing identification of a debtor's assets</p> <p>Measures for easier access to justice</p> <p>Measures for easier provision of information to the public</p> <p>Measures relating to harmonisation of conflict-of-law rules</p>
	<p>Second stage:</p> <p>Revision of the Brussels I Regulation:</p> <ul style="list-style-type: none"> — incorporation of previous developments — extension of abolition of exequatur — measures to strengthen the effects in the requested State of judgments made in the State of origin (provisional enforcement, protective measures, including the attachment of bank accounts) 	<p>Second stage:</p> <p>For every previously adopted instrument:</p> <ul style="list-style-type: none"> — application of simplified recognition and enforcement procedures in the Brussels I Regulation — measures to strengthen the effects in the requested State of judgments made in the State of origin (provisional enforcement and protective measures) 	<p>Second stage:</p> <p>Revision of the instrument(s) drawn up at the first stage:</p> <ul style="list-style-type: none"> — application of simplified recognition and enforcement procedures in the Brussels I Regulation — measures to strengthen the effects in the requested State of judgments made in the State of origin (provisional enforcement and protective measures) 	<p>Second stage:</p> <p>Revision of the instrument(s) drawn up at the first stage:</p> <ul style="list-style-type: none"> — application of simplified recognition and enforcement procedures in the Brussels I Regulation — measures to strengthen the effects in the requested State of judgments made in the State of origin (provisional enforcement and protective measures) 	
	<p>Third stage:</p> <p>Abolition of exequatur for all the areas covered by the Brussels I Regulation</p>	<p>Third stage:</p> <p>Abolition of exequatur for the areas covered by the Brussels II Regulation and for family situations arising through relationships other than marriage</p>	<p>Third stage:</p> <p>Abolition of exequatur for the areas covered by the instrument(s) drawn up</p>	<p>Third stage:</p> <p>Abolition of exequatur for the areas covered by the instrument drawn up</p>	

Free circulation of judgments in civil and commercial matters

3a

Council Regulation No 44/2001 of
22 December 2000 on jurisdiction
and the recognition and enforcement
of judgments in civil and commercial
matters, known as 'Brussels I'



I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 44/2001

of 22 December 2000

on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. In order to establish progressively such an area, the Community should adopt, amongst other things, the measures relating to judicial cooperation in civil matters which are necessary for the sound operation of the internal market.

(2) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential.

(3) This area is within the field of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.

(4) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(5) On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the Treaty, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by Conventions on the Accession of the New Member States to that Convention (hereinafter referred to as the 'Brussels Convention') ⁽⁴⁾. On 16 September 1988 Member States and EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which is a parallel Convention to the 1968 Brussels Convention. Work has been undertaken for the revision of those Conventions, and the Council has approved the content of the revised texts. Continuity in the results achieved in that revision should be ensured.

(6) In order to attain the objective of free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a Community legal instrument which is binding and directly applicable.

(7) The scope of this Regulation must cover all the main civil and commercial matters apart from certain well-defined matters.

⁽¹⁾ OJ C 376, 28.12.1999, p. 1.

⁽²⁾ Opinion delivered on 21 September 2000 (not yet published in the Official Journal).

⁽³⁾ OJ C 117, 26.4.2000, p. 6.

⁽⁴⁾ OJ L 299, 31.12.1972, p. 32.

OJ L 304, 30.10.1978, p. 1.

OJ L 388, 31.12.1982, p. 1.

OJ L 285, 3.10.1989, p. 1.

OJ C 15, 15.1.1997, p. 1.

For a consolidated text, see OJ C 27, 26.1.1998, p. 1.

- (8) There must be a link between proceedings to which this Regulation applies and the territory of the Member States bound by this Regulation. Accordingly common rules on jurisdiction should, in principle, apply when the defendant is domiciled in one of those Member States.
- (9) A defendant not domiciled in a Member State is in general subject to national rules of jurisdiction applicable in the territory of the Member State of the court seised, and a defendant domiciled in a Member State not bound by this Regulation must remain subject to the Brussels Convention.
- (10) For the purposes of the free movement of judgments, judgments given in a Member State bound by this Regulation should be recognised and enforced in another Member State bound by this Regulation, even if the judgment debtor is domiciled in a third State.
- (11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.
- (12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.
- (13) In relation to insurance, consumer contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.
- (14) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, must be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.
- (15) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. There must be a clear and effective mechanism for resolving cases of *lis pendens* and related actions and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation that time should be defined autonomously.
- (16) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.
- (17) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.
- (18) However, respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability, if he considers one of the grounds for non-enforcement to be present. Redress procedures should also be available to the claimant where his application for a declaration of enforceability has been rejected.
- (19) Continuity between the Brussels Convention and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Communities and the 1971 Protocol⁽¹⁾ should remain applicable also to cases already pending when this Regulation enters into force.
- (20) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (21) Denmark, 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

⁽¹⁾ OJ L 204, 2.8.1975, p. 28.
 OJ L 304, 30.10.1978, p. 1.
 OJ L 388, 31.12.1982, p. 1.
 OJ L 285, 3.10.1989, p. 1.
 OJ C 15, 15.1.1997, p. 1.
 For a consolidated text see OJ C 27, 26.1.1998, p. 28.

establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application.

(22) Since the Brussels Convention remains in force in relations between Denmark and the Member States that are bound by this Regulation, both the Convention and the 1971 Protocol continue to apply between Denmark and the Member States bound by this Regulation.

(23) The Brussels Convention also continues to apply to the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 299 of the Treaty.

(24) Likewise for the sake of consistency, this Regulation should not affect rules governing jurisdiction and the recognition of judgments contained in specific Community instruments.

(25) Respect for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties.

(26) The necessary flexibility should be provided for in the basic rules of this Regulation in order to take account of the specific procedural rules of certain Member States. Certain provisions of the Protocol annexed to the Brussels Convention should accordingly be incorporated in this Regulation.

(27) In order to allow a harmonious transition in certain areas which were the subject of special provisions in the Protocol annexed to the Brussels Convention, this Regulation lays down, for a transitional period, provisions taking into consideration the specific situation in certain Member States.

(28) No later than five years after entry into force of this Regulation the Commission will present a report on its application and, if need be, submit proposals for adaptations.

(29) The Commission will have to adjust Annexes I to IV on the rules of national jurisdiction, the courts or competent authorities and redress procedures available on the basis of the amendments forwarded by the Member State concerned; amendments made to Annexes V and VI should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE

Article 1

1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

- (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
- (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- (c) social security;
- (d) arbitration.

3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.

CHAPTER II

JURISDICTION

Section 1

General provisions

Article 2

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

Article 3

1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

2. In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.

Article 4

1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles 22 and 23, be determined by the law of that Member State.

2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex I, in the same way as the nationals of that State.

Section 2

Special jurisdiction

Article 5

A person domiciled in a Member State may, in another Member State, be sued:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,

(c) if subparagraph (b) does not apply then subparagraph (a) applies;

2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;

3. in matters relating to tort, *delict* or *quasi-delict*, in the courts for the place where the harmful event occurred or may occur;

4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;

6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;

7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

(a) has been arrested to secure such payment, or

(b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 6

A person domiciled in a Member State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled,

provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.

Article 7

Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

Section 3

Jurisdiction in matters relating to insurance

Article 8

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.

Article 9

1. An insurer domiciled in a Member State may be sued:
 - (a) in the courts of the Member State where he is domiciled, or
 - (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled,

- (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 10

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 11

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

2. Articles 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 12

1. Without prejudice to Article 11(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 13

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen, or

2. which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
3. which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or
4. any risk or interest connected with any of those referred to in points 1 to 3;
5. notwithstanding points 1 to 4, all 'large risks' as defined in Council Directive 73/239/EEC⁽¹⁾, as amended by Council Directives 88/357/EEC⁽²⁾ and 90/618/EEC⁽³⁾, as they may be amended.

Section 4

Jurisdiction over consumer contracts

Article 15

4. which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State, or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 14.

Article 14

The following are the risks referred to in Article 13(5):

1. any loss of or damage to:
 - (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;
2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage:
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
 - (b) for loss or damage caused by goods in transit as described in point 1(b);
3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5, if:

- (a) it is a contract for the sale of goods on instalment credit terms; or
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in the Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

⁽¹⁾ OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2000/26/EC of the European Parliament and of the Council (OJ L 181, 20.7.2000, p. 65).

⁽²⁾ OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2000/26/EC.

⁽³⁾ OJ L 330, 29.11.1990, p. 44.

Article 16

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 17

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

*Section 5***Jurisdiction over individual contracts of employment***Article 18*

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.

2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 19

An employer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled; or
2. in another Member State:
 - (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or
 - (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

Article 20

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 21

The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen; or
2. which allows the employee to bring proceedings in courts other than those indicated in this Section.

*Section 6***Exclusive jurisdiction***Article 22*

The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;
4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of a Community instrument or an international convention deemed to have taken place.

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State;

5. in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

Section 7

Prorogation of jurisdiction

Article 23

1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall

have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing; or
- (b) in a form which accords with practices which the parties have established between themselves; or
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

3. Where such an agreement is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

4. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

5. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

Article 24

Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.

Section 8

Examination as to jurisdiction and admissibility*Article 25*

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.

Article 26

1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

3. Article 19 of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters⁽¹⁾ shall apply instead of the provisions of paragraph 2 if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to this Regulation.

4. Where the provisions of Regulation (EC) No 1348/2000 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted pursuant to that Convention.

Section 9

Lis pendens — related actions*Article 27*

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of

different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 28

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 29

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30

For the purposes of this Section, a court shall be deemed to be seised:

1. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or

2. if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

⁽¹⁾ OJ L 160, 30.6.2000, p. 37.

Section 10

Provisional, including protective, measures*Article 31*

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III

RECOGNITION AND ENFORCEMENT*Article 32*

For the purposes of this Regulation, 'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

Section 1

Recognition*Article 33*

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be recognised.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 34

A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;

2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;

4. if it 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 its recognition in the Member State addressed.

Article 35

1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.

Article 36

Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 37

1. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin, by reason of an appeal.

Section 2

Article 43

Enforcement

Article 38

1. A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 39

1. The application shall be submitted to the court or competent authority indicated in the list in Annex II.

2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

Article 40

1. The procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.

2. The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the Member State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

3. The documents referred to in Article 53 shall be attached to the application.

Article 41

The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 42

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.

2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal is to be lodged with the court indicated in the list in Annex III.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 26(2) to (4) shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.

5. An appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 44

The judgment given on the appeal may be contested only by the appeal referred to in Annex IV.

Article 45

1. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.

2. Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 46

1. The court with which an appeal is lodged under Article 43 or Article 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

3. The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 47

1. When a judgment must be recognised in accordance with this Regulation, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State requested without a declaration of enforceability under Article 41 being required.

2. The declaration of enforceability shall carry with it the power to proceed to any protective measures.

3. During the time specified for an appeal pursuant to Article 43(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 48

1. Where a foreign judgment has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.

2. An applicant may request a declaration of enforceability limited to parts of a judgment.

Article 49

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.

Article 50

An applicant who, in the Member State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedure provided for in this Section, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State addressed.

Article 51

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Article 52

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State in which enforcement is sought.

Section 3

Common provisions

Article 53

1. A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.

2. A party applying for a declaration of enforceability shall also produce the certificate referred to in Article 54, without prejudice to Article 55.

Article 54

The court or competent authority of a Member State where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Regulation.

Article 55

1. If the certificate referred to in Article 54 is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2. If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be certified by a person qualified to do so in one of the Member States.

Article 56

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 53 or Article 55(2), or in respect of a document appointing a representative *ad litem*.

CHAPTER IV

Article 60

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 57

1. A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Member State shall, in another Member State, be declared enforceable there, on application made in accordance with the procedures provided for in Articles 38, et seq. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is manifestly contrary to public policy in the Member State addressed.

2. Arrangements relating to maintenance obligations concluded with administrative authorities or authenticated by them shall also be regarded as authentic instruments within the meaning of paragraph 1.

3. The instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.

4. Section 3 of Chapter III shall apply as appropriate. The competent authority of a Member State where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI to this Regulation.

Article 58

A settlement which has been approved by a court in the course of proceedings and is enforceable in the Member State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments. The court or competent authority of a Member State where a court settlement was approved shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Regulation.

CHAPTER V

GENERAL PROVISIONS

Article 59

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.

2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

- (a) statutory seat, or
- (b) central administration, or
- (c) principal place of business.

2. For the purposes of the United Kingdom and Ireland 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

3. In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 61

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Member State who are being prosecuted in the criminal courts of another Member State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Member States.

Article 62

In Sweden, in summary proceedings concerning orders to pay (*betalningsföreläggande*) and assistance (*handräckning*), the expression 'court' includes the 'Swedish enforcement service' (*kronofogdemyndighet*).

Article 63

1. A person domiciled in the territory of the Grand Duchy of Luxembourg and sued in the court of another Member State pursuant to Article 5(1) may refuse to submit to the jurisdiction of that court if the final place of delivery of the goods or provision of the services is in Luxembourg.

2. Where, under paragraph 1, the final place of delivery of the goods or provision of the services is in Luxembourg, any agreement conferring jurisdiction must, in order to be valid, be accepted in writing or evidenced in writing within the meaning of Article 23(1)(a).

3. The provisions of this Article shall not apply to contracts for the provision of financial services.

4. The provisions of this Article shall apply for a period of six years from entry into force of this Regulation.

Article 64

1. In proceedings involving a dispute between the master and a member of the crew of a seagoing ship registered in Greece or in Portugal, concerning remuneration or other conditions of service, a court in a Member State shall establish whether the diplomatic or consular officer responsible for the ship has been notified of the dispute. It may act as soon as that officer has been notified.

2. The provisions of this Article shall apply for a period of six years from entry into force of this Regulation.

Article 65

1. The jurisdiction specified in Article 6(2), and Article 11 in actions on a warranty of guarantee or in any other third party proceedings may not be resorted to in Germany and Austria. Any person domiciled in another Member State may be sued in the courts:

- (a) of Germany, pursuant to Articles 68 and 72 to 74 of the Code of Civil Procedure (*Zivilprozessordnung*) concerning third-party notices,
- (b) of Austria, pursuant to Article 21 of the Code of Civil Procedure (*Zivilprozessordnung*) concerning third-party notices.

2. Judgments given in other Member States by virtue of Article 6(2), or Article 11 shall be recognised and enforced in Germany and Austria in accordance with Chapter III. Any effects which judgments given in these States may have on third parties by application of the provisions in paragraph 1 shall also be recognised in the other Member States.

CHAPTER VI

TRANSITIONAL PROVISIONS

Article 66

1. This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.

2. However, if the proceedings in the Member State of origin were instituted before the entry into force of this Regulation, judgments given after that date shall be recognised and enforced in accordance with Chapter III,

- (a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels or the Lugano Convention both in the Member State of origin and in the Member State addressed;
- (b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

CHAPTER VII

RELATIONS WITH OTHER INSTRUMENTS

Article 67

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in Community instruments or in national legislation harmonised pursuant to such instruments.

Article 68

1. This Regulation shall, as between the Member States, supersede the Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 299 of the Treaty.

2. In so far as this Regulation replaces the provisions of the Brussels Convention between Member States, any reference to the Convention shall be understood as a reference to this Regulation.

Article 69

Subject to Article 66(2) and Article 70, this Regulation shall, as between Member States, supersede the following conventions and treaty concluded between two or more of them:

- the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899,

- the Convention between Belgium and the Netherlands on Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925,
- the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930,
- the Convention between Germany and Italy on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 9 March 1936,
- the Convention between Belgium and Austria on the Reciprocal Recognition and Enforcement of Judgments and Authentic Instruments relating to Maintenance Obligations, signed at Vienna on 25 October 1957,
- the Convention between Germany and Belgium on the Mutual Recognition and Enforcement of Judgments, Arbitration Awards and Authentic Instruments in Civil and Commercial Matters, signed at Bonn on 30 June 1958,
- the Convention between the Netherlands and Italy on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 17 April 1959,
- the Convention between Germany and Austria on the Reciprocal Recognition and Enforcement of Judgments, Settlements and Authentic Instruments in Civil and Commercial Matters, signed at Vienna on 6 June 1959,
- the Convention between Belgium and Austria on the Reciprocal Recognition and Enforcement of Judgments, Arbitral Awards and Authentic Instruments in Civil and Commercial Matters, signed at Vienna on 16 June 1959,
- the Convention between Greece and Germany for the Reciprocal Recognition and Enforcement of Judgments, Settlements and Authentic Instruments in Civil and Commercial Matters, signed in Athens on 4 November 1961,
- the Convention between Belgium and Italy on the Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at Rome on 6 April 1962,
- the Convention between the Netherlands and Germany on the Mutual Recognition and Enforcement of Judgments and Other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962,
- the Convention between the Netherlands and Austria on the Reciprocal Recognition and Enforcement of Judgments and Authentic Instruments in Civil and Commercial Matters, signed at The Hague on 6 February 1963,
- the Convention between France and Austria on the Recognition and Enforcement of Judgments and Authentic Instruments in Civil and Commercial Matters, signed at Vienna on 15 July 1966,
- the Convention between Spain and France on the Recognition and Enforcement of Judgment Arbitration Awards in Civil and Commercial Matters, signed at Paris on 28 May 1969,
- the Convention between Luxembourg and Austria on the Recognition and Enforcement of Judgments and Authentic Instruments in Civil and Commercial Matters, signed at Luxembourg on 29 July 1971,
- the Convention between Italy and Austria on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, of Judicial Settlements and of Authentic Instruments, signed at Rome on 16 November 1971,
- the Convention between Spain and Italy regarding Legal Aid and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Madrid on 22 May 1973,
- the Convention between Finland, Iceland, Norway, Sweden and Denmark on the Recognition and Enforcement of Judgments in Civil Matters, signed at Copenhagen on 11 October 1977,
- the Convention between Austria and Sweden on the Recognition and Enforcement of Judgments in Civil Matters, signed at Stockholm on 16 September 1982,
- the Convention between Spain and the Federal Republic of Germany on the Recognition and Enforcement of Judgments, Settlements and Enforceable Authentic Instruments in Civil and Commercial Matters, signed at Bonn on 14 November 1983,
- the Convention between Austria and Spain on the Recognition and Enforcement of Judgments, Settlements and Enforceable Authentic Instruments in Civil and Commercial Matters, signed at Vienna on 17 February 1984,
- the Convention between Finland and Austria on the Recognition and Enforcement of Judgments in Civil Matters, signed at Vienna on 17 November 1986, and

- the Treaty between Belgium, the Netherlands and Luxembourg in Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 24 November 1961, in so far as it is in force.

Article 70

1. The Treaty and the Conventions referred to in Article 69 shall continue to have effect in relation to matters to which this Regulation does not apply.

2. They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Regulation.

Article 71

1. This Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:

- (a) this Regulation shall not prevent a court of a Member State, which is a party to a convention on a particular matter, from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Regulation;
- (b) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation which concern the procedure for recognition and enforcement of judgments may be applied.

Article 72

This Regulation shall not affect agreements by which Member States undertook, prior to the entry into force of this

Regulation pursuant to Article 59 of the Brussels Convention, not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

CHAPTER VIII

FINAL PROVISIONS

Article 73

No later than five years after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.

Article 74

1. The Member States shall notify the Commission of the texts amending the lists set out in Annexes I to IV. The Commission shall adapt the Annexes concerned accordingly.

2. The updating or technical adjustment of the forms, specimens of which appear in Annexes V and VI, shall be adopted in accordance with the advisory procedure referred to in Article 75(2).

Article 75

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

3. The Committee shall adopt its rules of procedure.

Article 76

This Regulation shall enter into force on 1 March 2002.

This Regulation is binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 22 December 2000.

For the Council

The President

C. PIERRET

ANNEX I

Rules of jurisdiction referred to in Article 3(2) and Article 4(2)

The rules of jurisdiction referred to in Article 3(2) and Article 4(2) are the following:

- in Belgium: Article 15 of the Civil Code (*Code civil/Burgerlijk Wetboek*) and Article 638 of the Judicial Code (*Code judiciaire/Gerechtelijk Wetboek*);
- in Germany: Article 23 of the Code of Civil Procedure (*Zivilprozessordnung*),
- in Greece, Article 40 of the Code of Civil Procedure (*Κώδικας Πολιτικής Δικονομίας*);
- in France: Articles 14 and 15 of the Civil Code (*Code civil*),
- in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland,
- in Italy: Articles 3 and 4 of Act 218 of 31 May 1995,
- in Luxembourg: Articles 14 and 15 of the Civil Code (*Code civil*),
- in the Netherlands: Articles 126(3) and 127 of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*),
- in Austria: Article 99 of the Court Jurisdiction Act (*Jurisdiktionsnorm*),
- in Portugal: Articles 65 and 65A of the Code of Civil Procedure (*Código de Processo Civil*) and Article 11 of the Code of Labour Procedure (*Código de Processo de Trabalho*),
- in Finland: the second, third and fourth sentences of the first paragraph of Section 1 of Chapter 10 of the Code of Judicial Procedure (*oikeudenkäymiskaari/rättegångsbalken*),
- in Sweden: the first sentence of the first paragraph of Section 3 of Chapter 10 of the Code of Judicial Procedure (*rättegångsbalken*),
- in the United Kingdom: rules which enable jurisdiction to be founded on:
 - (a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or
 - (b) the presence within the United Kingdom of property belonging to the defendant; or
 - (c) the seizure by the plaintiff of property situated in the United Kingdom.

ANNEX II

The courts or competent authorities to which the application referred to in Article 39 may be submitted are the following:

- in Belgium, the '*tribunal de première instance*' or '*rechtbank van eerste aanleg*' or '*erstinstanzliches Gericht*',
 - in Germany, the presiding judge of a chamber of the '*Landgericht*',
 - in Greece, the '*Μονομελές Πρωτοδικείο*',
 - in Spain, the '*Juzgado de Primera Instancia*',
 - in France, the presiding judge of the '*tribunal de grande instance*',
 - in Ireland, the High Court,
 - in Italy, the '*Corte d'appello*',
 - in Luxembourg, the presiding judge of the '*tribunal d'arrondissement*',
 - in the Netherlands, the presiding judge of the '*arrondissementsrechtbank*';
 - in Austria, the '*Bezirksgericht*',
 - in Portugal, the '*Tribunal de Comarca*',
 - in Finland, the '*käräjäoikeus/tingsrätt*',
 - in Sweden, the '*Svea hovrätt*',
 - in the United Kingdom:
 - (a) in England and Wales, the High Court of Justice, or in the case of a maintenance judgment, the Magistrate's Court on transmission by the Secretary of State;
 - (b) in Scotland, the Court of Session, or in the case of a maintenance judgment, the Sheriff Court on transmission by the Secretary of State;
 - (c) in Northern Ireland, the High Court of Justice, or in the case of a maintenance judgment, the Magistrate's Court on transmission by the Secretary of State;
 - (d) in Gibraltar, the Supreme Court of Gibraltar, or in the case of a maintenance judgment, the Magistrates' Court on transmission by the Attorney General of Gibraltar.
-

ANNEX III

The courts with which appeals referred to in Article 43(2) may be lodged are the following:

- in Belgium,
 - (a) as regards appeal by the defendant: the '*tribunal de première instance*' or '*rechtbank van eerste aanleg*' or '*erstinstanzliches Gericht*',
 - (b) as regards appeal by the applicant: the '*Cour d'appel*' or '*hof van beroep*',
- in the Federal Republic of Germany, the '*Oberlandesgericht*',
- in Greece, the '*Εφετείο*',
- in Spain, the '*Audiencia Provincial*',
- in France, the '*cour d'appel*',
- in Ireland, the High Court,
- in Italy, the '*corte d'appello*',
- in Luxembourg, the '*Cour supérieure de Justice*' sitting as a court of civil appeal,
- in the Netherlands:
 - (a) for the defendant: the '*arrondissementsrechtbank*',
 - (b) for the applicant: the '*gerechtshof*',
- in Austria, the '*Bezirksgericht*',
- in Portugal, the '*Tribunal de Relação*',
- in Finland, the '*hovioikeus/hovrätt*',
- in Sweden, the '*Svea hovrätt*',
- in the United Kingdom:
 - (a) in England and Wales, the High Court of Justice, or in the case of a maintenance judgment, the Magistrate's Court;
 - (b) in Scotland, the Court of Session, or in the case of a maintenance judgment, the Sheriff Court;
 - (c) in Northern Ireland, the High Court of Justice, or in the case of a maintenance judgment, the Magistrate's Court;
 - (d) in Gibraltar, the Supreme Court of Gibraltar, or in the case of a maintenance judgment, the Magistrates' Court.

ANNEX IV

The appeals which may be lodged pursuant to Article 44 are the following

- in Belgium, Greece, Spain, France, Italy, Luxembourg and the Netherlands, an appeal in cassation,
 - in Germany, a '*Rechtsbeschwerde*',
 - in Ireland, an appeal on a point of law to the Supreme Court,
 - in Austria, a '*Revisionsrekurs*',
 - in Portugal, an appeal on a point of law,
 - in Finland, an appeal to the '*korkein oikeus/högsta domstolen*',
 - in Sweden, an appeal to the '*Högsta domstolen*',
 - in the United Kingdom, a single further appeal on a point of law.
-

ANNEX V

Certificate referred to in Articles 54 and 58 of the Regulation on judgments and court settlements

(English, inglés, anglais, inglese, ...)

- 1. Member State of origin
- 2. Court or competent authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel./fax/e-mail
- 3. Court which delivered the judgment/approved the court settlement (*)
 - 3.1. Type of court
 - 3.2. Place of court
- 4. Judgment/court settlement (*)
 - 4.1. Date
 - 4.2. Reference number
 - 4.3. The parties to the judgment/court settlement (*)
 - 4.3.1. Name(s) of plaintiff(s)
 - 4.3.2. Name(s) of defendant(s)
 - 4.3.3. Name(s) of other party(ies), if any
 - 4.4. Date of service of the document instituting the proceedings where judgment was given in default of appearance
 - 4.5. Text of the judgment/court settlement (*) as annexed to this certificate
- 5. Names of parties to whom legal aid has been granted

The judgment/court settlement (*) is enforceable in the Member State of origin (Articles 38 and 58 of the Regulation) against:

Name:

Done at , date

Signature and/or stamp

(*) Delete as appropriate.

ANNEX VI

Certificate referred to in Article 57(4) of the Regulation on authentic instruments

(English, inglés, anglais, inglese)

- 1. Member State of origin
- 2. Competent authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel./fax/e-mail
- 3. Authority which has given authenticity to the instrument
 - 3.1. Authority involved in the drawing up of the authentic instrument (if applicable)
 - 3.1.1. Name and designation of authority
 - 3.1.2. Place of authority
 - 3.2. Authority which has registered the authentic instrument (if applicable)
 - 3.2.1. Type of authority
 - 3.2.2. Place of authority
- 4. Authentic instrument
 - 4.1. Description of the instrument
 - 4.2. Date
 - 4.2.1. on which the instrument was drawn up
 - 4.2.2. if different: on which the instrument was registered
 - 4.3. Reference number
 - 4.4. Parties to the instrument
 - 4.4.1. Name of the creditor
 - 4.4.2. Name of the debtor
- 5. Text of the enforceable obligation as annexed to this certificate

The authentic instrument is enforceable against the debtor in the Member State of origin (Article 57(1) of the Regulation)

Done at , date

Signature and/or stamp

3b

Regulation (EU) No 1215/2012
of the European Parliament and of the Council
of 12 December 2012 on jurisdiction and
the recognition and enforcement of judgments
in civil and commercial matters (recast)



I

(Legislative acts)

REGULATIONS

**REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2012**

on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 67(4) and points (a), (c) and (e) of Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) On 21 April 2009, the Commission adopted a report on the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽³⁾. The report concluded that, in general, the operation of that Regulation is satisfactory, but that it is desirable to improve the application of certain of its provisions, to further facilitate the free circulation of judgments and to further enhance access

to justice. Since a number of amendments are to be made to that Regulation it should, in the interests of clarity, be recast.

- (2) At its meeting in Brussels on 10 and 11 December 2009, the European Council adopted a new multiannual programme entitled 'The Stockholm Programme – an open and secure Europe serving and protecting citizens' ⁽⁴⁾. In the Stockholm Programme the European Council considered that the process of abolishing all intermediate measures (the *exequatur*) should be continued during the period covered by that Programme. At the same time the abolition of the *exequatur* should also be accompanied by a series of safeguards.

- (3) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, *inter alia*, by facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

- (4) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters, and to ensure rapid and simple recognition and enforcement of judgments given in a Member State, are essential.

- (5) Such provisions fall within the area of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty on the Functioning of the European Union (TFEU).

⁽¹⁾ OJ C 218, 23.7.2011, p. 78.

⁽²⁾ Position of the European Parliament of 20 November 2012 (not yet published in the Official Journal) and decision of the Council of 6 December 2012.

⁽³⁾ OJ L 12, 16.1.2001, p. 1.

⁽⁴⁾ OJ C 115, 4.5.2010, p. 1.

(6) In order to attain the objective of free circulation of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable.

(7) On 27 September 1968, the then Member States of the European Communities, acting under Article 220, fourth indent, of the Treaty establishing the European Economic Community, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, subsequently amended by conventions on the accession to that Convention of new Member States ⁽¹⁾ ('the 1968 Brussels Convention'). On 16 September 1988, the then Member States of the European Communities and certain EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ⁽²⁾ ('the 1988 Lugano Convention'), which is a parallel convention to the 1968 Brussels Convention. The 1988 Lugano Convention became applicable to Poland on 1 February 2000.

(8) On 22 December 2000, the Council adopted Regulation (EC) No 44/2001, which replaces the 1968 Brussels Convention with regard to the territories of the Member States covered by the TFEU, as between the Member States except Denmark. By Council Decision 2006/325/EC ⁽³⁾, the Community concluded an agreement with Denmark ensuring the application of the provisions of Regulation (EC) No 44/2001 in Denmark. The 1988 Lugano Convention was revised by the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ⁽⁴⁾, signed at Lugano on 30 October 2007 by the Community, Denmark, Iceland, Norway and Switzerland ('the 2007 Lugano Convention').

(9) The 1968 Brussels Convention continues to apply to the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the TFEU.

(10) The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters, in particular maintenance obligations, which should be excluded from the scope of this Regulation following the adoption of Council Regulation (EC)

No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ⁽⁵⁾.

(11) For the purposes of this Regulation, courts or tribunals of the Member States should include courts or tribunals common to several Member States, such as the Benelux Court of Justice when it exercises jurisdiction on matters falling within the scope of this Regulation. Therefore, judgments given by such courts should be recognised and enforced in accordance with this Regulation.

(12) This 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.

A ruling given by a court of a Member State as to whether or not an arbitration agreement is null and void, inoperative or incapable of being performed should not be subject to the rules of recognition and enforcement laid down in this Regulation, regardless of whether the court decided on this as a principal issue or as an incidental question.

On the other hand, where a court of a Member State, exercising jurisdiction under this Regulation or under national law, has determined that an arbitration agreement is null and void, inoperative or incapable of being performed, this should not preclude that court's judgment on the substance of the matter from being recognised or, as the case may be, enforced in accordance with this Regulation. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 ('the 1958 New York Convention'), which takes precedence over this Regulation.

This Regulation should not apply to any action or ancillary proceedings relating to, in particular, the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of an arbitration procedure or any other aspects of such a procedure, nor to any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.

⁽⁵⁾ OJ L 7, 10.1.2009, p. 1.

⁽¹⁾ OJ L 299, 31.12.1972, p. 32, OJ L 304, 30.10.1978, p. 1, OJ L 388, 31.12.1982, p. 1, OJ L 285, 3.10.1989, p. 1, OJ C 15, 15.1.1997, p. 1. For a consolidated text, see OJ C 27, 26.1.1998, p. 1.

⁽²⁾ OJ L 319, 25.11.1988, p. 9.

⁽³⁾ OJ L 120, 5.5.2006, p. 22.

⁽⁴⁾ OJ L 147, 10.6.2009, p. 5.

- (13) There must be a connection between proceedings to which this Regulation applies and the territory of the Member States. Accordingly, common rules of jurisdiction should, in principle, apply when the defendant is domiciled in a Member State.
- (14) 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.
- (15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.
- (16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.
- (17) The owner of a cultural object as defined in Article 1(1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State⁽¹⁾ should be able under this Regulation 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. Such proceedings should be without prejudice to proceedings initiated under Directive 93/7/EEC.
- (18) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.
- (19) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, should be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.
- (20) 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, including the conflict-of-laws rules of that Member State.
- (21) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in different Member States. There should be a clear and effective mechanism for resolving cases of *lis pendens* and related actions, and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation, that time should be defined autonomously.
- (22) However, in order to enhance the effectiveness of exclusive choice-of-court agreements and to avoid abusive litigation tactics, it is necessary 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. This is the situation where a court not designated in an exclusive choice-of-court agreement has been seised of proceedings and the designated court is seised subsequently of proceedings involving the same cause of action and between the same parties. In such a case, the court first seised should be required to stay its proceedings as soon as the designated court has been seised and until such time as the latter court declares that it has no jurisdiction under the exclusive choice-of-court agreement. This is to ensure that, in such a situation, the designated court has priority to decide on the validity of the agreement and on the extent to which the agreement applies to the dispute pending before it. The designated court should be able to proceed irrespective of whether the non-designated court has already decided on the stay of proceedings.

⁽¹⁾ OJ L 74, 27.3.1993, p. 74.

This exception should not cover situations where the parties have entered into conflicting exclusive choice-of-court agreements or where a court designated in an exclusive choice-of-court agreement has been seised first. In such cases, the general *lis pendens* rule of this Regulation should apply.

- (23) This Regulation should provide for a flexible mechanism allowing the courts of the Member States to take into account proceedings pending before the courts of third States, considering in particular whether a judgment of a third State will be capable of recognition and enforcement in the Member State concerned under the law of that Member State and the proper administration of justice.

- (24) When taking into account the proper administration of justice, the court of the Member State concerned should assess all the circumstances of the case before it. Such circumstances may include connections between the facts of the case and the parties and the third State concerned, the stage to which the proceedings in the third State have progressed by the time proceedings are initiated in the court of the Member State and whether or not the court of the third State can be expected to give a judgment within a reasonable time.

That assessment may also include consideration of the question whether the court of the third State has exclusive jurisdiction in the particular case in circumstances where a court of a Member State would have exclusive jurisdiction.

- (25) The notion of provisional, including protective, measures should include, for example, protective orders aimed at obtaining information or preserving evidence as referred to in Articles 6 and 7 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights⁽¹⁾. It should not include measures which are not of a protective nature, such as measures ordering the hearing of a witness. This should be without prejudice to the application of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters⁽²⁾.
- (26) Mutual trust in the administration of justice in the Union justifies the principle that judgments given in a Member State should be recognised in all Member States without

the need for any special procedure. In addition, the aim of making cross-border litigation less time-consuming and costly justifies the abolition of the declaration of enforceability prior to enforcement in the Member State addressed. As a result, a judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed.

- (27) 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.
- (28) Where a judgment contains a measure or order which is not known in the law of the Member State addressed, that measure or order, including any right indicated therein, should, to the extent possible, be adapted to one which, under the law of that Member State, has equivalent effects attached to it and pursues similar aims. How, and by whom, the adaptation is to be carried out should be determined by each Member State.
- (29) The direct enforcement in the Member State addressed of a judgment given in another Member State without a declaration of enforceability should not jeopardise respect for the rights of the defence. Therefore, 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. It should also include the grounds which could be invoked on the basis of an agreement between the Member State addressed and a third State concluded pursuant to Article 59 of the 1968 Brussels Convention.
- (30) A party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the legal system of the Member State addressed, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law.

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.

⁽¹⁾ OJ L 157, 30.4.2004, p. 45.

⁽²⁾ OJ L 174, 27.6.2001, p. 1.

- (31) Pending a challenge to the enforcement of a judgment, it should be possible for the courts in the Member State addressed, during the entire proceedings relating to such a challenge, including any appeal, to allow the enforcement to proceed subject to a limitation of the enforcement or to the provision of security.
- (32) In order to inform the person against whom enforcement is sought of the enforcement of a judgment given in another Member State, the certificate established under this Regulation, if necessary accompanied by the judgment, should be served on that person in reasonable time before the first enforcement measure. In this context, the first enforcement measure should mean the first enforcement measure after such service.
- (33) Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement. This should not preclude the recognition and enforcement of such measures under national law. Where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, the effect of such measures should be confined, under this Regulation, to the territory of that Member State.
- (34) Continuity between the 1968 Brussels Convention, Regulation (EC) No 44/2001 and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of the 1968 Brussels Convention and of the Regulations replacing it.
- (35) Respect for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties.
- (36) Without prejudice to the obligations of the Member States under the Treaties, this Regulation should not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.
- (37) In order to ensure that the certificates to be used in connection with the recognition or enforcement of judgments, authentic instruments and court settlements under this Regulation are kept up-to-date, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of amendments to Annexes I and II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (38) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and to a fair trial guaranteed in Article 47 of the Charter.
- (39) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (40) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the TEU and to the then Treaty establishing the European Community, took part in the adoption and application of Regulation (EC) No 44/2001. In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.
- (41) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application, without prejudice to the possibility for Denmark of applying the amendments to Regulation (EC) No 44/2001 pursuant to Article 3 of the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽¹⁾,

⁽¹⁾ OJ L 299, 16.11.2005, p. 62.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

2. This Regulation shall not apply to:

- (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
- (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- (c) social security;
- (d) arbitration;
- (e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;
- (f) wills and succession, including maintenance obligations arising by reason of death.

Article 2

For the purposes of this Regulation:

- (a) 'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.

For the purposes of Chapter III, 'judgment' includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not

include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement;

- (b) 'court settlement' means a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings;
- (c) 'authentic instrument' means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:
 - (i) relates to the signature and the content of the instrument; and
 - (ii) has been established by a public authority or other authority empowered for that purpose;
- (d) 'Member State of origin' means the Member State in which, as the case may be, the judgment has been given, the court settlement has been approved or concluded, or the authentic instrument has been formally drawn up or registered;
- (e) 'Member State addressed' means the Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought;
- (f) 'court of origin' means the court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

Article 3

For the purposes of this Regulation, 'court' includes the following authorities to the extent that they have jurisdiction in matters falling within the scope of this Regulation:

- (a) in Hungary, in summary proceedings concerning orders to pay (fizetési meghagyásos eljárás), the notary (közjegyző);
- (b) in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande) and assistance (handräckning), the Enforcement Authority (Kronofogdemyndigheten).

CHAPTER II

JURISDICTION

SECTION 1

General provisions*Article 4*

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State.

Article 5

1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

2. In particular, the rules of national jurisdiction of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1) shall not be applicable as against the persons referred to in paragraph 1.

Article 6

1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.

2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1), in the same way as nationals of that Member State.

SECTION 2

Special jurisdiction*Article 7*

A person domiciled in a Member State may be sued in another Member State:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if point (b) does not apply then point (a) applies;

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

(3) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;

(4) as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised;

(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

(6) as regards a dispute brought against a settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;

(7) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

(a) has been arrested to secure such payment; or

(b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 8

A person domiciled in a Member State may also be sued:

- (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
- (2) as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
- (3) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
- (4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.

Article 9

Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

*SECTION 3****Jurisdiction in matters relating to insurance****Article 10*

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7.

Article 11

1. An insurer domiciled in a Member State may be sued:
 - (a) in the courts of the Member State in which he is domiciled;
 - (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; or
 - (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 12

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 13

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.
2. Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.
3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 14

1. Without prejudice to Article 13(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 15

The provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen;
- (2) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section;
- (3) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State;

- (4) which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or
- (5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.

Article 16

The following are the risks referred to in point 5 of Article 15:

- (1) any loss of or damage to:
 - (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;
- (2) any liability, other than for bodily injury to passengers or loss of or damage to their baggage:
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
 - (b) for loss or damage caused by goods in transit as described in point 1(b);
- (3) any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;
- (4) any risk or interest connected with any of those referred to in points 1 to 3;
- (5) notwithstanding points 1 to 4, all 'large risks' as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ⁽¹⁾.

⁽¹⁾ OJ L 335, 17.12.2009, p. 1.

SECTION 4

Jurisdiction over consumer contracts

Article 17

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

- (a) it is a contract for the sale of goods on instalment credit terms;
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 18

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 19

The provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen;
- (2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
- (3) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

SECTION 5

Jurisdiction over individual contracts of employment

Article 20

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.

2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 21

1. An employer domiciled in a Member State may be sued:

- (a) in the courts of the Member State in which he is domiciled; or
- (b) in another Member State:
 - (i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or
 - (ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.

Article 22

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 23

The provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen; or
- (2) which allows the employee to bring proceedings in courts other than those indicated in this Section.

SECTION 6

Exclusive jurisdiction

Article 24

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

- (1) in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

- (2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

- (3) in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;

- (4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place.

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that Member State;

- (5) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

SECTION 7

Prorogation of jurisdiction

Article 25

1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing;
- (b) in a form which accords with practices which the parties have established between themselves; or

- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

3. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive

jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between those persons or their rights or obligations under the trust are involved.

4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 24.

5. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.

Article 26

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 24.

2. In matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.

SECTION 8

Examination as to jurisdiction and admissibility

Article 27

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24, it shall declare of its own motion that it has no jurisdiction.

Article 28

1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

3. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)⁽¹⁾ shall apply instead of paragraph 2 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

4. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

SECTION 9

Lis pendens — related actions

Article 29

1. Without prejudice to Article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. In cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised in accordance with Article 32.

3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where the action in the court first seised is pending at first instance, any other court may also, on the application of

one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 31

1. Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

2. Without prejudice to Article 26, where a court of a Member State on which an agreement as referred to in Article 25 confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement.

3. Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State shall decline jurisdiction in favour of that court.

4. Paragraphs 2 and 3 shall not apply to matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the claimant and the agreement is not valid under a provision contained within those Sections.

Article 32

1. For the purposes of this Section, a court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served.

⁽¹⁾ OJ L 324, 10.12.2007, p. 79.

2. The court, or the authority responsible for service, referred to in paragraph 1, shall note, respectively, the date of the lodging of the document instituting the proceedings or the equivalent document, or the date of receipt of the documents to be served.

Article 33

1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and proceedings are pending before a court of a third State at the time when a court in a Member State is seised of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings if:

- (a) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and
- (b) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

2. The court of the Member State may continue the proceedings at any time if:

- (a) the proceedings in the court of the third State are themselves stayed or discontinued;
- (b) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or
- (c) the continuation of the proceedings is required for the proper administration of justice.

3. The court of the Member State shall dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.

4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

Article 34

1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and an action is pending before a court of a third State at the time when a court in a Member State is seised of an

action which is related to the action in the court of the third State, the court of the Member State may stay the proceedings if:

- (a) it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
- (b) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and
- (c) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

2. The court of the Member State may continue the proceedings at any time if:

- (a) it appears to the court of the Member State that there is no longer a risk of irreconcilable judgments;
- (b) the proceedings in the court of the third State are themselves stayed or discontinued;
- (c) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or
- (d) the continuation of the proceedings is required for the proper administration of justice.

3. The court of the Member State may dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.

4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

SECTION 10

Provisional, including protective, measures

Article 35

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III

RECOGNITION AND ENFORCEMENT

SECTION 1

Recognition*Article 36*

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party may, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of refusal of recognition, that court shall have jurisdiction over that question.

Article 37

1. A party who wishes to invoke in a Member State a judgment given in another Member State shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) the certificate issued pursuant to Article 53.

2. The court or authority before which a judgment given in another Member State is invoked may, where necessary, require the party invoking it to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate referred to in point (b) of paragraph 1. The court or authority may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation.

Article 38

The court or authority before which a judgment given in another Member State is invoked may suspend the proceedings, in whole or in part, if:

(a) the judgment is challenged in the Member State of origin; or

(b) an application has been submitted for a decision that there are no grounds for refusal of recognition as referred to in Article 45 or for a decision that the recognition is to be refused on the basis of one of those grounds.

SECTION 2

Enforcement*Article 39*

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.

Article 40

An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.

Article 41

1. Subject to the provisions of this Section, the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State addressed. A judgment given in a Member State which is enforceable in the Member State addressed shall be enforced there under the same conditions as a judgment given in the Member State addressed.

2. Notwithstanding paragraph 1, the grounds for refusal or of suspension of enforcement under the law of the Member State addressed shall apply in so far as they are not incompatible with the grounds referred to in Article 45.

3. The party seeking the enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

Article 42

1. For the purposes of enforcement in a Member State of a judgment given in another Member State, the applicant shall provide the competent enforcement authority with:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) the certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.

2. For the purposes of enforcement in a Member State of a judgment given in another Member State ordering a provisional, including a protective, measure, the applicant shall provide the competent enforcement authority with:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- (b) the certificate issued pursuant to Article 53, containing a description of the measure and certifying that:
 - (i) the court has jurisdiction as to the substance of the matter;
 - (ii) the judgment is enforceable in the Member State of origin; and
- (c) where the measure was ordered without the defendant being summoned to appear, proof of service of the judgment.

3. The competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate.

4. The competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation.

Article 43

1. Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.

2. 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 or, where there are several official languages in that Member State, the official language or one of the official languages of the place where 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.

This paragraph shall not apply if the judgment has already been served on the person against whom enforcement is sought in one of the languages referred to in the first subparagraph or is accompanied by a translation into one of those languages.

3. This Article shall not apply to the enforcement of a protective measure in a judgment or where the person seeking enforcement proceeds to protective measures in accordance with Article 40.

Article 44

1. In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in the Member State addressed may, on the application of the person against whom enforcement is sought:

- (a) limit the enforcement proceedings to protective measures;
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) suspend, either wholly or in part, the enforcement proceedings.

2. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

SECTION 3

Refusal of recognition and enforcement

Subsection 1

Refusal of recognition

Article 45

1. On the application of any interested party, the recognition of a judgment shall be refused:

- (a) if such recognition 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 which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him 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 its recognition in the Member State addressed; or
- (e) if the judgment conflicts with:
- (i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or

(ii) Section 6 of Chapter II.

2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.

3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.

4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.

Subsection 2

Refusal of enforcement

Article 46

On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.

Article 47

1. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted.

2. The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.

3. The applicant shall provide the court with a copy of the judgment and, where necessary, a translation or transliteration of it.

The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents.

4. The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

Article 48

The court shall decide on the application for refusal of enforcement without delay.

Article 49

1. The decision on the application for refusal of enforcement may be appealed against by either party.

2. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged.

Article 50

The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.

Article 51

1. The court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

2. Where the judgment was given in Ireland, Cyprus or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

SECTION 4

Common provisions*Article 52*

Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed.

Article 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.

Article 54

1. If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests.

Such adaptation shall not result in effects going beyond those provided for in the law of the Member State of origin.

2. Any party may challenge the adaptation of the measure or order before a court.

3. If necessary, the party invoking the judgment or seeking its enforcement may be required to provide a translation or a transliteration of the judgment.

Article 55

A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin.

Article 56

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for the enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State addressed.

Article 57

1. When a translation or a transliteration is required under this Regulation, such translation or transliteration shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where a judgment given in another Member State is invoked or an application is made, in accordance with the law of that Member State.

2. For the purposes of the forms referred to in Articles 53 and 60, translations or transliterations may also be into any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept.

3. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.

CHAPTER IV

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS*Article 58*

1. An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required. Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (*ordre public*) in the Member State addressed.

The provisions of Section 2, Subsection 2 of Section 3, and Section 4 of Chapter III shall apply as appropriate to authentic instruments.

2. The authentic instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.

Article 59

A court settlement which is enforceable in the Member State of origin shall be enforced in the other Member States under the same conditions as authentic instruments.

Article 60

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

CHAPTER V

GENERAL PROVISIONS*Article 61*

No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.

Article 62

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.

2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

Article 63

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

- (a) statutory seat;
- (b) central administration; or
- (c) principal place of business.

2. For the purposes of Ireland, Cyprus and the United Kingdom, 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

3. In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 64

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Member State who are being prosecuted in the criminal courts of another Member State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Member States.

Article 65

1. The jurisdiction specified in point 2 of Article 8 and Article 13 in actions on a warranty or guarantee or in any

other third-party proceedings may be resorted to in the Member States included in the list established by the Commission pursuant to point (b) of Article 76(1) and Article 76(2) only in so far as permitted under national law. A person domiciled in another Member State may be invited to join the proceedings before the courts of those Member States pursuant to the rules on third-party notice referred to in that list.

2. Judgments given in a Member State by virtue of point 2 of Article 8 or Article 13 shall be recognised and enforced in accordance with Chapter III in any other Member State. Any effects which judgments given in the Member States included in the list referred to in paragraph 1 may have, in accordance with the law of those Member States, on third parties by application of paragraph 1 shall be recognised in all Member States.

3. The Member States included in the list referred to in paragraph 1 shall, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC⁽¹⁾ ('the European Judicial Network') provide information on how to determine, in accordance with their national law, the effects of the judgments referred to in the second sentence of paragraph 2.

CHAPTER VI

TRANSITIONAL PROVISIONS

Article 66

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.

2. Notwithstanding Article 80, Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.

CHAPTER VII

RELATIONSHIP WITH OTHER INSTRUMENTS

Article 67

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in instruments of the Union or in national legislation harmonised pursuant to such instruments.

⁽¹⁾ OJ L 174, 27.6.2001, p. 25.

Article 68

1. This Regulation shall, as between the Member States, supersede the 1968 Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the TFEU.

2. In so far as this Regulation replaces the provisions of the 1968 Brussels Convention between the Member States, any reference to that Convention shall be understood as a reference to this Regulation.

Article 69

Subject to Articles 70 and 71, this Regulation shall, as between the Member States, supersede the conventions that cover the same matters as those to which this Regulation applies. In particular, the conventions included in the list established by the Commission pursuant to point (c) of Article 76(1) and Article 76(2) shall be superseded.

Article 70

1. The conventions referred to in Article 69 shall continue to have effect in relation to matters to which this Regulation does not apply.

2. They shall continue to have effect in respect of judgments given, authentic instruments formally drawn up or registered and court settlements approved or concluded before the date of entry into force of Regulation (EC) No 44/2001.

Article 71

1. This Regulation shall not affect any conventions to which the Member States are parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:

(a) this Regulation shall not prevent a court of a Member State which is party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not party to that convention. The court hearing the action shall, in any event, apply Article 28 of this Regulation;

(b) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a

particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation on recognition and enforcement of judgments may be applied.

Article 72

This Regulation shall not affect agreements by which Member States, prior to the entry into force of Regulation (EC) No 44/2001, undertook pursuant to Article 59 of the 1968 Brussels Convention not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third State where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

Article 73

1. This Regulation shall not affect the application of the 2007 Lugano Convention.

2. This Regulation shall not affect the application of the 1958 New York Convention.

3. This Regulation shall not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.

CHAPTER VIII

FINAL PROVISIONS*Article 74*

The Member States shall provide, within the framework of the European Judicial Network and with a view to making the information available to the public, a description of national rules and procedures concerning enforcement, including authorities competent for enforcement, and information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods.

The Member States shall keep this information permanently updated.

Article 75

By 10 January 2014, the Member States shall communicate to the Commission:

- (a) the courts to which the application for refusal of enforcement is to be submitted pursuant to Article 47(1);
- (b) the courts with which an appeal against the decision on the application for refusal of enforcement is to be lodged pursuant to Article 49(2);
- (c) the courts with which any further appeal is to be lodged pursuant to Article 50; and
- (d) the languages accepted for translations of the forms as referred to in Article 57(2).

The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network.

Article 76

1. The Member States shall notify the Commission of:
 - (a) the rules of jurisdiction referred to in Articles 5(2) and 6(2);
 - (b) the rules on third-party notice referred to in Article 65; and
 - (c) the conventions referred to in Article 69.
2. The Commission shall, on the basis of the notifications by the Member States referred to in paragraph 1, establish the corresponding lists.
3. The Member States shall notify the Commission of any subsequent amendments required to be made to those lists. The Commission shall amend those lists accordingly.
4. The Commission shall publish the lists and any subsequent amendments made to them in the *Official Journal of the European Union*.
5. The Commission shall make all information notified pursuant to paragraphs 1 and 3 publicly available through any other appropriate means, in particular through the European Judicial Network.

Article 77

The Commission shall be empowered to adopt delegated acts in accordance with Article 78 concerning the amendment of Annexes I and II.

Article 78

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 77 shall be conferred on the Commission for an indeterminate period of time from 9 January 2013.
3. The delegation of power referred to in Article 77 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 77 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 79

By 11 January 2022 the Commission shall present a report to the European Parliament, to the Council and to the European Economic and Social Committee 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.

Article 80

This Regulation shall repeal Regulation (EC) No 44/2001. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex III.

Article 81

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 10 January 2015, with the exception of Articles 75 and 76, which shall apply from 10 January 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 12 December 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. D. MAVROYIANNIS

ANNEX I

CERTIFICATE CONCERNING A JUDGMENT IN CIVIL AND COMMERCIAL MATTERS**Article 53 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters****1. COURT OF ORIGIN**

1.1. Name:

1.2. Address:

1.2.1. Street and number/PO box:

1.2.2. Place and postal code:

1.2.3. Member State:

AT ☐ BE ☐ BG ☐ CY ☐ CZ ☐ DE ☐ EE ☐ EL ☐ ES ☐ FI ☐ FR ☐ HU ☐ IE ☐ IT ☐ LT ☐ LU ☐ LV ☐ MT ☐
 NL ☐ PL ☐ PT ☐ RO ☐ SE ☐ SI ☐ SK ☐ UK ☐

1.3. Telephone:

1.4. Fax

1.5. E-mail (if available):

2. CLAIMANT(S) ⁽¹⁾

2.1. Surname and given name(s)/name of company or organisation:

2.2. Identification number (if applicable and if available):

2.3. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):

2.4. Address:

2.4.1. Street and number/PO box:

2.4.2. Place and postal code:

2.4.3. Country:

AT ☐ BE ☐ BG ☐ CY ☐ CZ ☐ DE ☐ EE ☐ EL ☐ ES ☐ FI ☐ FR ☐ HU ☐ IE ☐ IT ☐ LT ☐ LU ☐ LV ☐ MT ☐
 NL ☐ PL ☐ PT ☐ RO ☐ SE ☐ SI ☐ SK ☐ UK ☐ Other (please specify (ISO-code)) ☐

2.5. E-mail (if available):

3. DEFENDANT(S) ⁽²⁾

3.1. Surname and given name(s)/name of company or organisation:

3.2. Identification number (if applicable and if available):

3.3. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):

3.4. Address:

3.4.1. Street and number/PO box:

3.4.2. Place and postal code:

3.4.3. Country:

AT ☐ BE ☐ BG ☐ CY ☐ CZ ☐ DE ☐ EE ☐ EL ☐ ES ☐ FI ☐ FR ☐ HU ☐ IE ☐ IT ☐ LT ☐ LU ☐ LV ☐ MT ☐
 NL ☐ PL ☐ PT ☐ RO ☐ SE ☐ SI ☐ SK ☐ UK ☐ Other (please specify (ISO-code)) ☐

3.5. E-mail (if available):

4. THE JUDGMENT
- 4.1. Date (dd/mm/yyyy) of the judgment:
- 4.2. Reference number of the judgment:
- 4.3. The judgment was given in default of appearance:
- 4.3.1. ☐ No
- 4.3.2. ☐ Yes (please indicate the date (dd/mm/yyyy) on which the document instituting the proceedings or an equivalent document was served on the defendant):
- 4.4. The judgment is enforceable in the Member State of origin without any further conditions having to be met:
- 4.4.1. ☐ Yes (please indicate the date (dd/mm/yyyy) on which the judgment was declared enforceable, if applicable):
- 4.4.2. ☐ Yes, but only against the following person(s) (please specify):
- 4.4.3. ☐ Yes, but limited to part(s) of the judgment (please specify):
- 4.4.4. ☐ The judgment does not contain an enforceable obligation
- 4.5. As of the date of issue of the certificate, the judgment has been served on the defendant(s):
- 4.5.1. ☐ Yes (please indicate the date of service (dd/mm/yyyy) if known):
- 4.5.1.1. The judgment was served in the following language(s):
BG ☐ ES ☐ CS ☐ DE ☐ ET ☐ EL ☐ EN ☐ FR ☐ GA ☐ IT ☐ LV ☐ LT ☐ HU ☐ MT ☐ NL ☐ PL ☐ PT ☐
RO ☐ SK ☐ SL ☐ FI ☐ SV ☐ Other (please specify (ISO-code)) ☐
- 4.5.2. ☐ Not to the knowledge of the court
- 4.6. Terms of the judgment and interest:
- 4.6.1. Judgment on a monetary claim ⁽³⁾
- 4.6.1.1. Short description of the subject-matter of the case:
- 4.6.1.2. The court has ordered
..... (surname and given name(s)/name of company or organisation) ⁽⁴⁾
to make a payment to:
..... (surname and given name(s)/name of company or organisation)
- 4.6.1.2.1. If more than one person has been held liable for one and the same claim, the whole amount may be collected from any one of them:
- 4.6.1.2.1.1. ☐ Yes
- 4.6.1.2.1.2. ☐ No
- 4.6.1.3. Currency:
☐ euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN) ☐ Pound Sterling (GBP) ☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify (ISO code)):
- 4.6.1.4. Principal amount:
- 4.6.1.4.1. ☐ Amount to be paid in one sum

4.6.1.4.2. ☐ Amount to be paid in instalments ⁽⁵⁾

Due date (dd/mm/yyyy)	Amount

4.6.1.4.3. ☐ Amount to be paid regularly

4.6.1.4.3.1. ☐ per day

4.6.1.4.3.2. ☐ per week

4.6.1.4.3.3. ☐ other (state frequency):

4.6.1.4.3.4. From date (dd/mm/yyyy) or event:

4.6.1.4.3.5. If applicable, until (date (dd/mm/yyyy) or event):

4.6.1.5. Interest, if applicable:

4.6.1.5.1. Interest:

4.6.1.5.1.1. ☐ Not specified in the judgment

4.6.1.5.1.2. ☐ Yes, specified in the judgment as follows:

4.6.1.5.1.2.1. Amount:

or:

4.6.1.5.1.2.2. Rate ... %

4.6.1.5.1.2.3. Interest due from (date (dd/mm/yyyy) or event) to (date (dd/mm/yyyy) or event) ⁽⁶⁾

4.6.1.5.2. ☐ Statutory interest (if applicable) to be calculated in accordance with (please specify relevant statute):

4.6.1.5.2.1. Interest due from (date (dd/mm/yyyy) or event) to (date (dd/mm/yyyy) or event) ⁽⁶⁾

4.6.1.5.3. ☐ Capitalisation of interest (if applicable, please specify):

4.6.2. Judgment ordering a provisional, including a protective, measure:

4.6.2.1. Short description of the subject-matter of the case and the measure ordered:

4.6.2.2. The measure was ordered by a court having jurisdiction as to the substance of the matter

4.6.2.2.1. ☐ Yes

4.6.3. Other type of judgment:

4.6.3.1. Short description of the subject-matter of the case and the ruling by the court:

4.7. Costs ⁽⁷⁾:

4.7.1. Currency:

☐ euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN) ☐ Pound Sterling (GBP) ☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify (ISO code)):

4.7.2. The following person(s) against whom enforcement is sought has/have been ordered to bear the costs:

4.7.2.1. Surname and given name(s)/name of company or organisation: ⁽⁸⁾

4.7.2.2. If more than one person has been ordered to bear the costs, the whole amount may be collected from any one of them:

- 4.7.2.2.1. ☐ Yes
- 4.7.2.2.2. ☐ No
- 4.7.3. The costs of which recovery is sought are as follows: ⁽⁸⁾
- 4.7.3.1. ☐ The costs have been fixed in the judgment by way of a total amount (please specify amount):
- 4.7.3.2. ☐ The costs have been fixed in the judgment by way of a percentage of total costs (please specify percentage of total):
- 4.7.3.3. ☐ Liability for the costs has been determined in the judgment and the exact amounts are as follows:
- 4.7.3.3.1. ☐ Court fees:
- 4.7.3.3.2. ☐ Lawyers' fees:
- 4.7.3.3.3. ☐ Cost of service of documents:
- 4.7.3.3.4. ☐ Other:
- 4.7.3.4. ☐ Other (please specify):
- 4.7.4. Interest on costs:
- 4.7.4.1. ☐ Not applicable
- 4.7.4.2. ☐ Interest specified in the judgment
- 4.7.4.2.1. ☐ Amount:
or
- 4.7.4.2.2. ☐ Rate ... %
- 4.7.4.2.2.1. Interest due from (date (dd/mm/yyyy) or event) to (date (dd/mm/yyyy) or event) ⁽⁶⁾
- 4.7.4.3. ☐ Statutory interest (if applicable) to be calculated in accordance with (please specify relevant statute):
- 4.7.4.3.1. Interest due from (date (dd/mm/yyyy) or event) to (date (dd/mm/yyyy) or event) ⁽⁶⁾
- 4.7.4.4. ☐ Capitalisation of interest (if applicable, please specify):
- Done at: ...
- Signature and/or stamp of the court of origin:

⁽¹⁾ Insert information for all claimants if the judgment concerns more than one.

⁽²⁾ Insert information for all defendants if the judgment concerns more than one.

⁽³⁾ If the judgment only concerns costs relating to a claim which has been decided in an earlier judgment, leave point 4.6.1 blank and go to point 4.7.

⁽⁴⁾ If more than one person has been ordered to make a payment, insert information for all persons.

⁽⁵⁾ Insert information for each instalment.

⁽⁶⁾ Insert information for all periods if more than one.

⁽⁷⁾ This point also covers situations where the costs are awarded in a separate judgment.

⁽⁸⁾ Insert information for all persons if more than one.

⁽⁹⁾ In the event that the costs may be recovered from several persons, insert the breakdown for each person separately.

ANNEX II

CERTIFICATE CONCERNING AN AUTHENTIC INSTRUMENT/COURT SETTLEMENT ⁽¹⁾ IN CIVIL AND COMMERCIAL MATTERS

Article 60 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

1. COURT OR COMPETENT AUTHORITY ISSUING THE CERTIFICATE
 - 1.1. Name:
 - 1.2. Address:
 - 1.2.1. Street and number/PO box:
 - 1.2.2. Place and postal code:
 - 1.2.3. Member State:
 AT ☐ BE ☐ BG ☐ CY ☐ CZ ☐ DE ☐ EE ☐ EL ☐ ES ☐ FI ☐ FR ☐ HU ☐ IE ☐ IT ☐ LT ☐ LU
 LV ☐ MT ☐ NL ☐ PL ☐ PT ☐ RO ☐ SE ☐ SI ☐ SK ☐ UK ☐
 - 1.3. Telephone:
 - 1.4. Fax:
 - 1.5. E-mail (if available):
2. AUTHENTIC INSTRUMENT
 - 2.1. Authority which has drawn up the authentic instrument (if different from the authority issuing the certificate)
 - 2.1.1. Name and designation of authority:
 - 2.1.2. Address:
 - 2.2. Date (dd/mm/yyyy) on which the authentic instrument was drawn up by the authority referred to in point 2.1:
 - 2.3. Reference number of the authentic instrument (if applicable):
 - 2.4. Date (dd/mm/yyyy) on which the authentic instrument was registered in the Member State of origin (to be filled in only if the date of registration determines the legal effect of the instrument and this date is different from the date indicated in point 2.2):
 - 2.4.1. Reference number in the register (if applicable):
3. COURT SETTLEMENT
 - 3.1. Court which approved the court settlement or before which the court settlement was concluded (if different from the court issuing the certificate)
 - 3.1.1. Name of court:
 - 3.1.2. Address:
 - 3.2. Date (dd/mm/yyyy) of the court settlement:
 - 3.3. Reference number of the court settlement:
4. PARTIES TO THE AUTHENTIC INSTRUMENT/COURT SETTLEMENT:
 - 4.1. Name(s) of creditor(s) (surname and given name(s)/name of company or organisation) ⁽²⁾:
 - 4.1.1. Identification number (if applicable and if available):
 - 4.1.2. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):
 - 4.2. Name(s) of debtor(s) (surname and given name(s)/name of company or organisation) ⁽³⁾:
 - 4.2.1. Identification number (if applicable and if available):
 - 4.2.2. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):
 - 4.3. Name of other parties, if any (surname and given name(s)/name of company or organisation) ⁽⁴⁾

- 4.3.1. Identification number (if applicable and if available):
- 4.3.2. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):
5. ENFORCEABILITY OF THE AUTHENTIC INSTRUMENT/COURT SETTLEMENT IN THE MEMBER STATE OF ORIGIN
- 5.1. The authentic instrument/court settlement is enforceable in the Member State of origin
- 5.1.1. ☐ Yes
- 5.2. Terms of the authentic instrument/court settlement and interest
- 5.2.1. Authentic instrument/court settlement relating to a monetary claim
- 5.2.1.1. Short description of the subject matter:
- 5.2.1.2. Under the authentic instrument/court settlement
 (surname and given name(s)/name of company or organisation) ⁽⁵⁾
 has to make a payment to:
 (surname and given name(s)/name of company or organisation)
- 5.2.1.2.1. If more than one person has been held liable for one and the same claim, the whole amount may be collected from any one of them:
- 5.2.1.2.1.1. ☐ Yes
- 5.2.1.2.1.2. ☐ No
- 5.2.1.3. Currency:
☐ euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN) ☐ Pound Sterling (GBP) ☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify (ISO code)):
- 5.2.1.4. Principal amount:
- 5.2.1.4.1. ☐ Amount to be paid in one sum
- 5.2.1.4.2. ☐ Amount to be paid in instalments ⁽⁶⁾
- | Due date (dd/mm/yyyy) | Amount |
|-----------------------|--------|
| | |
| | |
| | |
- 5.2.1.4.3. ☐ Amount to be paid regularly
- 5.2.1.4.3.1. ☐ per day
- 5.2.1.4.3.2. ☐ per week
- 5.2.1.4.3.3. ☐ other (state frequency):
- 5.2.1.4.3.4. From date (dd/mm/yyyy) or event:
- 5.2.1.4.3.5. If applicable, until (date (dd/mm/yyyy) or event)
- 5.2.1.5. Interest, if applicable
- 5.2.1.5.1. Interest:
- 5.2.1.5.1.1. ☐ Not specified in the authentic instrument/court settlement
- 5.2.1.5.1.2. ☐ Yes, specified in the authentic instrument/court settlement as follows:

5.2.1.5.1.2.1. Amount:

or

5.2.1.5.1.2.2. Rate ... %

5.2.1.5.1.2.3. Interest due from (date (dd/mm/yyyy) or event) to (date (dd/mm/yyyy) or event) ⁽⁷⁾

5.2.1.5.2. ☐ Statutory interest (if applicable) to be calculated in accordance with (please specify relevant statute):

5.2.1.5.2.1. Interest due from (date (dd/mm/yyyy) or event) to (date (dd/mm/yyyy) or event) ⁽⁷⁾

5.2.1.5.3. ☐ Capitalisation of interest (if applicable, please specify):

5.2.2. Authentic instrument/court settlement relating to a non-monetary enforceable obligation:

5.2.2.1. Short description of the enforceable obligation

5.2.2.2. The obligation referred to in point 5.2.2.1 is enforceable against the following person(s) ⁽⁸⁾ (surname and given name(s)/name of company or organisation):

Done at: ...

Signature and/or stamp of the court or competent authority issuing the certificate:

⁽¹⁾ Delete as appropriate throughout the certificate.

⁽²⁾ Insert information for all creditors if more than one.

⁽³⁾ Insert information for all debtors if more than one.

⁽⁴⁾ Insert information for other parties (if any).

⁽⁵⁾ If more than one person has been ordered to make a payment, insert information for all persons.

⁽⁶⁾ Insert information for each instalment.

⁽⁷⁾ Insert information for all periods if more than one.

⁽⁸⁾ Insert information for all persons if more than one.

ANNEX III

CORRELATION TABLE

Regulation (EC) No 44/2001	This Regulation
Article 1(1)	Article 1(1)
Article 1(2), introductory words	Article 1(2), introductory words
Article 1(2) point (a)	Article 1(2), points (a) and (f)
Article 1(2), points (b) to (d)	Article 1(2), points (b) to (d)
—	Article 1(2), point (e)
Article 1(3)	—
—	Article 2
Article 2	Article 4
Article 3	Article 5
Article 4	Article 6
Article 5, introductory words	Article 7, introductory words
Article 5, point (1)	Article 7, point (1)
Article 5, point (2)	—
Article 5, points (3) and (4)	Article 7, points (2) and (3)
—	Article 7, point (4)
Article 5, points (5) to (7)	Article 7, points (5) to (7)
Article 6	Article 8
Article 7	Article 9
Article 8	Article 10
Article 9	Article 11
Article 10	Article 12
Article 11	Article 13
Article 12	Article 14
Article 13	Article 15
Article 14	Article 16
Article 15	Article 17
Article 16	Article 18
Article 17	Article 19
Article 18	Article 20
Article 19, points (1) and (2)	Article 21(1)
—	Article 21(2)
Article 20	Article 22
Article 21	Article 23
Article 22	Article 24
Article 23(1) and (2)	Article 25(1) and (2)

Regulation (EC) No 44/2001	This Regulation
Article 23(3)	—
Article 23(4) and (5)	Article 25(3) and (4)
—	Article 25(5)
Article 24	Article 26(1)
—	Article 26(2)
Article 25	Article 27
Article 26	Article 28
Article 27(1)	Article 29(1)
—	Article 29(2)
Article 27(2)	Article 29(3)
Article 28	Article 30
Article 29	Article 31(1)
—	Article 31(2)
—	Article 31(3)
—	Article 31(4)
Article 30	Article 32(1), points (a) and (b)
—	Article 32(1), second subparagraph
—	Article 32(2)
—	Article 33
—	Article 34
Article 31	Article 35
Article 32	Article 2, point (a)
Article 33	Article 36
—	Article 37
—	Article 39
—	Article 40
—	Article 41
—	Article 42
—	Article 43
—	Article 44
Article 34	Article 45(1), points (a) to (d)
Article 35(1)	Article 45(1), point (e)
Article 35(2)	Article 45(2)
Article 35(3)	Article 45(3)
—	Article 45(4)
Article 36	Article 52
Article 37(1)	Article 38, point (a)
Article 38	—

Regulation (EC) No 44/2001	This Regulation
Article 39	—
Article 40	—
Article 41	—
Article 42	—
Article 43	—
Article 44	—
Article 45	—
Article 46	—
Article 47	—
Article 48	—
—	Article 46
—	Article 47
—	Article 48
—	Article 49
—	Article 50
—	Article 51
—	Article 54
Article 49	Article 55
Article 50	—
Article 51	Article 56
Article 52	—
Article 53	—
Article 54	Article 53
Article 55(1)	—
Article 55(2)	Article 37(2), Article 47(3) and Article 57
Article 56	Article 61
Article 57(1)	Article 58(1)
Article 57(2)	—
Article 57(3)	Article 58(2)
Article 57(4)	Article 60
Article 58	Article 59 and Article 60
Article 59	Article 62
Article 60	Article 63
Article 61	Article 64
Article 62	Article 3
Article 63	—
Article 64	—
Article 65	Article 65(1) and (2)

Regulation (EC) No 44/2001	This Regulation
—	Article 65(3)
Article 66	Article 66
Article 67	Article 67
Article 68	Article 68
Article 69	Article 69
Article 70	Article 70
Article 71	Article 71
Article 72	Article 72
—	Article 73
Article 73	Article 79
Article 74(1)	Article 75, first paragraph, points (a), (b) and (c), and Article 76(1), point (a)
Article 74(2)	Article 77
—	Article 78
—	Article 80
Article 75	—
Article 76	Article 81
Annex I	Article 76(1), point (a)
Annex II	Article 75, point (a)
Annex III	Article 75, point (b)
Annex IV	Article 75, point (c)
Annex V	Annex I and Annex II
Annex VI	Annex II
—	Annex III

3c

Regulation (EC) No 805/2004
of the European Parliament and of the Council
of 21 April 2004 creating a European
Enforcement Order for uncontested claims



REGULATION (EC) No 805/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 April 2004

creating a European Enforcement Order for uncontested claims

THE EUROPEAN PARLIAMENT AND THE
COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, inter alia, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.
- (2) On 3 December 1998, the Council adopted an Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice ⁽⁴⁾ (the Vienna Action Plan).
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area.
- (4) On 30 November 2000, the Council adopted a programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters ⁽⁵⁾. This programme includes in its first stage the abolition of exequatur, that is to say, the creation of a European Enforcement Order for uncontested claims.

(5) The concept of 'uncontested claims' should cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a court settlement or an authentic instrument.

(6) The absence of objections from the debtor as stipulated in Article 3(1)(b) can take the shape of default of appearance at a court hearing or of failure to comply with an invitation by the court to give written notice of an intention to defend the case.

(7) This Regulation should apply to judgments, court settlements and authentic instruments on uncontested claims and to decisions delivered following challenges to judgments, court settlements and authentic instruments certified as European Enforcement Orders.

(8) In its Tampere conclusions, the European Council considered that access to enforcement in a Member State other than that in which the judgment has been given should be accelerated and simplified by dispensing with any intermediate measures to be taken prior to enforcement in the Member State in which enforcement is sought. A judgment that has been certified as a European Enforcement Order by the court of origin should, for enforcement purposes, be treated as if it had been delivered in the Member State in which enforcement is sought. In the United Kingdom, for example, the registration of a certified foreign judgment will therefore follow the same rules as the registration of a judgment from another part of the United Kingdom and is not to imply a review as to the substance of the foreign judgment. Arrangements for the enforcement of judgments should continue to be governed by national law.

(9) Such a procedure should offer significant advantages as compared with the exequatur procedure provided for in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽⁶⁾, in that there is no need for approval by the

⁽¹⁾ OJ C 203 E, 27.8.2002, p. 86.

⁽²⁾ OJ C 85, 8.4.2003, p. 1.

⁽³⁾ Opinion of the European Parliament of 8 April 2003 (OJ C 64 E, 12.3.2004, p. 79), Council Common Position of 6.2.2004 (not yet published in the Official Journal) and Position of the European Parliament of 30.3.2004 (not yet published in the Official Journal).

⁽⁴⁾ OJ C 19, 23.1.1999, p. 1.

⁽⁵⁾ OJ C 12, 15.1.2001, p. 1.

⁽⁶⁾ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 1496/2002 (OJ L 225, 22.8.2002, p. 13).

- judiciary in a second Member State with the delays and expenses that this entails.
- (10) Where a court in a Member State has given judgment on an uncontested claim in the absence of participation of the debtor in the proceedings, the abolition of any checks in the Member State of enforcement is inextricably linked to and dependent upon the existence of a sufficient guarantee of observance of the rights of the defence.
- (11) This Regulation seeks to promote the fundamental rights and takes into account the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the right to a fair trial as recognised in Article 47 of the Charter.
- (12) Minimum standards should be established for the proceedings leading to the judgment in order to ensure that the debtor is informed about the court action against him, the requirements for his active participation in the proceedings to contest the claim and the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defence.
- (13) Due to differences between the Member States as regards the rules of civil procedure and especially those governing the service of documents, it is necessary to lay down a specific and detailed definition of those minimum standards. In particular, any method of service that is based on a legal fiction as regards the fulfilment of those minimum standards cannot be considered sufficient for the certification of a judgment as a European Enforcement Order.
- (14) All the methods of service listed in Articles 13 and 14 are characterised by either full certainty (Article 13) or a very high degree of likelihood (Article 14) that the document served has reached its addressee. In the second category, a judgment should only be certified as a European Enforcement Order if the Member State of origin has an appropriate mechanism in place enabling the debtor to apply for a full review of the judgment under the conditions set out in Article 19 in those exceptional cases where, in spite of compliance with Article 14, the document has not reached the addressee.
- (15) Personal service on certain persons other than the debtor himself pursuant to Article 14(1)(a) and (b) should be understood to meet the requirements of those provisions only if those persons actually accepted/received the document in question.
- (16) Article 15 should apply to situations where the debtor cannot represent himself in court, as in the case of a legal person, and where a person to represent him is determined by law as well as situations where the debtor has authorised another person, in particular a lawyer, to represent him in the specific court proceedings at issue.
- (17) The courts competent for scrutinising full compliance with the minimum procedural standards should, if satisfied, issue a standardised European Enforcement Order certificate that makes that scrutiny and its result transparent.
- (18) Mutual trust in the administration of justice in the Member States justifies the assessment by the court of one Member State that all conditions for certification as a European Enforcement Order are fulfilled to enable a judgment to be enforced in all other Member States without judicial review of the proper application of the minimum procedural standards in the Member State where the judgment is to be enforced.
- (19) This Regulation does not imply an obligation for the Member States to adapt their national legislation to the minimum procedural standards set out herein. It provides an incentive to that end by making available a more efficient and rapid enforceability of judgments in other Member States only if those minimum standards are met.
- (20) Application for certification as a European Enforcement Order for uncontested claims should be optional for the creditor, who may instead choose the system of recognition and enforcement under Regulation (EC) No 44/2001 or other Community instruments.
- (21) When a document has to be sent from one Member State to another for service there, this Regulation and in particular the rules on service set out herein should apply together with Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ⁽¹⁾, and in particular Article 14 thereof in conjunction with Member States declarations made under Article 23 thereof.
- (22) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community

⁽¹⁾ OJ L 160, 30.6.2000, p. 37.

may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (23) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (24) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.
- (25) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation, and is therefore not bound by it or subject to its application.
- (26) Pursuant to the second indent of Article 67(5) of the Treaty, the codecision procedure is applicable from 1 February 2003 for the measures laid down in this Regulation,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

The purpose of this Regulation is to create a European Enforcement Order for uncontested claims to permit, by laying down minimum standards, the free circulation of judgments, court settlements and authentic instruments throughout all Member States without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

Article 2

Scope

1. This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority ('acta iure imperii').
2. This Regulation shall not apply to:
 - (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
 - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - (c) social security;
 - (d) arbitration.
3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.

Article 3

Enforcement titles to be certified as a European Enforcement Order

1. This Regulation shall apply to judgments, court settlements and authentic instruments on uncontested claims.

A claim shall be regarded as uncontested if:

- (a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or
- (b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or
- (c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or
- (d) the debtor has expressly agreed to it in an authentic instrument.

2. This Regulation shall also apply to decisions delivered following challenges to judgments, court settlements or authentic instruments certified as European Enforcement Orders.

Article 4

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'judgment': any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court;
2. 'claim': a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement or authentic instrument;
3. 'authentic instrument':
 - (a) a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which:
 - (i) relates to the signature and the content of the instrument; and
 - (ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates;
 - or
 - b) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them;
4. 'Member State of origin': the Member State in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered, and is to be certified as a European Enforcement Order;
5. 'Member State of enforcement': the Member State in which enforcement of the judgment, court settlement or authentic instrument certified as a European Enforcement Order is sought;
6. 'court of origin': the court or tribunal seised of the proceedings at the time of fulfilment of the conditions set out in Article 3(1)(a), (b) or (c);
7. in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande), the expression 'court' includes the Swedish enforcement service (kronofogdemyndighet).

CHAPTER II

EUROPEAN ENFORCEMENT ORDER

Article 5

Abolition of exequatur

A judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

Article 6

Requirements for certification as a European Enforcement Order

1. A judgment on an uncontested claim delivered in a Member State shall, upon application at any time to the court of origin, be certified as a European Enforcement Order if:
 - (a) the judgment is enforceable in the Member State of origin; and
 - (b) the judgment does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001; and
 - (c) the court proceedings in the Member State of origin met the requirements as set out in Chapter III where a claim is uncontested within the meaning of Article 3(1)(b) or (c); and
 - (d) the judgment was given in the Member State of the debtor's domicile within the meaning of Article 59 of Regulation (EC) No 44/2001, in cases where
 - a claim is uncontested within the meaning of Article 3(1)(b) or (c); and
 - it relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession; and
 - the debtor is the consumer.

2. Where a judgment certified as a European Enforcement Order has ceased to be enforceable or its enforceability has been suspended or limited, a certificate indicating the lack or limitation of enforceability shall, upon application at any time to the court of origin, be issued, using the standard form in Annex IV.

3. Without prejudice to Article 12(2), where a decision has been delivered following a challenge to a judgment certified as a European Enforcement Order in accordance with paragraph 1 of this Article, a replacement certificate shall, upon application at any time, be issued, using the standard form in Annex V, if that decision on the challenge is enforceable in the Member State of origin.

Article 7

Costs related to court proceedings

Where a judgment includes an enforceable decision on the amount of costs related to the court proceedings, including the interest rates, it shall be certified as a European Enforcement Order also with regard to the costs unless the debtor has specifically objected to his obligation to bear such costs in the course of the court proceedings, in accordance with the law of the Member State of origin.

Article 8

Partial European Enforcement Order certificate

If only parts of the judgment meet the requirements of this Regulation, a partial European Enforcement Order certificate shall be issued for those parts.

Article 9

Issue of the European Enforcement Order certificate

1. The European Enforcement Order certificate shall be issued using the standard form in Annex I.
2. The European Enforcement Order certificate shall be issued in the language of the judgment.

Article 10

Rectification or withdrawal of the European Enforcement Order certificate

1. The European Enforcement Order certificate shall, upon application to the court of origin, be
 - (a) rectified where, due to a material error, there is a discrepancy between the judgment and the certificate;
 - (b) withdrawn where it was clearly wrongly granted, having regard to the requirements laid down in this Regulation.
2. The law of the Member State of origin shall apply to the rectification or withdrawal of the European Enforcement Order certificate.

3. An application for the rectification or withdrawal of a European Enforcement Order certificate may be made using the standard form in Annex VI.

4. No appeal shall lie against the issuing of a European Enforcement Order certificate.

Article 11

Effect of the European Enforcement Order certificate

The European Enforcement Order certificate shall take effect only within the limits of the enforceability of the judgment.

CHAPTER III

MINIMUM STANDARDS FOR UNCONTESTED CLAIMS PROCEDURES

Article 12

Scope of application of minimum standards

1. A judgment on a claim that is uncontested within the meaning of Article 3(1)(b) or (c) can be certified as a European Enforcement Order only if the court proceedings in the Member State of origin met the procedural requirements as set out in this Chapter.
2. The same requirements shall apply to the issuing of a European Enforcement Order certificate or a replacement certificate within the meaning of Article 6(3) for a decision following a challenge to a judgment where, at the time of that decision, the conditions of Article 3(1)(b) or (c) are fulfilled.

Article 13

Service with proof of receipt by the debtor

1. The document instituting the proceedings or an equivalent document may have been served on the debtor by one of the following methods:
 - (a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the debtor;

- (b) personal service attested by a document signed by the competent person who effected the service stating that the debtor has received the document or refused to receive it without any legal justification, and the date of the service;
- (c) postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor;
- (d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor.

2. Any summons to a court hearing may have been served on the debtor in compliance with paragraph 1 or orally in a previous court hearing on the same claim and stated in the minutes of that previous court hearing.

Article 14

Service without proof of receipt by the debtor

1. Service of the document instituting the proceedings or an equivalent document and any summons to a court hearing on the debtor may also have been effected by one of the following methods:

- (a) personal service at the debtor's personal address on persons who are living in the same household as the debtor or are employed there;
- (b) in the case of a self-employed debtor or a legal person, personal service at the debtor's business premises on persons who are employed by the debtor;
- (c) deposit of the document in the debtor's mailbox;
- (d) deposit of the document at a post office or with competent public authorities and the placing in the debtor's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits;
- (e) postal service without proof pursuant to paragraph 3 where the debtor has his address in the Member State of origin;
- (f) electronic means attested by an automatic confirmation of delivery, provided that the debtor has expressly accepted this method of service in advance.

2. For the purposes of this Regulation, service under paragraph 1 is not admissible if the debtor's address is not known with certainty.

3. Service pursuant to paragraph 1, (a) to (d), shall be attested by:

- (a) a document signed by the competent person who effected the service, indicating:
 - (i) the method of service used; and
 - (ii) the date of service; and
 - (iii) where the document has been served on a person other than the debtor, the name of that person and his relation to the debtor,

or

- b) an acknowledgement of receipt by the person served, for the purposes of paragraphs 1(a) and (b).

Article 15

Service on the debtor's representatives

Service pursuant to Articles 13 or 14 may also have been effected on a debtor's representative.

Article 16

Provision to the debtor of due information about the claim

In order to ensure that the debtor was provided with due information about the claim, the document instituting the proceedings or the equivalent document must have contained the following:

- (a) the names and the addresses of the parties;
- (b) the amount of the claim;
- (c) if interest on the claim is sought, the interest rate and the period for which interest is sought unless statutory interest is automatically added to the principal under the law of the Member State of origin;
- (d) a statement of the reason for the claim.

Article 17

Provision to the debtor of due information about the procedural steps necessary to contest the claim

The following must have been clearly stated in or together with the document instituting the proceedings, the equivalent document or any summons to a court hearing:

- (a) the procedural requirements for contesting the claim, including the time limit for contesting the claim in writing or the time for the court hearing, as applicable, the name and the address of the institution to which to respond or before which to appear, as applicable, and whether it is mandatory to be represented by a lawyer;
- (b) the consequences of an absence of objection or default of appearance, in particular, where applicable, the possibility that a judgment may be given or enforced against the debtor and the liability for costs related to the court proceedings.

Article 18

Cure of non-compliance with minimum standards

1. If the proceedings in the Member State of origin did not meet the procedural requirements as set out in Articles 13 to 17, such non-compliance shall be cured and a judgment may be certified as a European Enforcement Order if:

- (a) the judgment has been served on the debtor in compliance with the requirements pursuant to Article 13 or Article 14; and
- (b) it was possible for the debtor to challenge the judgment by means of a full review and the debtor has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing; and
- (c) the debtor has failed to challenge the judgment in compliance with the relevant procedural requirements.

2. If the proceedings in the Member State of origin did not comply with the procedural requirements as set out in Article 13 or Article 14, such non-compliance shall be cured if it is proved by the conduct of the debtor in the court proceedings that he has personally received the document to be served in sufficient time to arrange for his defence.

Article 19

Minimum standards for review in exceptional cases

1. Further to Articles 13 to 18, a judgment can only be certified as a European Enforcement Order if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment where:

- (a) (i) the document instituting the proceedings or an equivalent document or, where applicable, the summons to a court hearing, was served by one of the methods provided for in Article 14; and
- (ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part;

or

- (b) the debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

2. This Article is without prejudice to the possibility for Member States to grant access to a review of the judgment under more generous conditions than those mentioned in paragraph 1.

CHAPTER IV

ENFORCEMENT

Article 20

Enforcement procedure

1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement.

A judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement.

2. The creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- (b) a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and

(c) where necessary, a transcription of the European Enforcement Order certificate or a translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Community other than its own which it can accept for the completion of the certificate. The translation shall be certified by a person qualified to do so in one of the Member States.

3. No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment certified as a European Enforcement Order in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

Article 21

Refusal of enforcement

1. Enforcement shall, upon application by the debtor, be refused by the competent court in the Member State of enforcement if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

- (a) the earlier judgment involved the same cause of action and was between the same parties; and
- (b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- (c) the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

2. Under no circumstances may the judgment or its certification as a European Enforcement Order be reviewed as to their substance in the Member State of enforcement.

Article 22

Agreements with third countries

This Regulation shall not affect agreements by which Member States undertook, prior to the entry into force of Regulation (EC) No 44/2001, pursuant to Article 59 of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, not to recognise judgments given, in particular in other Contracting States to that

Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

Article 23

Stay or limitation of enforcement

Where the debtor has

- challenged a judgment certified as a European Enforcement Order, including an application for review within the meaning of Article 19, or
- applied for the rectification or withdrawal of a European Enforcement Order certificate in accordance with Article 10,

the competent court or authority in the Member State of enforcement may, upon application by the debtor:

- (a) limit the enforcement proceedings to protective measures; or
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) under exceptional circumstances, stay the enforcement proceedings.

CHAPTER V

COURT SETTLEMENTS AND AUTHENTIC INSTRUMENTS

Article 24

Court settlements

1. A settlement concerning a claim within the meaning of Article 4(2) which has been approved by a court or concluded before a court in the course of proceedings and is enforceable in the Member State in which it was approved or concluded shall, upon application to the court that approved it or before which it was concluded, be certified as a European Enforcement Order using the standard form in Annex II.

2. A settlement which has been certified as a European Enforcement Order in the Member State of origin shall be enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its enforceability.

3. The provisions of Chapter II, with the exception of Articles 5, 6(1) and 9(1), and of Chapter IV, with the exception of Articles 21(1) and 22, shall apply as appropriate.

Article 28

Relationship with Regulation (EC) No 1348/2000

This Regulation shall not affect the application of Regulation (EC) No 1348/2000.

Article 25

Authentic instruments

1. An authentic instrument concerning a claim within the meaning of Article 4(2) which is enforceable in one Member State shall, upon application to the authority designated by the Member State of origin, be certified as a European Enforcement Order, using the standard form in Annex III.

2. An authentic instrument which has been certified as a European Enforcement Order in the Member State of origin shall be enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its enforceability.

3. The provisions of Chapter II, with the exception of Articles 5, 6(1) and 9(1), and of Chapter IV, with the exception of Articles 21(1) and 22, shall apply as appropriate.

CHAPTER VIII

GENERAL AND FINAL PROVISIONS

Article 29

Information on enforcement procedures and authorities

The Member States shall cooperate to provide the general public and professional circles with information on:

- (a) the methods and procedures of enforcement in the Member States; and
- (b) the competent authorities for enforcement in the Member States,

in particular via the European Judicial Network in civil and commercial matters established in accordance with Decision 2001/470/EC ⁽¹⁾.

CHAPTER VI

TRANSITIONAL PROVISION

Article 26

Transitional provision

This Regulation shall apply only to judgments given, to court settlements approved or concluded and to documents formally drawn up or registered as authentic instruments after the entry into force of this Regulation.

CHAPTER VII

RELATIONSHIP WITH OTHER COMMUNITY INSTRUMENTS

Article 27

Relationship with Regulation (EC) No 44/2001

This Regulation shall not affect the possibility of seeking recognition and enforcement, in accordance with Regulation (EC) No 44/2001, of a judgment, a court settlement or an authentic instrument on an uncontested claim.

Article 30

Information relating to redress procedures, languages and authorities

- 1. The Member States shall notify the Commission of:
 - (a) the procedures for rectification and withdrawal referred to in Article 10(2) and for review referred to in Article 19(1);
 - (b) the languages accepted pursuant to Article 20(2)(c);
 - (c) the lists of the authorities referred to in Article 25;
 and any subsequent changes thereof.
- 2. The Commission shall make the information notified in accordance with paragraph 1 publicly available through publication in the *Official Journal of the European Union* and through any other appropriate means.

⁽¹⁾ OJ L 174, 27.6.2001, p. 25.

*Article 31***Amendments to the Annexes**

Any amendment to the standard forms in the Annexes shall be adopted in accordance with the advisory procedure referred to in Article 32(2).

*Article 32***Committee**

1. The Commission shall be assisted by the committee provided for by Article 75 of Regulation (EC) No 44/2001.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The Committee shall adopt its Rules of Procedure.

*Article 33***Entry into force**

This Regulation shall enter into force on 21 January 2004.

It shall apply from 21 October 2005, with the exception of Articles 30, 31 and 32, which shall apply from 21 January 2005.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 21 April 2004.

For the European Parliament

The President

P. COX

For the Council

The President

D. ROCHE

ANNEX I

EUROPEAN ENFORCEMENT ORDER CERTIFICATE — JUDGMENT

1. Member State of origin: AT ☐ BE ☐ DE ☐ EL ☐ ES ☐ FI ☐ FR ☐
IE ☐ IT ☐ LU ☐ NL ☐ PT ☐ SE ☐ UK ☐
2. Court/Tribunal issuing the certificate
- 2.1. Name:
- 2.2. Address:
- 2.3. Tel./fax/e-mail:
3. If different, Court/Tribunal giving the judgment
- 3.1. Name:
- 3.2. Address:
- 3.3. Tel./fax/e-mail:
4. Judgment
- 4.1. Date:
- 4.2. Reference number:
- 4.3. The parties
- 4.3.1. Name and address of creditor(s):
- 4.3.2. Name and address of debtor(s):
5. Monetary claim as certified
- 5.1. Principal Amount :
- 5.1.1. Currency Euro ☐
 Swedish Kronor ☐
 Pounds Sterling ☐
 other (explain) ☐
- 5.1.2. If the claim is for periodical payments
- 5.1.2.1. Amount of each instalment:
- 5.1.2.2. Due date of first instalment:
- 5.1.2.3. Due dates of following instalments
- weekly ☐ monthly ☐ other (explain) ☐

- 5.1.2.4. Period of the claim
- 5.1.2.4.1. Currently indefinite ☐ or
- 5.1.2.4.2. Due date of last instalment:
- 5.2. Interest
- 5.2.1. Interest rate
- 5.2.1.1. ... % or
- 5.2.1.2. ... % above the base rate of the ECB ⁽¹⁾
- 5.2.1.3. Other (explain)
- 5.2.2. Interest to be collected as from:
- 5.3. Amount of reimbursable costs if specified in the judgment:
6. Judgment is enforceable in the Member State of origin ☐
7. Judgment is still subject to the possibility of a challenge
Yes ☐ No ☐
8. Judgment is on an uncontested claim under Article 3(1) ☐
9. Judgment is in compliance with Article 6(1) (b) ☐
10. The judgment concerns matters relating to consumer contracts
Yes ☐ No ☐
- 10.1. If yes:
The debtor is the consumer
Yes ☐ No ☐
- 10.2. If yes:
The debtor is domiciled in the Member State of origin (within the meaning of Article 59 of Regulation (EC) 44/2001) ☐
11. Service of the document instituting the proceedings under Chapter III, where applicable
Yes ☐ No ☐
- 11.1. Service was effected in compliance with Article 13 ☐
or service was effected in compliance with Article 14 ☐
or it is proved in accordance with Article 18(2) that the debtor has received the document ☐

⁽¹⁾ Interest rate applied by the European Central Bank to its main refinancing operations.

- 11.2.

Due information

The debtor was informed in compliance with Articles 16 and 17 ☐
12.

Service of summons, where applicable

Yes ☐ No ☐
- 12.1.

Service was effected in compliance with Article 13 ☐

or service was effected in compliance with Article 14 ☐

or it is proved in accordance with Article 18(2) that the debtor has received the summons ☐
- 12.2.

Due information

The debtor was informed in compliance with Article 17 ☐
13.

Cure of non-compliance with procedural minimum standards pursuant to Article 18(1)
- 13.1.

Service of the judgment was effected in compliance with Article 13 ☐

or service of the judgment was effected in compliance with Article 14 ☐

or it is proved in accordance with Article 18(2) that the debtor has received the judgment ☐
- 13.2.

Due information

The debtor was informed in compliance with Article 18(1)(b) ☐
- 13.3.

It was possible for the debtor to challenge the judgment

Yes ☐ No ☐
- 13.4.

The debtor failed to challenge the judgment in compliance with the relevant procedural requirements

Yes ☐ No ☐

Done at date

.....
Signature and/or stamp

ANNEX II

EUROPEAN ENFORCEMENT ORDER CERTIFICATE — COURT SETTLEMENT

1. Member State of origin: AT ☐ BE ☐ DE ☐ EL ☐ ES ☐ FI ☐ FR ☐
IE ☐ IT ☐ LU ☐ NL ☐ PT ☐ SE ☐ UK ☐
2. Court issuing the certificate
 - 2.1. Name:
 - 2.2. Address:
 - 2.3. Tel./fax/e-mail:
3. If different, Court approving the settlement or before which it was concluded
 - 3.1. Name:
 - 3.2. Address:
 - 3.3. Tel./fax/e-mail:
4. Court settlement
 - 4.1. Date:
 - 4.2. Reference number:
 - 4.3. The parties
 - 4.3.1. Name and address of creditor(s):
 - 4.3.2. Name and address of debtor(s):
5. Monetary claim as certified
 - 5.1. Principal Amount:
 - 5.1.1. Currency Euro ☐
 Swedish Kronor ☐
 Pounds Sterling ☐
 other (explain) ☐
 - 5.1.2. If the claim is for periodical payments
 - 5.1.2.1. Amount of each instalment:
 - 5.1.2.2. Due date of first instalment:
 - 5.1.2.3. Due dates of following instalments
weekly ☐ monthly ☐ other (explain) ☐

- 5.1.2.4. Period of the claim
 - 5.1.2.4.1. Currently indefinite ☐ or
 - 5.1.2.4.2. Due date of last instalment:
- 5.2. Interest
 - 5.2.1. Interest rate
 - 5.2.1.1. ... % or
 - 5.2.1.2. ... % above the base rate of the ECB ⁽¹⁾
 - 5.2.1.3. Other (explain)
 - 5.2.2. Interest to be collected as from:
- 5.3. Amount of reimbursable costs if specified in the court settlement:
- 6. The court settlement is enforceable in the Member State of origin ☐

Done at date

.....
Signature and/or stamp

⁽¹⁾ Interest rate applied by the European Central Bank to its main refinancing operations.

ANNEX III

EUROPEAN ENFORCEMENT ORDER CERTIFICATE — AUTHENTIC INSTRUMENT

1.

Member State of origin:

AT☐ BE☐ DE☐ EL☐ ES☐ FI☐ FR☐
IE☐ IT☐ LU☐ NL☐ PT☐ SE☐ UK☐
2.

Court/Authority issuing the certificate

2.1.

Name:

2.2.

Address:

2.3.

Tel./fax/e-mail:
3.

If different, Court/Authority drawing up or registering the authentic instrument

3.1.

Name:

3.2.

Address:

3.3.

Tel./fax/e-mail:
4.

Authentic instrument

4.1.

Date:

4.2.

Reference number:

4.3.

The parties

4.3.1.

Name and address of creditor(s):

4.3.2.

Name and address of debtor(s):
5.

Monetary claim as certified

5.1.

Principal Amount:

5.1.1.

Currency

Euro☐

Swedish Kronor☐

Pounds Sterling☐

other (explain)☐

5.1.2.

If the claim is for periodical payments

5.1.2.1.

Amount of each instalment:

5.1.2.2.

Due date of first instalment:

5.1.2.3.

Due dates of following instalments

weekly☐

monthly☐

other (explain)☐
- 130

- 5.1.2.4. Period of the claim
 - 5.1.2.4.1. Currently indefinite ☐ or
 - 5.1.2.4.2. Due date of last instalment
- 5.2. Interest
 - 5.2.1. Interest rate
 - 5.2.1.1. ... % or
 - 5.2.1.2. ... % above the base rate of the ECB ⁽¹⁾
 - 5.2.1.3. Other (explain)
 - 5.2.2. Interest to be collected as from:
- 5.3. Amount of reimbursable costs if specified in the authentic instrument:
- 6. The authentic instrument is enforceable in the Member State of origin ☐

Done at date

.....
Signature and/or stamp

⁽¹⁾ Interest rate applied by the European Central Bank to its main refinancing operations.

ANNEX IV

CERTIFICATE OF LACK OR LIMITATION OF ENFORCEABILITY
(Article 6(2))

1. Member State of origin: AT ☐ BE ☐ DE ☐ EL ☐ ES ☐ FI ☐ FR ☐
IE ☐ IT ☐ LU ☐ NL ☐ PT ☐ SE ☐ UK ☐
2. Court/Authority issuing the certificate
- 2.1. Name:
- 2.2. Address:
- 2.3. Tel./fax/e-mail:
3. If different, Court/Authority issuing the judgment/Court settlement/Authentic Instrument (*)
- 3.1. Name:
- 3.2. Address:
- 3.3. Tel./fax/e-mail:
4. Judgment/Court settlement/Authentic Instrument (*)
- 4.1. Date:
- 4.2. Reference number:
- 4.3. The parties
- 4.3.1. Name and address of creditor(s):
- 4.3.2. Name and address of debtor(s):
5. This judgment/court settlement/authentic instrument (*) was certified as a European Enforcement Order but
- 5.1. the judgment/court settlement/authentic instrument (*) is no longer enforceable ☐
- 5.2. Enforcement is temporarily
- 5.2.1. stayed ☐
- 5.2.2. limited to protective measures ☐

(*) Delete as appropriate.

5.2.3. conditional upon the provision of a security which is still outstanding ☐

5.2.3.1. Amount of the security:

- 5.2.3.2. Currency
- Euro

Swedish Kronor

Pounds Sterling

other(explain)
- ☐

☐

☐

☐

5.2.4. Other (explain) ☐

Done at date

.....
Signature and/or stamp

ANNEX V

EUROPEAN ENFORCEMENT ORDER REPLACEMENT CERTIFICATE FOLLOWING A CHALLENGE
(Article 6(3))

- A. The following judgment/court settlement/authentic instrument (*) certified as a European Enforcement Order was challenged
1. Member State of origin: AT ☐ BE ☐ DE ☐ EL ☐ ES ☐ FI ☐ FR ☐
IE ☐ IT ☐ LU ☐ NL ☐ PT ☐ SE ☐ UK ☐
2. Court/Authority issuing the certificate
- 2.1. Name:
- 2.2. Address:
- 2.3. Tel./fax/e-mail:
3. If different, Court/Authority issuing the judgment/Court settlement/Authentic Instrument (*)
- 3.1. Name:
- 3.2. Address:
- 3.3. Tel./fax/e-mail:
4. Judgment/Court settlement/Authentic Instrument (*)
- 4.1. Date:
- 4.2. Reference number:
- 4.3. The parties
- 4.3.1. Name and address of creditor(s):
- 4.3.2. Name and address of debtor(s):
- B. Upon that challenge the following decision has been handed down and is hereby certified as a European Enforcement Order replacing the original European Enforcement Order.
1. Court
- 1.1. Name:
- 1.2. Address:
- 1.3. Tel./fax/e-mail:

(*) Delete as appropriate.

2. Decision
 - 2.1. Date:
 - 2.2. Reference number:
3. Monetary claim as certified
 - 3.1. Principal Amount
 - 3.1.1. Currency

Euro	<input type="checkbox"/>
Swedish Kronor	<input type="checkbox"/>
Pounds Sterling	<input type="checkbox"/>
Other (explain)	<input type="checkbox"/>
 - 3.1.2. If the claim is for periodic payments
 - 3.1.2.1. Amount of each instalment:
 - 3.1.2.2. Due date of first instalment:
 - 3.1.2.3. Due dates of following instalments

weekly ☐ monthly ☐ other (explain) ☐
 - 3.1.2.4. Period of the claim
 - 3.1.2.4.1. Currently indefinite ☐ or
 - 3.1.2.4.2. Due date of last instalment:
 - 3.2. Interest
 - 3.2.1. Interest rate
 - 3.2.1.1. ... % or
 - 3.2.1.2. ... % above the base rate of the ECB ⁽¹⁾
 - 3.2.1.3. Other (explain)
 - 3.2.2. Interest to be collected as from:
 - 3.3. Amount of reimbursable costs if specified in the decision:
4. Decision is enforceable in the Member State of origin ☐
5. Decision is still subject to the possibility of a further appeal

Yes ☐ No ☐
6. Decision is in compliance with Article 6(1)(b) ☐

⁽¹⁾ Interest rate applied by the European Central Bank to its main refinancing operations.

7. The decision concerns matters relating to consumer contracts
- Yes ☐ No ☐
- 7.1. If yes:
- The debtor is the consumer
- Yes ☐ No ☐
- 7.2. If yes:
- The debtor is domiciled in the Member State of origin in the meaning of Article 59 of Regulation (EC) No 44/2001 ☐
8. At the time of the decision following the challenge, the claim is uncontested within the meaning of Article 3(1)(b) or (c)
- Yes ☐ No ☐
- If yes:
- 8.1. Service of the document instituting the challenge.
- Did the creditor lodge the challenge?
- Yes ☐ No ☐
- If yes:
- 8.1.1. Service was effected in compliance with Article 13 ☐
- or service was effected in compliance with Article 14 ☐
- or it is proved in accordance with Article 18(2) that the debtor has received the document ☐
- 8.1.2. Due information
- The debtor was informed in compliance with Articles 16 and 17 ☐
- 8.2. Service of summons, where applicable
- Yes ☐ No ☐
- If yes:
- 8.2.1. Service was effected in compliance with Article 13 ☐
- or service was effected in compliance with Article ☐
- or it is proved in accordance with Article 18(2) that the debtor has received the summons ☐
- 8.2.2. Due information
- The debtor was informed in compliance with Article 17 ☐

- 8.3. Cure of non-compliance with procedural minimum standards pursuant to Article 18(1)
- 8.3.1. Service of the decision was effected in compliance with Article 13 ☐
or Service of the decision was effected in compliance with Article 14 ☐
or it is proved in accordance with Article 18(2) that the debtor has received the decision ☐
- 8.3.2. Due information
The debtor was informed in compliance with Article 18(1)(b) ☐

Done at date

.....
Signature and/or stamp

ANNEX VI

**APPLICATION FOR RECTIFICATION OR WITHDRAWAL OF THE EUROPEAN ENFORCEMENT ORDER
CERTIFICATE** (Article 10(3))

THE FOLLOWING EUROPEAN ENFORCEMENT ORDER CERTIFICATE

1. Member State of origin: AT ☐ BE ☐ DE ☐ EL ☐ ES ☐ FI ☐ FR ☐
IE ☐ IT ☐ LU ☐ NL ☐ PT ☐ SE ☐ UK ☐
2. Court/Authority issuing the certificate
- 2.1. Name:
- 2.2. Address:
- 2.3. Tel./fax/e-mail:
3. If different, Court/Authority issuing the judgment/Court settlement/Authentic Instrument (*)
- 3.1. Name:
- 3.2. Address:
- 3.3. Tel./fax/e-mail:
4. Judgment/Court settlement/Authentic Instrument
- 4.1. Date:
- 4.2. Reference number:
- 4.3. The parties
- 4.3.1. Name and address of creditor(s):
- 4.3.2. Name and address of debtor(s):

HAS TO BE

5. RECTIFIED as due to a material error there is the following discrepancy between the European Enforcement Order certificate and the underlying judgment/court settlement/authentic instrument (explain) ☐

(*) Delete as appropriate.

6. WITHDRAWN because:
- 6.1. the certified judgment was related to a consumer contract but was given in a Member State where the consumer is not domiciled within the meaning of Article 59 of Regulation (EC) No 44/2001 ☐
- 6.2. the European Enforcement Order certificate was clearly wrongly granted for another reason (explain) ☐

Done at date

.....
Signature and/or stamp

3d

Regulation (EC) No 1896/2006
of the European Parliament and of the
Council of 12 December 2006 creating
a European order for payment procedure



I

(Acts whose publication is obligatory)

REGULATION (EC) No 1896/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 12 December 2006****creating a European order for payment procedure**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, inter alia, measures in the field of judicial cooperation in civil matters having cross-border implications and needed for the proper functioning of the internal market.
- (2) According to Article 65(c) of the Treaty, these measures are to include measures eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 invited the Council and the Commission to prepare new legislation on issues that are instrumental to smooth judicial cooperation and to enhanced access to law and specifically made reference, in that context, to orders for money payment.
- (4) On 30 November 2000, the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of

decisions in civil and commercial matters ⁽³⁾. The programme envisages the possibility of a specific, uniform or harmonised procedure laid down within the Community to obtain a judicial decision in specific areas including that of uncontested claims. This was taken forward by the Hague Programme, adopted by the European Council on 5 November 2004, which called for work to be actively pursued on the European order for payment.

- (5) The Commission adopted a Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation on 20 December 2002. The Green Paper launched consultations on the possible objectives and features of a uniform or harmonised European procedure for the recovery of uncontested claims.
- (6) The swift and efficient recovery of outstanding debts over which no legal controversy exists is of paramount importance for economic operators in the European Union, as late payments constitute a major reason for insolvency threatening the survival of businesses, particularly small and medium-sized enterprises, and resulting in numerous job losses.
- (7) All Member States are trying to tackle the issue of mass recovery of uncontested claims, in the majority of States by means of a simplified order for payment procedure, but both the content of national legislation and the performance of domestic procedures vary substantially. Furthermore, the procedures currently in existence are frequently either inadmissible or impracticable in cross-border cases.
- (8) The resulting impediments to access to efficient justice in cross-border cases and the distortion of competition within the internal market due to imbalances in the functioning of procedural means afforded to creditors in different Member States necessitate Community legislation guaranteeing a level playing field for creditors and debtors throughout the European Union.

⁽¹⁾ OJ C 221, 8.9.2005, p. 77.

⁽²⁾ Opinion of the European Parliament of 13 December 2005 (not yet published in the Official Journal), Council Common Position of 30 June 2006 (not yet published in the Official Journal) and Position of the European Parliament of 25 October 2006. Council Decision of 11 December 2006.

⁽³⁾ OJ C 12, 15.1.2001, p. 1.

- (9) The purpose of this Regulation is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure, and to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.
- (10) The procedure established by this Regulation should serve as an additional and optional means for the claimant, who remains free to resort to a procedure provided for by national law. Accordingly, this Regulation neither replaces nor harmonises the existing mechanisms for the recovery of uncontested claims under national law.
- (11) The procedure should be based, to the largest extent possible, on the use of standard forms in any communication between the court and the parties in order to facilitate its administration and enable the use of automatic data processing.
- (12) When deciding which courts are to have jurisdiction to issue a European order for payment, Member States should take due account of the need to ensure access to justice.
- (13) In the application for a European order for payment, the claimant should be obliged to provide information that is sufficient to clearly identify and support the claim in order to place the defendant in a position to make a well-informed choice either to oppose the claim or to leave it uncontested.
- (14) In that context, it should be compulsory for the claimant to include a description of evidence supporting the claim. For that purpose the application form should include as exhaustive a list as possible of types of evidence that are usually produced in support of pecuniary claims.
- (15) The lodging of an application for a European order for payment should entail the payment of any applicable court fees.
- (16) The court should examine the application, including the issue of jurisdiction and the description of evidence, on the basis of the information provided in the application form. This would allow the court to examine *prima facie* the merits of the claim and *inter alia* to exclude clearly unfounded claims or inadmissible applications. The examination should not need to be carried out by a judge.
- (17) There is to be no right of appeal against the rejection of the application. This does not preclude, however, a possible review of the decision rejecting the application at the same level of jurisdiction in accordance with national law.
- (18) The European order for payment should apprise the defendant of his options to pay the amount awarded to the claimant or to send a statement of opposition within a time limit of 30 days if he wishes to contest the claim. In addition to being provided with full information concerning the claim as supplied by the claimant, the defendant should be advised of the legal significance of the European order for payment and in particular of the consequences of leaving the claim uncontested.
- (19) Due to differences between Member States' rules of civil procedure and especially those governing the service of documents, it is necessary to lay down a specific and detailed definition of minimum standards that should apply in the context of the European order for payment procedure. In particular, as regards the fulfilment of those standards, any method based on legal fiction should not be considered sufficient for the service of the European order for payment.
- (20) All the methods of service listed in Articles 13 and 14 are characterised by either complete certainty (Article 13) or a very high degree of likelihood (Article 14) that the document served has reached its addressee.
- (21) Personal service on certain persons other than the defendant himself pursuant to Article 14(1)(a) and (b) should be deemed to meet the requirements of those provisions only if those persons actually accepted/received the European order for payment.
- (22) Article 15 should apply to situations where the defendant cannot represent himself in court, as in the case of a legal person, and where a person authorised to represent him is determined by law, as well as to situations where the defendant has authorised another person, in particular a lawyer, to represent him in the specific court proceedings at issue.
- (23) The defendant may submit his statement of opposition using the standard form set out in this Regulation. However, the courts should take into account any other written form of opposition if it is expressed in a clear manner.
- (24) A statement of opposition filed within the time limit should terminate the European order for payment procedure and should lead to an automatic transfer of the case to ordinary civil proceedings unless the claimant has explicitly requested that the proceedings be terminated in that event. For the purposes of this Regulation the concept of ordinary civil proceedings should not necessarily be interpreted within the meaning of national law.

- (25) After the expiry of the time limit for submitting the statement of opposition, in certain exceptional cases the defendant should be entitled to apply for a review of the European order for payment. Review in exceptional cases should not mean that the defendant is given a second opportunity to oppose the claim. During the review procedure the merits of the claim should not be evaluated beyond the grounds resulting from the exceptional circumstances invoked by the defendant. The other exceptional circumstances could include a situation where the European order for payment was based on false information provided in the application form.
- (26) Court fees covered by Article 25 should not include for example lawyers' fees or costs of service of documents by an entity other than a court.
- (27) A European order for payment issued in one Member State which has become enforceable should be regarded for the purposes of enforcement as if it had been issued in the Member State in which enforcement is sought. Mutual trust in the administration of justice in the Member States justifies the assessment by the court of one Member State that all conditions for issuing a European order for payment are fulfilled to enable the order to be enforced in all other Member States without judicial review of the proper application of minimum procedural standards in the Member State where the order is to be enforced. Without prejudice to the provisions of this Regulation, in particular the minimum standards laid down in Article 22(1) and (2) and Article 23, the procedures for the enforcement of the European order for payment should continue to be governed by national law.
- (28) For the purposes of calculating time limits, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits ⁽¹⁾ should apply. The defendant should be advised of this and should be informed that account will be taken of the public holidays of the Member State in which the court issuing the European order for payment is situated.
- (29) Since the objective of this Regulation, namely to establish a uniform rapid and efficient mechanism for the recovery of uncontested pecuniary claims throughout the European Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the Regulation, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (30) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (31) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (32) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation, and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1. The purpose of this Regulation is:

- (a) to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure;

and

- (b) to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

2. This Regulation shall not prevent a claimant from pursuing a claim within the meaning of Article 4 by making use of another procedure available under the law of a Member State or under Community law.

Article 2

Scope

1. This Regulation shall apply to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority ('acta iure imperii').

⁽¹⁾ OJ L 124, 8.6.1971, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

2. This Regulation shall not apply to:
- (a) rights in property arising out of a matrimonial relationship, wills and succession;
 - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - (c) social security;
 - (d) claims arising from non-contractual obligations, unless:
 - (i) they have been the subject of an agreement between the parties or there has been an admission of debt,
 - or
 - (ii) they relate to liquidated debts arising from joint ownership of property.

3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.

Article 3

Cross-border cases

1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised.
2. Domicile shall be determined in accordance with Articles 59 and 60 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾.
3. The relevant moment for determining whether there is a cross-border case shall be the time when the application for a European order for payment is submitted in accordance with this Regulation.

Article 4

European order for payment procedure

The European order for payment procedure shall be established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted.

Article 5

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- 1) 'Member State of origin' means the Member State in which a European order for payment is issued;

⁽¹⁾ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 2245/2004 (OJ L 381, 28.12.2004, p. 10).

- 2) 'Member State of enforcement' means the Member State in which enforcement of a European order for payment is sought;
- 3) 'court' means any authority in a Member State with competence regarding European orders for payment or any other related matters;
- 4) 'court of origin' means the court which issues a European order for payment.

Article 6

Jurisdiction

1. For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No 44/2001.
2. However, if the claim relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled, within the meaning of Article 59 of Regulation (EC) No 44/2001, shall have jurisdiction.

Article 7

Application for a European order for payment

1. An application for a European order for payment shall be made using standard form A as set out in Annex I.
2. The application shall state:
 - (a) the names and addresses of the parties, and, where applicable, their representatives, and of the court to which the application is made;
 - (b) the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs;
 - (c) if interest on the claim is demanded, the interest rate and the period of time for which that interest is demanded unless statutory interest is automatically added to the principal under the law of the Member State of origin;
 - (d) the cause of the action, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded;
 - (e) a description of evidence supporting the claim;
 - (f) the grounds for jurisdiction;

and

 - (g) the cross-border nature of the case within the meaning of Article 3.

3. In the application, the claimant shall declare that the information provided is true to the best of his knowledge and belief and shall acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin.

4. In an Appendix to the application the claimant may indicate to the court that he opposes a transfer to ordinary civil proceedings within the meaning of Article 17 in the event of opposition by the defendant. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued.

5. The application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin.

6. The application shall be signed by the claimant or, where applicable, by his representative. Where the application is submitted in electronic form in accordance with paragraph 5, it shall be signed in accordance with Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures⁽¹⁾. The signature shall be recognised in the Member State of origin and may not be made subject to additional requirements.

However, such electronic signature shall not be required if and to the extent that an alternative electronic communications system exists in the courts of the Member State of origin which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner. Member States shall inform the Commission of such communications systems.

Article 8

Examination of the application

The court seised of an application for a European order for payment shall examine, as soon as possible and on the basis of the application form, whether the requirements set out in Articles 2, 3, 4, 6 and 7 are met and whether the claim appears to be founded. This examination may take the form of an automated procedure.

Article 9

Completion and rectification

1. If the requirements set out in Article 7 are not met and unless the claim is clearly unfounded or the application is inadmissible, the court shall give the claimant the opportunity to complete or rectify the application. The court shall use standard form B as set out in Annex II.

2. Where the court requests the claimant to complete or rectify the application, it shall specify a time limit it deems appropriate in the circumstances. The court may at its discretion extend that time limit.

Article 10

Modification of the application

1. If the requirements referred to in Article 8 are met for only part of the claim, the court shall inform the claimant to that effect, using standard form C as set out in Annex III. The claimant shall be invited to accept or refuse a proposal for a European order for payment for the amount specified by the court and shall be informed of the consequences of his decision. The claimant shall reply by returning standard form C sent by the court within a time limit specified by the court in accordance with Article 9(2).

2. If the claimant accepts the court's proposal, the court shall issue a European order for payment, in accordance with Article 12, for that part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim shall be governed by national law.

3. If the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, the court shall reject the application for a European order for payment in its entirety.

Article 11

Rejection of the application

1. The court shall reject the application if:

(a) the requirements set out in Articles 2, 3, 4, 6 and 7 are not met;

or

(b) the claim is clearly unfounded;

or

(c) the claimant fails to send his reply within the time limit specified by the court under Article 9(2);

or

(d) the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, in accordance with Article 10.

The claimant shall be informed of the grounds for the rejection by means of standard form D as set out in Annex IV.

⁽¹⁾ OJ L 13, 19.1.2000, p. 12.

2. There shall be no right of appeal against the rejection of the application.

3. The rejection of the application shall not prevent the claimant from pursuing the claim by means of a new application for a European order for payment or of any other procedure available under the law of a Member State.

Article 12

Issue of a European order for payment

1. If the requirements referred to in Article 8 are met, the court shall issue, as soon as possible and normally within 30 days of the lodging of the application, a European order for payment using standard form E as set out in Annex V.

The 30-day period shall not include the time taken by the claimant to complete, rectify or modify the application.

2. The European order for payment shall be issued together with a copy of the application form. It shall not comprise the information provided by the claimant in Appendices 1 and 2 to form A.

3. In the European order for payment, the defendant shall be advised of his options to:

(a) pay the amount indicated in the order to the claimant;

or

(b) oppose the order by lodging with the court of origin a statement of opposition, to be sent within 30 days of service of the order on him.

4. In the European order for payment, the defendant shall be informed that:

(a) the order was issued solely on the basis of the information which was provided by the claimant and was not verified by the court;

(b) the order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16;

(c) where a statement of opposition is lodged, the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.

5. The court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15.

Article 13

Service with proof of receipt by the defendant

The European order for payment may be served on the defendant in accordance with the national law of the State in which the service is to be effected, by one of the following methods:

(a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the defendant;

(b) personal service attested by a document signed by the competent person who effected the service stating that the defendant has received the document or refused to receive it without any legal justification, and the date of service;

(c) postal service attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant;

(d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant.

Article 14

Service without proof of receipt by the defendant

1. The European order for payment may also be served on the defendant in accordance with the national law of the State in which service is to be effected, by one of the following methods:

(a) personal service at the defendant's personal address on persons who are living in the same household as the defendant or are employed there;

(b) in the case of a self-employed defendant or a legal person, personal service at the defendant's business premises on persons who are employed by the defendant;

(c) deposit of the order in the defendant's mailbox;

(d) deposit of the order at a post office or with competent public authorities and the placing in the defendant's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits;

(e) postal service without proof pursuant to paragraph 3 where the defendant has his address in the Member State of origin;

(f) electronic means attested by an automatic confirmation of delivery, provided that the defendant has expressly accepted this method of service in advance.

2. For the purposes of this Regulation, service under paragraph 1 is not admissible if the defendant's address is not known with certainty.

3. Service pursuant to paragraph 1(a), (b), (c) and (d) shall be attested by:

(a) a document signed by the competent person who effected the service, indicating:

(i) the method of service used;

and

(ii) the date of service;

and

(iii) where the order has been served on a person other than the defendant, the name of that person and his relation to the defendant;

or

(b) an acknowledgement of receipt by the person served, for the purposes of paragraphs (1)(a) and (b).

Article 15

Service on a representative

Service pursuant to Articles 13 or 14 may also be effected on a defendant's representative.

Article 16

Opposition to the European order for payment

1. The defendant may lodge a statement of opposition to the European order for payment with the court of origin using standard form F as set out in Annex VI, which shall be supplied to him together with the European order for payment.

2. The statement of opposition shall be sent within 30 days of service of the order on the defendant.

3. The defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this.

4. The statement of opposition shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin.

5. The statement of opposition shall be signed by the defendant or, where applicable, by his representative. Where the statement of opposition is submitted in electronic form in accordance with paragraph 4, it shall be signed in accordance with Article 2(2) of Directive 1999/93/EC. The signature shall be recognised in the Member State of origin and may not be made subject to additional requirements.

However, such electronic signature shall not be required if and to the extent that an alternative electronic communications system exists in the courts of the Member State of origin which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner. Member States shall inform the Commission of such communications systems.

Article 17

Effects of the lodging of a statement of opposition

1. If a statement of opposition is entered within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.

Where the claimant has pursued his claim through the European order for payment procedure, nothing under national law shall prejudice his position in subsequent ordinary civil proceedings.

2. The transfer to ordinary civil proceedings within the meaning of paragraph 1 shall be governed by the law of the Member State of origin.

3. The claimant shall be informed whether the defendant has lodged a statement of opposition and of any transfer to ordinary civil proceedings.

Article 18

Enforceability

1. If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable using standard form G as set out in Annex VII. The court shall verify the date of service.

2. Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin.

3. The court shall send the enforceable European order for payment to the claimant.

*Article 19***Abolition of exequatur**

A European order for payment which has become enforceable in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

*Article 20***Review in exceptional cases**

1. After the expiry of the time limit laid down in Article 16(2) the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where:

- (a) (i) the order for payment was served by one of the methods provided for in Article 14,

and

- (ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part,

or

- (b) the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

2. After expiry of the time limit laid down in Article 16(2) the defendant shall also be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances.

3. If the court rejects the defendant's application on the basis that none of the grounds for review referred to in paragraphs 1 and 2 apply, the European order for payment shall remain in force.

If the court decides that the review is justified for one of the reasons laid down in paragraphs 1 and 2, the European order for payment shall be null and void.

*Article 21***Enforcement**

1. Without prejudice to the provisions of this Regulation, enforcement procedures shall be governed by the law of the Member State of enforcement.

A European order for payment which has become enforceable shall be enforced under the same conditions as an enforceable decision issued in the Member State of enforcement.

2. For enforcement in another Member State, the claimant shall provide the competent enforcement authorities of that Member State with:

- (a) a copy of the European order for payment, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity;

and

- (b) where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States.

3. No security, bond or deposit, however described, shall be required of a claimant who in one Member State applies for enforcement of a European order for payment issued in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

*Article 22***Refusal of enforcement**

1. Enforcement shall, upon application by the defendant, be refused by the competent court in the Member State of enforcement if the European order for payment is irreconcilable with an earlier decision or order previously given in any Member State or in a third country, provided that:

- (a) the earlier decision or order involved the same cause of action between the same parties;

and

- (b) the earlier decision or order fulfils the conditions necessary for its recognition in the Member State of enforcement;

and

- (c) the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.

2. Enforcement shall, upon application, also be refused if and to the extent that the defendant has paid the claimant the amount awarded in the European order for payment.

3. Under no circumstances may the European order for payment be reviewed as to its substance in the Member State of enforcement.

Article 23

Stay or limitation of enforcement

Where the defendant has applied for a review in accordance with Article 20, the competent court in the Member State of enforcement may, upon application by the defendant:

- (a) limit the enforcement proceedings to protective measures;
- or
- (b) make enforcement conditional on the provision of such security as it shall determine;
- or
- (c) under exceptional circumstances, stay the enforcement proceedings.

Article 24

Legal representation

Representation by a lawyer or another legal professional shall not be mandatory:

- (a) for the claimant in respect of the application for a European order for payment;
- (b) for the defendant in respect of the statement of opposition to a European order for payment.

Article 25

Court fees

1. The combined court fees of a European order for payment procedure and of the ordinary civil proceedings that ensue in the event of a statement of opposition to a European order for payment in a Member State shall not exceed the court fees of ordinary civil proceedings without a preceding European order for payment procedure in that Member State.

2. For the purposes of this Regulation, court fees shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law.

Article 26

Relationship with national procedural law

All procedural issues not specifically dealt with in this Regulation shall be governed by national law.

Article 27

Relationship with Regulation (EC) No 1348/2000

This Regulation shall not affect the application of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters ⁽¹⁾.

Article 28

Information relating to service costs and enforcement

Member States shall cooperate to provide the general public and professional circles with information on:

- (a) costs of service of documents;
- and
- (b) which authorities have competence with respect to enforcement for the purposes of applying Articles 21, 22 and 23,

in particular via the European Judicial Network in civil and commercial matters established in accordance with Council Decision 2001/470/EC ⁽²⁾.

Article 29

Information relating to jurisdiction, review procedures, means of communication and languages

1. By 12 June 2008, Member States shall communicate to the Commission:

- (a) which courts have jurisdiction to issue a European order for payment;
- (b) the review procedure and the competent courts for the purposes of the application of Article 20;
- (c) the means of communication accepted for the purposes of the European order for payment procedure and available to the courts;
- (d) languages accepted pursuant to Article 21(2)(b).

⁽¹⁾ OJ L 160, 30.6.2000, p. 37.

⁽²⁾ OJ L 174, 27.6.2001, p. 25.

Member States shall apprise the Commission of any subsequent changes to this information.

2. The Commission shall make the information notified in accordance with paragraph 1 publicly available through publication in the *Official Journal of the European Union* and through any other appropriate means.

Article 30

Amendments to the Annexes

The standard forms set out in the Annexes shall be updated or technically adjusted, ensuring full conformity with the provisions of this Regulation, in accordance with the procedure referred to in Article 31(2).

Article 31

Committee

1. The Commission shall be assisted by the committee established by Article 75 of Regulation (EC) No 44/2001.

2. Where reference is made to this paragraph, Article 5a(1)-(4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The Committee shall adopt its Rules of Procedure.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 12 December 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

Article 32

Review

By 12 December 2013, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European order for payment procedure. That report shall contain an assessment of the procedure as it has operated and an extended impact assessment for each Member State.

To that end, and in order to ensure that best practice in the European Union is duly taken into account and reflects the principles of better legislation, Member States shall provide the Commission with information relating to the cross-border operation of the European order for payment. This information shall cover court fees, speed of the procedure, efficiency, ease of use and the internal payment order procedures of the Member States.

The Commission's report shall be accompanied, if appropriate, by proposals for adaptation.

Article 33

Entry into force

This Regulation shall enter into force on the day following the date of its publication in the *Official Journal of the European Union*.

It shall apply from 12 December 2008, with the exception of Articles 28, 29, 30 and 31 which shall apply from 12 June 2008.

For the Council
The President
M. PEKKARINEN

ANNEX I

Application for a European order for payment Form A Article 7 (1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure	
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Please ensure that you read the guidelines on the last page – they will help you to understand this form!

Please note in particular that this form must be completed in the language or one of the languages accepted by the court to be seised. The form is available in all official languages of the European Union; this may help you fill in the form in the required language.

1. Court Court Address <table style="width: 100%;"> <tr> <td style="width: 33%;">Postal code</td> <td style="width: 33%;">City</td> <td style="width: 33%;">Country</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> </tr> </table>	Postal code	City	Country				<table style="width: 100%;"> <tr> <td style="width: 60%;">Case number (to be completed by the court)</td> <td style="width: 40%; height: 20px;"></td> </tr> <tr> <td colspan="2" style="height: 60px; vertical-align: top;">Received by the court</td> </tr> </table>	Case number (to be completed by the court)		Received by the court	
Postal code	City	Country									
Case number (to be completed by the court)											
Received by the court											

2. Parties and their representatives					
Codes: 01 Claimant		03 Claimant's representative *		05 Claimant's legally authorised representative **	
02 Defendant		04 Defendant's representative *		06 Defendant's legally authorised representative **	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)	
	Address			Postal code	City
					Country
	Phone ***	Fax ***		e-Mail ***	
	Occupation ***			Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)	
	Address			Postal code	City
					Country
	Phone ***	Fax ***		e-Mail ***	
	Occupation ***			Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)	
	Address			Postal code	City
					Country
	Phone ***	Fax ***		e-Mail ***	
	Occupation ***			Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)	
	Address			Postal code	City
					Country
	Phone ***	Fax ***		e-Mail ***	
	Occupation ***			Other details ***	

* e.g. lawyer

** e.g. parent, guardian, managing director

*** optional

3. Grounds for the court's jurisdiction	
Codes:	
01 Domicile of the defendant or co-defendant	07 Domicile of the policyholder, the insured or the beneficiary in insurance matters
02 Place of performance of the obligation in question	08 Domicile of the consumer
03 Place of the harmful event	09 Place where the employee carries out his work
04 Where a dispute arises out of the operations of a branch, agency or other establishment, the place in which the branch, agency or other establishment is situated	10 Place where the business which engaged the employee is situated
05 Domicile of the trust	11 Place where the immovable property is situated
06 Where a dispute arises concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, the place of the court under the authority of which the cargo or freight is or could have been arrested	12 Choice of court agreed by the parties
	13 Domicile of the maintenance creditor
	14 Other (please specify)
Code	Specification only for code 14

4. Cross-border nature of the case				
Codes:				
01 Belgium	06 Spain	11 Lettland	16 The Netherlands	21 Slovakia
02 Czech Republic	07 France	12 Litauen	17 Austria	22 Finland
03 Germany	08 Ireland	13 Luxemburg	18 Poland	23 Sweden
04 Estonia	09 Italy	14 Ungarn	19 Portugal	24 United Kingdom
05 Greece	10 Cyprus	15 Malta	20 Slovenia	25 other (please specify)
Domicile or habitual residence of claimant	Domicile or habitual residence of defendant	Country of the court		

5. Bank details (optional)		
5.1 Payment of court fees by the claimant		
Codes:	01 By bank transfer	02 By credit card
	04 Legal aid	05 Other (please specify)
	03 Collection by court from claimant's bank account	
If you choose code 02 or 03, please fill in the bank details in Appendix 1		
Code	If you choose code 05, please specify	

5.2 Payment by defendant of amount awarded	
Account holder	Bank name (BIC) or other relevant bank code
Account number	International bank account number (IBAN)

EUR	Euro	CYP	Cypriot Pound	CZK	Czech Koruna	EEK	Estonian Kroon	GBP	Pound sterling
HUF	Hungarian Forint	LTN	Lithuanian Litas	LVL	Latvian Lats	MTL	Maltese Lira	PLN	Polish Zloty
SEK	Swedish Krona	SIT	Slovenian Tolars	SKK	Slovak Koruna	Other (according to international banking code)			

6. Principal				Currency	Total value of principal, excluding interest and costs
---------------------	--	--	--	----------	--

The claim relates to (Code 1)

01 Sales contract	10 Contract of service - repair	18 Claims arising from joint ownership of property
02 Rental agreement - movable property	11 Contract of service - brokerage	19 Damages - contract
03 Rental agreement - immovable property	12 Contract of service - other (please specify)	20 Subscription agreement (newspaper, magazine)
04 Rental agreement - commercial lease	13 Building contract	21 Membership fee
05 Contract of service - electricity, gas, water, phone	14 Insurance contract	22 Employment agreement
06 Contract of service - medical services	15 Loan	23 Out-of-court settlement
07 Contract of service - transport	16 Guarantee or other collateral(s)	24 Maintenance agreement
08 Contract of service - legal, tax, technical advice	17 Claims arising from non-contractual obligations if they are subject to an agreement between the parties or an admission of debt (e.g. damages, unjust enrichment)	25 Other (please specify)
09 Contract of service - hotel, restaurant		

Circumstances invoked (Code 2)

30 Non-payment	33 Non-delivery of goods or services	35 Goods or services not in conformity with the order
31 Insufficient payment	34 Delivery of defective goods or poor services	36 Other (please specify)
32 Late payment		

Other details (Code 3)

40 Place of purchase	43 Date of delivery	46 In case of loan, purpose: Consumer credit
41 Place of delivery	44 Type of goods or services concerned	47 In case of loan, purpose: Mortgage credit
42 Date of purchase	45 Address of immovable property	48 Other detail (please specify)

ID	Code 1	Code 2	Code 3	Explanatory statement	Date (or period)	Amount
ID	Code 1	Code 2	Code 3	Explanatory statement	Date (or period)	Amount
ID	Code 1	Code 2	Code 3	Explanatory statement	Date (or period)	Amount
ID	Code 1	Code 2	Code 3	Explanatory statement	Date (or period)	Amount

The claim has been assigned to the claimant by (if applicable)

Surname, first name/Name of company or organisation		Identification code (if applicable)	
Address		Postal code	City
			Country

Additional specifications for claims relating to consumer contracts (if applicable)

The claim concerns matters relating to consumer contracts	If yes, the defendant is the consumer	If yes, the defendant is domiciled within the meaning of Article 59 of Council Regulation (EC) No 44/2001 in the Member State where the court is seised
yes no		
	yes no	yes no

7. Interest							
Codes (please combine number with letter):							
01 Statutory		02 Contractual		03 Capitalisation of interest		04 Interest rate on a loan **	
A per year		B per half year		C per quarter		D per month	
						E Other ***	
ID *	Code	Interest rate (%)	% over base rate (ECB)	on (amount)	Starting from	to	
ID *	Code	Zinssatz (%)	% über dem Basissatz der EZB	auf (Betrag)	Ab	bis	
ID *	Code	Zinssatz (%)	% über dem Basissatz der EZB	auf (Betrag)	Ab	bis	
ID *	Code	Zinssatz (%)	% über dem Basissatz der EZB	auf (Betrag)	Ab	bis	
ID * Please specify in case of Code 6 and/or E							

* Fill in corresponding claim ID ** taken out by the claimant at least in the amount of the principal *** Please specify

8. Contractual penalties (if applicable)	
Amount	Please specify

9. Costs (if applicable)			
Codes:		02 Other (please specify)	
01 Court fees			
Code	Specification only for code 02	Currency	Amount
Code	Specification only for code 02	Currency	Amount
Code	Specification only for code 02	Currency	Amount
Code	Specification only for code 02	Currency	Amount

10. Evidence available in support of the claim				
Codes: 01 Written evidence 02 Oral evidence 03 Expert evidence 04 Inspection of an object or site 05 Other (please specify)				
ID *	Code	Description of evidence	Date (day/month/year)	
ID *	Code	Description of evidence	Date (day/month/year)	
ID *	Code	Description of evidence	Date (day/month/year)	
ID *	Code	Description of evidence	Date (day/month/year)	

* Fill in corresponding claim ID

11. Additional statements and further information (if necessary)

I hereby request the court to order the defendant(s) to pay to the claimant(s) the sum of the above principal plus interest, contractual penalties and costs.		
I declare that to the best of my knowledge and belief the information provided is true.		
I acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin.		
Done at	Date (day/month/year)	Signature and/or stamp

Appendix 1 to the application for a European order for payment

Bank details for the purposes of payment of court fees by the claimant

Code 02 By credit card

03 Collection by court from claimant's bank account

Code	Account holder	Bank name (BIC) or other relevant bank code / Credit card company
Account number / Credit card number		International bank account number (IBAN) / Expiry date and security number of credit card

Appendix 2 to the application for a European order for payment		
Opposition to a transfer to ordinary civil proceedings		
Case number (to be completed if this Appendix is sent to the court separately from the application form)		
Done at	Date (day/month/year)	Signature and/or stamp

GUIDELINES FOR FILLING IN THE APPLICATION FORM**Important information**

This form must be filled in in the language or one of the languages accepted by the court to be seised. Please note that the form is available in all official languages of the European Union; this may help you fill in the form in the required language.

If the defendant lodges an opposition to your claim, proceedings will continue before the competent courts in accordance with the rules of ordinary civil procedure. If you do not wish to continue proceedings in that event, you should also fill in Appendix 2 to this form. This appendix should reach the court before the European order for payment is issued.

If the application concerns a claim against a consumer relating to a consumer contract, it must be lodged with the competent court of the Member State in which the consumer is domiciled. In other cases, the application must be lodged with the court having jurisdiction in accordance with the rules of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Information on the rules of jurisdiction can be found on the European Judicial Atlas (http://ec.europa.eu/justice_home/judicialatlascivil/html/index.htm).

Please make sure you duly sign and date the form on the last page.

Guidelines

At the start of each section you will find specific codes that should be inserted, as appropriate, in the relevant boxes.

1. Court When deciding which court to choose, you need to consider the grounds for the court's jurisdiction.

2. Parties and their representatives This field must identify the parties and their representatives, if any, in accordance with the codes indicated on the form. The box [Identification code] should refer, where applicable, to the special number which solicitors have in certain Member States for the purposes of electronic communication with the court (see Art. 7(6), second subparagraph, of Regulation (EC) No 1896/2006), to the registration number for companies or organisations or to any applicable identification number for natural persons. The box [Other details] may contain any other information that helps to identify the person (e.g. date of birth, position of the named person in the company or organisation concerned). If there are more than four parties and/or representatives, please use field [11].

3. Grounds for the court's jurisdiction See 'Important Information' above.

4. Cross-border nature of the case For you to be allowed to use this European order for payment procedure, at least two of the boxes in this field must refer to different States.

5. Bank details (optional) In field [5.1], you may inform the court by what means you intend to pay the court fees. Please note that not all methods of payment in this field are necessarily available at the court to which you are making this application. You should verify which method of payment will be accepted by the court. You can do this by contacting the court concerned or by consulting the website of the European Judicial Network in civil and commercial matters (<http://ec.europa.eu/civiljustice/>). If you choose to pay by credit card or to allow the court to collect the fees from your bank account, you should give the necessary credit card/bank account details in Appendix 1 to this form.

In field [5.2], you may indicate by what means you wish to receive payment from the defendant. If you wish to be paid by bank transfer, please give the necessary bank details.

6. Principal This field must contain a description of the principal and the circumstances forming the basis of the claim in accordance with the codes indicated on the form. You need to use an identification number ('ID') for each claim, numbering them from 1 through 4. Each claim must be specified on the line of the box following the ID number, by filling in the relevant numbers of codes 1, 2, and 3. If you need more space, please use field [11]. The box [Date (or period)] refers, for instance, to the date of the contract or harmful event or to the period of the rent.

7. Interest If interest is demanded, this should be specified for each claim as identified in field [6] in accordance with the codes indicated on the form. The code must contain both the relevant number (first row of the codes) and the letter (second row of the codes). For instance, if the interest rate has been agreed by contract and covers annual periods, the code is 02A. If interest is demanded up to the decision by the court, the last box [to] should be left blank. Code 01 refers to an interest rate laid down by statute. Code 02 refers to an interest rate agreed by the parties. If you use Code 03 (capitalisation of interest), the amount indicated should be the basis for the remainder of the term to be covered. Capitalisation of interest refers to the situation where the accrued interest is added to the principal and is taken into account for purposes of calculating further interest. Please note that in commercial transactions as referred to in Directive 2000/35/EC of 29 June 2000 on combating late payments, the statutory interest rate is the sum of the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question ('the reference rate'), plus at least seven percentage points. For a Member State which is not participating in the third stage of economic and monetary union, the reference rate referred to above is the equivalent rate set at national level (e.g. by the national central bank). In both cases the reference rate in force on the first calendar day of the half-year in question will apply for the following six months (see Art. 3(1)(d) of Directive 2000/35/EC). The 'base rate (ECB)' refers to the interest rate applied by the European Central Bank to its main refinancing operations.

8. Contractual penalties (if applicable)

9. Costs (if applicable) If reimbursement of costs is demanded, these must be described using the codes indicated on the form. The box [specification] must be used only for code 02, i.e. when reimbursement of costs other than court fees is demanded. These other costs could include, for instance, fees of a claimant's representative or prelitigation costs. If you request reimbursement of the court fees but you do not know the exact amount, you must fill in the box [Code] (01) but you may leave the box [Amount] blank and it will be filled in by the court.

10. Evidence available in support of the claim This field must specify the evidence available in support of each claim using the codes indicated on the form. The box [Description of evidence] will contain, for instance, the title, name, date, and/or reference number of the document concerned, the amount mentioned on the document concerned, and/or the name of the witness or expert.

11. Additional statements and further information (if necessary) You may use this field if you need more space for any of the fields above or, if necessary, to provide additional information useful to the court. For instance, if there are several defendants each being liable for a portion of the claim, you should indicate here the amount individually owed by each defendant.

Appendix 1 Here you must indicate the details of your credit card or bank account if you choose to pay the court fees by credit card or if you allow the court to collect the fees from your bank account. Please note that not all methods of payment in this field are necessarily available at the court to which you are making this application. Please note that the information given in Appendix 1 will not be sent to the defendant.

Appendix 2 Here you must inform the court if you do not wish to continue proceedings in the event of the defendant opposing the claim. If you send this information to the court after having sent the application form, please make sure you fill in the case number given by the court. Please note that the information given in Appendix 2 will not be sent to the defendant.

ANNEX II

Request to the claimant to complete and/or rectify an application for a European order for payment**Form B**

Article 9 (1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure



1. Court Court Address Postal code City Country			Case number	
			Done at	Date (day/month/year)
			Signature and/or stamp	

2. Parties and their representatives				
Codes: 01 Claimant		03 Claimant's representative *		05 Claimant's legally authorised representative **
02 Defendant		04 Defendant's representative *		06 Defendant's legally authorised representative **
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation***		Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation***		Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation***		Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation***		Other details ***	

* e.g. lawyer ** e.g. parent, guardian, managing director *** optional

Following the examination of your application for a European order for payment, please complete and/or rectify the attached application as indicated below as soon as possible and in any event by ____/____/____

Your initial application should be completed and/or rectified in the language or in one of the languages accepted by the court seised.

The court will reject the application, under the conditions provided for in the Regulation, if you fail to complete and/or rectify the application within the time limit set out above.

Your application has not been filled in in the correct language. Please fill it in in one of the following languages:

01 Czech	05 Greek	09 Lithuanian	13 Polish	17 Finnish
02 German	06 French	10 Hungarian	14 Portuguese	18 Swedish
03 Estonian	07 Italian	11 Maltese	15 Slovak	19 English
04 Spanish	08 Latvian	12 Dutch	16 Slovene	20 other (please specify)

Language code	Language specification (only for code 20)

The following items must be completed and/or rectified:

Codes:

01 Parties and their representatives	04 Bank details	07 Contractual penalties	10 Additional statements
02 Grounds of jurisdiction	05 Principal	08 Costs	11 Signature
03 Cross border nature of the case	06 Interest	09 Evidence	

Code	Please specify
Code	Please specify
Code	Please specify
Code	Please specify
Code	Please specify

ANNEX III

Proposal to the claimant to modify an application for a European order for payment**Form C**

Article 10 (1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure



1. Court Court Address Postal code City Country			Case number	
			Done at	Date (day/month/year)
			Signature and/or stamp	

2. Parties and their representatives				
Codes: 01 Claimant		03 Claimant's representative *		05 Claimant's legally authorised representative **
02 Defendant		04 Defendant's representative *		06 Defendant's legally authorised representative **
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation ***		Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation ***		Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation ***		Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City Country
	Phone ***	Fax ***	e-Mail ***	
	Beruf ***		Sonstige Angaben ***	
* e.g. lawyer ** e.g. parent, guardian, managing director *** optional				

After examination of your application for a European order for payment, the court considers that the necessary requirements are met for only a part of the claim. Therefore, the court proposes the following modification to the application:

Please send your reply to the court as soon as possible and in any event by ____/____/____

If you fail to send your reply to the court within the time limit set out above or refuse this proposal, the court will reject your application for a European order for payment, under the conditions provided for in the Regulation, in its entirety.

If you accept this proposal, the court will issue a European order for payment for that part of the claim. It depends on the national law of the Member State where the court is seised whether you will be able, in further proceedings, to recover the remaining part of your initial claim not covered by the European order for payment.

<input type="checkbox"/> I accept the above proposal by the court		<input type="checkbox"/> I refuse the above proposal by the court
Done at	Date (day/month/year)	Surname, first name
		Signature and/or stamp

ANNEX IV

Decision to reject the application for a European order for payment**Form D**

Article 11(1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure

**1. Court**

Court

Address

Postal code

City

Country

Case number

Done at

Date (day/month/year)

Signature and/or stamp

2. Parties and their representatives

Codes: 01 Claimant

03 Claimant's representative *

05 Claimant's legally authorised representative **

02 Defendant

04 Defendant's representative *

06 Defendant's legally authorised representative **

Code	Surname, first name/Name of company or organisation	Identification code (if applicable)		
	Address	Postal code	City	Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation ***		Other details ***	
	Address	Postal code	City	Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation ***		Other details ***	
	Address	Postal code	City	Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation ***		Other details ***	
	Address	Postal code	City	Country
	Phone ***	Fax ***	e-Mail ***	
	Occupation ***		Other details ***	


* e.g. lawyer

** e.g. parent, guardian, managing director

*** optional

The court has examined your application for a European order for payment, in accordance with Article 8 of Regulation (EC) No 1896/2006 and rejects it on the following ground(s):	
01 The application does not fall within the scope of Article 2 of the Regulation (Article 11(1)(a)).	
02 The application does not concern a cross-border case within the meaning of Article 3 of the Regulation (Article 11(1)(a)).	
03 The application does not concern a pecuniary claim for a specific amount that has fallen due as referred to in Article 4 of the Regulation (Article 11(1)(a)).	
04 The court does not have jurisdiction in accordance with Article 6 of the Regulation (Article 11(1)(a)).	
05 The application does not fulfil the requirements set out in Article 7 of the Regulation (Article 11(1)(a)).	
06 The claim is clearly unfounded (Article 11(1)(b)).	
07 The application was not completed or rectified within the time limit specified by the court (Article 9(2) and Article 11(1)(c)).	
08 The application was not modified within the time limit specified by the court (Article 10 and Article 11(1)(d)).	
Ground(s) for rejection (please use code)	
Code	Further information, where necessary
Code	Further information, where necessary
Code	Further information, where necessary
Code	Further information, where necessary
There is no right of appeal against this rejection. However, this does not preclude a new application for a European order for payment or any other procedure available under the law of a Member State.	

ANNEX V

European order for payment						
Form E					Article 12 (1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure	

1. Court					
Court					
Address					
Postal code	City			Country	

Case number			
Done at	Date (day/month/year)		
Signature and/or stamp			

2. Parties and their representatives					
Codes: 01 Claimant		03 Claimant's representative *		05 Claimant's legally authorised representative **	
02 Defendant		04 Defendant's representative *		06 Defendant's legally authorised representative **	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)	
	Address		Postal code	City	Country
	Phone ***		Fax ***		e-Mail ***
	Occupation ***		Other details ***		
	Code		Surname, first name/Name of company or organisation		
Identification code (if applicable)					
	Address		Postal code	City	Country
	Phone ***		Fax ***		e-Mail ***
	Occupation ***		Other details ***		
	Code		Surname, first name/Name of company or organisation		
Identification code (if applicable)					
	Address		Postal code	City	Country
	Phone ***		Fax ***		e-Mail ***
	Occupation ***		Other details ***		
	Code		Surname, first name/Name of company or organisation		
Identification code (if applicable)					
	Address		Postal code	City	Country
	Phone ***		Fax ***		e-Mail ***
	Occupation ***		Other details ***		
	Code		Surname, first name/Name of company or organisation		
Identification code (if applicable)					
	Address		Postal code	City	Country
	Phone ***		Fax ***		e-Mail ***
	Occupation ***		Other details ***		
	Code		Surname, first name/Name of company or organisation		
Identification code (if applicable)					
* e.g. lawyer ** e.g. parent, guardian, managing director *** optional					

EUR	Euro	CYP	Cypriot Pound	CZK	Czech Koruna	EEK	Estonian Kroon	GBP	Pound sterling
HUF	Hungarian Forint	LTN	Lithuanian Litas	LVL	Latvian Lats	MTL	Maltese Lira	PLN	Polish Zloty
SEK	Swedish Krona	SIT	Slovenian Tolars	SKK	Slovak Koruna	Other (according to international banking code)			

In accordance with Article 12 of Regulation (EC) No 1896/2006, the court has issued this European order for payment on the basis of the attached application. By virtue of this decision, you are ordered to pay the claimant the following amount:

Defendant 1	Currency	Amount	Date (day/month/year)
Surname, first name/Name of company or organisation			
Principal			
Interest (as of)			
Contractual penalties			
Costs			
Total amount			
Defendant 2	Currency	Amount	Date (day/month/year)
Surname, first name/Name of company or organisation			
Principal			
Interest (as of)			
Contractual penalties			
Costs			
Total amount			
<input type="checkbox"/> Joint liability			

IMPORTANT INFORMATION FOR THE DEFENDANT**You are hereby advised that:**

- a. You have the option to:
- i. pay the amount indicated in this order to the claimant; or
 - ii. oppose the order by lodging a statement of opposition with the court that issued this order within the time limit indicated in (b);
- b. The statement of opposition must be sent to the court within 30 days of service of this order on you. This 30-day period starts on the day following that on which this order was served. This period includes Saturdays, Sundays and public holidays. Where the last day of such a period is a Saturday, a Sunday or a public holiday, the period will expire on the following working day (see Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 *). The public holidays to be taken into account are those of the Member State where the court is situated;
- c. This order has been issued solely on the basis of the information provided by the claimant. That information has not been verified by the court;
- d. This order will become enforceable unless a statement of opposition has been lodged with the court within the time limit indicated in (b);
- e. Where a statement of opposition is lodged, the proceedings will continue before the competent courts of the Member State where this order was issued in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.

* OJ L 124, 8.6.1971, p. 1 (de, fr, it, nl).

English special edition: Series I Chapter 1971(II), p. 354.


Greek special edition: Chapter 01 Volume 1, p. 131.

Portuguese and Spanish special editions: Chapter 01 Volume 1, p. 149.

Finnish and Swedish special editions: Chapter 1 Volume 1, p. 71.

Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovene special editions: Chapter 01 Volume 1, p. 51.

ANNEX VI

Opposition to a European order for payment Form F Article 16 (1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure	
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1. Court		
Court		
Address		
Postal code	Ort	Land

Case number (to be completed by the court)	
Received by the court	

2. Parties and their representatives				
Codes: 01 Claimant		03 Claimant's representative *		05 Claimant's legally authorised representative **
02 Defendant		04 Defendant's representative *		06 Defendant's legally authorised representative **
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City
				Country
	Phone ***	Fax ***		e-Mail ***
	Occupation ***		Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City
				Country
	Phone ***	Fax ***		e-Mail ***
	Occupation ***		Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City
				Country
	Phone ***	Fax ***		e-Mail ***
	Occupation ***		Other details ***	
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City
				Country
	Phone ***	Fax ***		e-Mail ***
	Occupation ***		Other details ***	
* e.g. lawyer ** e.g. parent, guardian, managing director *** optional				

I hereby lodge a statement of opposition against the European order for payment issued on ____/____/____		
Done at	Date (day/month/year)	Surname, first name
		Signature and/or stamp

ANNEX VII

Declaration of enforceability Form G Article 18(1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure		
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1. Court		
Court		
Address		
Postal code	City	Country

Case number	
Done at	Date (day/month/year)
Signature and/or stamp	

2. Parties and their representatives				
Codes: 01 Claimant		03 Claimant's representative *		05 Claimant's legally authorised representative **
02 Defendant		04 Defendant's representative *		06 Defendant's legally authorised representative **
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City
				Country
	Phone ***	Fax ***	e-Mail ***	
Occupation ***		Other details ***		
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City
				Country
	Phone ***	Fax ***	e-Mail ***	
Occupation ***		Other details ***		
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City
				Country
	Phone ***	Fax ***	e-Mail ***	
Occupation ***		Other details ***		
Code	Surname, first name/Name of company or organisation			Identification code (if applicable)
	Address		Postal code	City
				Country
	Phone ***	Fax ***	e-Mail ***	
Occupation ***		Other details ***		
*e.g. lawyer ** e.g. parent, guardian, managing director *** optional				

The court hereby declares that the attached European order for payment, issued on ____/____/____ and served on ____/____/____ is enforceable in accordance with Article 18 of Regulation (EC) No 1896/2006.

Important information

This European order for payment is automatically enforceable in all Member States of the European Union except Denmark, without the need for an additional declaration of enforceability in the Member State where enforcement is sought and without any possibility of opposing its recognition. The enforcement procedures are governed by the law of the Member State of enforcement, except where the Regulation provides otherwise.

3e

Regulation (EC) No 861/2007
of the European Parliament and of the
Council of 11 July 2007 establishing
a European Small Claims Procedure



I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

REGULATION (EC) No 861/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 July 2007
establishing a European Small Claims Procedure

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, *inter alia*, measures in the field of judicial cooperation in civil matters having cross-border implications and needed for the proper functioning of the internal market.
- (2) According to Article 65(c) of the Treaty, those measures are to include those eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.
- (3) In this respect, the Community has, among other measures, already adopted Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the

Member States of judicial and extrajudicial documents in civil or commercial matters ⁽³⁾, Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽⁴⁾, Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters ⁽⁵⁾, Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims ⁽⁶⁾ and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure ⁽⁷⁾.

- (4) The European Council meeting in Tampere on 15 and 16 October 1999 invited the Council and the Commission to establish common procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims.
- (5) On 30 November 2000, the Council adopted a joint programme of the Commission and the Council of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters ⁽⁸⁾. The programme refers to simplifying and speeding up the settlement of cross-border litigation on small claims. This was taken forward by the Hague Programme ⁽⁹⁾, adopted by the European Council on 5 November 2004, which called for work on small claims to be actively pursued.

⁽³⁾ OJ L 160, 30.6.2000, p. 37.

⁽⁴⁾ OJ L 12, 16.1.2001, p. 1. Regulation as amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽⁵⁾ OJ L 174, 27.6.2001, p. 25.

⁽⁶⁾ OJ L 143, 30.4.2004, p. 15. Regulation as amended by Commission Regulation (EC) No 1869/2005 (OJ L 300, 17.11.2005, p. 6).

⁽⁷⁾ OJ L 399, 30.12.2006, p. 1.

⁽⁸⁾ OJ C 12, 15.1.2001, p. 1.

⁽⁹⁾ OJ C 53, 3.3.2005, p. 1.

⁽¹⁾ OJ C 88, 11.4.2006, p. 61.

⁽²⁾ Opinion of the European Parliament of 14 December 2006 (not yet published in the Official Journal) and Council Decision of 13 June 2007.

- (6) On 20 December 2002, the Commission adopted a Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation. The Green Paper launched a consultation on measures concerning the simplification and the speeding up of small claims litigation.
- (7) Many Member States have introduced simplified civil procedures for small claims since costs, delays and complexities connected with litigation do not necessarily decrease proportionally with the value of the claim. The obstacles to obtaining a fast and inexpensive judgment are exacerbated in cross-border cases. It is therefore necessary to establish a European procedure for small claims (European Small Claims Procedure). The objective of such a procedure should be to facilitate access to justice. The distortion of competition within the internal market due to imbalances with regard to the functioning of the procedural means afforded to creditors in different Member States entails the need for Community legislation that guarantees a level playing-field for creditors and debtors throughout the European Union. It should be necessary to have regard to the principles of simplicity, speed and proportionality when setting the costs of dealing with a claim under the European Small Claims Procedure. It is appropriate that details of the costs to be charged be made public, and that the means of setting any such costs be transparent.
- (8) The European Small Claims Procedure should simplify and speed up litigation concerning small claims in cross-border cases, whilst reducing costs, by offering an optional tool in addition to the possibilities existing under the laws of the Member States, which will remain unaffected. This Regulation should also make it simpler to obtain the recognition and enforcement of a judgment given in the European Small Claims Procedure in another Member State.
- (9) This Regulation seeks to promote fundamental rights and takes into account, in particular, the principles recognised by the Charter of Fundamental Rights of the European Union. The court or tribunal should respect the right to a fair trial and the principle of an adversarial process, in particular when deciding on the necessity of an oral hearing and on the means of taking evidence and the extent to which evidence is to be taken.
- (10) For the purposes of facilitating calculation of the value of a claim, all interest, expenses and disbursements should be disregarded. This should affect neither the power of the court or tribunal to award these in its judgment nor the national rules on the calculation of interest.
- (11) In order to facilitate the commencement of the European Small Claims Procedure, the claimant should make an application by filling in a standard claim form and lodging it with the court or tribunal. The claim form should be submitted only to a court or tribunal that has jurisdiction.
- (12) The claim form should be accompanied, where appropriate, by any relevant supporting documents. However, this does not prevent the claimant from submitting, where appropriate, further evidence during the procedure. The same principle should apply to the response by the defendant.
- (13) The concepts of 'clearly unfounded' in the context of the dismissal of a claim and of 'inadmissible' in the context of the dismissal of an application should be determined in accordance with national law.
- (14) The European Small Claims Procedure should be a written procedure, unless an oral hearing is considered necessary by the court or tribunal or a party so requests. The court or tribunal may refuse such a request. Such refusal may not be contested separately.
- (15) The parties should not be obliged to be represented by a lawyer or another legal professional.
- (16) The concept of 'counterclaim' should be interpreted within the meaning of Article 6(3) of Regulation (EC) No 44/2001 as arising from the same contract or facts on which the original claim was based. Articles 2 and 4 as well as Article 5(3), (4) and (5) should apply, *mutatis mutandis*, to counterclaims.
- (17) In cases where the defendant invokes a right of set-off during the proceedings, such claim should not constitute a counterclaim for the purposes of this Regulation. Therefore, the defendant should not be obliged to use standard Form A, as set out in Annex I, for invoking such a right.
- (18) The Member State addressed for the purposes of the application of Article 6 is the Member State where service is to be effected or to where the document is to be dispatched. In order to reduce costs and delays, documents should be served on the parties primarily by postal service attested by an acknowledgment of receipt, including the date of receipt.
- (19) A party may refuse to accept a document at the time of service or by returning the document within one week if it is not written in, or accompanied by a translation into, the official language of the Member State addressed (or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched) or a language which the addressee understands.

- (20) In the context of oral hearings and the taking of evidence, the Member States should encourage the use of modern communication technology subject to the national law of the Member State where the court or tribunal is situated. The court or tribunal should use the simplest and least costly method of taking evidence.
- (21) The practical assistance to be made available to the parties should include technical information concerning the availability and the filling in of the forms.
- (22) The information about procedural questions can also be given by the court or tribunal staff in accordance with national law.
- (23) As the objective of this Regulation is to simplify and speed up litigation concerning small claims in cross-border cases, the court or tribunal should act as soon as possible even when this Regulation does not prescribe any time limit for a specific phase of the procedure.
- (24) For the purposes of calculating time limits as provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits ⁽¹⁾ should apply.
- (25) In order to speed up the recovery of small claims, the judgment should be enforceable notwithstanding any possible appeal and without the condition of the provision of a security except as provided for in this Regulation.
- (26) Any reference in this Regulation to an appeal should include any possible means of appeal available under national law.
- (27) The court or tribunal must include a person qualified to serve as a judge in accordance with national law.
- (28) Whenever the court or tribunal is required to set a time limit, the party concerned should be informed of the consequences of not complying with it.
- (29) The unsuccessful party should bear the costs of the proceedings. The costs of the proceedings should be determined in accordance with national law. Having regard to the objectives of simplicity and cost-effectiveness, the court or tribunal should order that an unsuccessful party be obliged to pay only the costs of the proceedings, including for example any costs resulting from the fact that the other party was represented by a lawyer or another legal professional, or any costs arising from the service or translation of documents, which are proportionate to the value of the claim or which were necessarily incurred.
- (30) In order to facilitate recognition and enforcement, a judgment given in a Member State in the European Small Claims Procedure should be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.
- (31) There should be minimum standards for the review of a judgment in situations where the defendant was not able to contest the claim.
- (32) Having regard to the objectives of simplicity and cost-effectiveness, the party seeking enforcement shall not be required to have an authorised representative or a postal address in the Member State of enforcement, other than with agents having competence for the enforcement procedure in accordance with the national law of that Member State.
- (33) Chapter III of this Regulation should also apply to the determination of costs and expenses made by officers of the court or tribunal due to a judgment given pursuant to the procedure specified in this Regulation.
- (34) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (35) In particular, power should be conferred on the Commission to adopt measures necessary to update or make technical amendments to the forms set out in the Annexes. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation and/or to supplement this Regulation by the addition of new non-essential elements, they should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (36) Since the objectives of this Regulation, namely, the establishment of a procedure to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

⁽¹⁾ OJ L 124, 8.6.1971, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

(37) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation.

(38) 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 establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND SCOPE

Article 1

Subject matter

This Regulation establishes a European procedure for small claims (hereinafter referred to as the European Small Claims Procedure), intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. The European Small Claims Procedure shall be available to litigants as an alternative to the procedures existing under the laws of the Member States.

This Regulation also eliminates the intermediate proceedings necessary to enable recognition and enforcement, in other Member States, of judgments given in one Member State in the European Small Claims Procedure.

Article 2

Scope

1. This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta jure imperii*).

2. This Regulation shall not apply to matters concerning:

(a) the status or legal capacity of natural persons;

(b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession;

(c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

(d) social security;

(e) arbitration;

(f) employment law;

(g) tenancies of immovable property, with the exception of actions on monetary claims; or

(h) violations of privacy and of rights relating to personality, including defamation.

3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.

Article 3

Cross-border cases

1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised.

2. Domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.

3. The relevant moment for determining whether there is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction.

CHAPTER II

THE EUROPEAN SMALL CLAIMS PROCEDURE

Article 4

Commencement of the Procedure

1. The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Annex I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced. The claim form shall include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.

2. Member States shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available.

3. Where a claim is outside the scope of this Regulation, the court or tribunal shall inform the claimant to that effect. Unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.

4. Where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear or if the claim form is not filled in properly, it shall, unless the claim appears to be clearly unfounded or the application inadmissible, give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies. The court or tribunal shall use standard Form B, as set out in Annex II, for this purpose.

Where the claim appears to be clearly unfounded or the application inadmissible or where the claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed.

5. Member States shall ensure that the claim form is available at all courts and tribunals at which the European Small Claims Procedure can be commenced.

Article 5

Conduct of the Procedure

1. The European Small Claims Procedure shall be a written procedure. The court or tribunal shall hold an oral hearing if it considers this to be necessary or if a party so requests. The court or tribunal may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair conduct of the proceedings. The reasons for refusal shall be given in writing. The refusal may not be contested separately.

2. After receiving the properly filled in claim form, the court or tribunal shall fill in Part I of the standard answer Form C, as set out in Annex III.

A copy of the claim form, and, where applicable, of the supporting documents, together with the answer form thus filled in, shall be served on the defendant in accordance with Article 13. These documents shall be dispatched within 14 days of receiving the properly filled in claim form.

3. The defendant shall submit his response within 30 days of service of the claim form and answer form, by filling in Part II of standard answer Form C, accompanied, where appropriate, by any relevant supporting documents, and returning it to the court or tribunal, or in any other appropriate way not using the answer form.

4. Within 14 days of receipt of the response from the defendant, the court or tribunal shall dispatch a copy thereof, together with any relevant supporting documents to the claimant.

5. If, in his response, the defendant claims that the value of a non-monetary claim exceeds the limit set out in Article 2(1), the court or tribunal shall decide within 30 days of dispatching the response to the claimant, whether the claim is within the scope of this Regulation. Such decision may not be contested separately.

6. Any counterclaim, to be submitted using standard Form A, and any relevant supporting documents shall be served on the claimant in accordance with Article 13. Those documents shall be dispatched within 14 days of receipt.

The claimant shall have 30 days from service to respond to any counterclaim.

7. If the counterclaim exceeds the limit set out in Article 2(1), the claim and counterclaim shall not proceed in the European Small Claims Procedure but shall be dealt with in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.

Articles 2 and 4 as well as paragraphs 3, 4 and 5 of this Article shall apply, *mutatis mutandis*, to counterclaims.

Article 6

Languages

1. The claim form, the response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents shall be submitted in the language or one of the languages of the court or tribunal.

2. If any other document received by the court or tribunal is not in the language in which the proceedings are conducted, the court or tribunal may require a translation of that document only if the translation appears to be necessary for giving the judgment.

3. Where a party has refused to accept a document because it is not in either of the following languages:

(a) the official language of the Member State addressed, or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched; or

(b) a language which the addressee understands,

the court or tribunal shall so inform the other party with a view to that party providing a translation of the document.

*Article 7***Conclusion of the Procedure**

1. Within 30 days of receipt of the response from the defendant or the claimant within the time limits laid down in Article 5(3) or (6), the court or tribunal shall give a judgment, or:

- (a) demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days;
- (b) take evidence in accordance with Article 9; or
- (c) summon the parties to an oral hearing to be held within 30 days of the summons.

2. The court or tribunal shall give the judgment either within 30 days of any oral hearing or after having received all information necessary for giving the judgment. The judgment shall be served on the parties in accordance with Article 13.

3. If the court or tribunal has not received an answer from the relevant party within the time limits laid down in Article 5(3) or (6), it shall give a judgment on the claim or counterclaim.

*Article 8***Oral hearing**

The court or tribunal may hold an oral hearing through video conference or other communication technology if the technical means are available.

*Article 9***Taking of evidence**

1. The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties. It may also admit the taking of evidence through video conference or other communication technology if the technical means are available.

2. The court or tribunal may take expert evidence or oral testimony only if it is necessary for giving the judgment. In making its decision, the court or tribunal shall take costs into account.

3. The court or tribunal shall use the simplest and least burdensome method of taking evidence.

*Article 10***Representation of parties**

Representation by a lawyer or another legal professional shall not be mandatory.

*Article 11***Assistance for the parties**

The Member States shall ensure that the parties can receive practical assistance in filling in the forms.

*Article 12***Remit of the court or tribunal**

1. The court or tribunal shall not require the parties to make any legal assessment of the claim.

2. If necessary, the court or tribunal shall inform the parties about procedural questions.

3. Whenever appropriate, the court or tribunal shall seek to reach a settlement between the parties.

*Article 13***Service of documents**

1. Documents shall be served by postal service attested by an acknowledgement of receipt including the date of receipt.

2. If service in accordance with paragraph 1 is not possible, service may be effected by any of the methods provided for in Articles 13 or 14 of Regulation (EC) No 805/2004.

*Article 14***Time limits**

1. Where the court or tribunal sets a time limit, the party concerned shall be informed of the consequences of not complying with it.

2. The court or tribunal may extend the time limits provided for in Article 4(4), Article 5(3) and (6) and Article 7(1), in exceptional circumstances, if necessary in order to safeguard the rights of the parties.

3. If, in exceptional circumstances, it is not possible for the court or tribunal to respect the time limits provided for in Article 5(2) to (6) and Article 7, it shall take the steps required by those provisions as soon as possible.

*Article 15***Enforceability of the judgment**

1. The judgment shall be enforceable notwithstanding any possible appeal. The provision of a security shall not be required.

2. Article 23 shall also apply in the event that the judgment is to be enforced in the Member State where the judgment was given.

Article 16

Costs

The unsuccessful party shall bear the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

Article 17

Appeal

1. Member States shall inform the Commission whether an appeal is available under their procedural law against a judgment given in the European Small Claims Procedure and within what time limit such appeal shall be lodged. The Commission shall make that information publicly available.

2. Article 16 shall apply to any appeal.

Article 18

Minimum standards for review of the judgment

1. The defendant shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the court or tribunal with jurisdiction of the Member State where the judgment was given where:

- (a) (i) the claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally, as provided for in Article 14 of Regulation (EC) No 805/2004; and
 - (ii) service was not effected in sufficient time to enable him to arrange for his defence without any fault on his part,
- or
- (b) the defendant was prevented from objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

2. If the court or tribunal rejects the review on the basis that none of the grounds referred to in paragraph 1 apply, the judgment shall remain in force.

If the court or tribunal decides that the review is justified for one of the reasons laid down in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void.

Article 19

Applicable procedural law

Subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted.

CHAPTER III

RECOGNITION AND ENFORCEMENT IN ANOTHER MEMBER STATE

Article 20

Recognition and enforcement

1. A judgment given in a Member State in the European Small Claims Procedure shall be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

2. At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost.

Article 21

Enforcement procedure

1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement.

Any judgment given in the European Small Claims Procedure shall be enforced under the same conditions as a judgment given in the Member State of enforcement.

2. The party seeking enforcement shall produce:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- (b) a copy of the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European Small Claims Procedure. The content of Form D shall be translated by a person qualified to make translations in one of the Member States.

3. The party seeking the enforcement of a judgment given in the European Small Claims Procedure in another Member State shall not be required to have:

- (a) an authorised representative; or
- (b) a postal address

in the Member State of enforcement, other than with agents having competence for the enforcement procedure.

4. No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in the European Small Claims Procedure in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

Article 22

Refusal of enforcement

1. Enforcement shall, upon application by the person against whom enforcement is sought, be refused by the court or tribunal with jurisdiction in the Member State of enforcement if the judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

- (a) the earlier judgment involved the same cause of action and was between the same parties;
- (b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- (c) the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given.

2. Under no circumstances may a judgment given in the European Small Claims Procedure be reviewed as to its substance in the Member State of enforcement.

Article 23

Stay or limitation of enforcement

Where a party has challenged a judgment given in the European Small Claims Procedure or where such a challenge is still possible, or where a party has made an application for review within the meaning of Article 18, the court or tribunal with jurisdiction or the competent authority in the Member State of enforcement may, upon application by the party against whom enforcement is sought:

- (a) limit the enforcement proceedings to protective measures;
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) under exceptional circumstances, stay the enforcement proceedings.

CHAPTER IV

FINAL PROVISIONS

Article 24

Information

The Member States shall cooperate to provide the general public and professional circles with information on the European Small Claims Procedure, including costs, in particular by way of the European Judicial Network in Civil and Commercial Matters established in accordance with Decision 2001/470/EC.

Article 25

Information relating to jurisdiction, means of communication and appeals

1. By 1 January 2008 the Member States shall communicate to the Commission:

- (a) which courts or tribunals have jurisdiction to give a judgment in the European Small Claims Procedure;
- (b) which means of communication are accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1);
- (c) whether an appeal is available under their procedural law in accordance with Article 17 and with which court or tribunal this may be lodged;
- (d) which languages are accepted pursuant to Article 21(2)(b); and
- (e) which authorities have competence with respect to enforcement and which authorities have competence for the purposes of the application of Article 23.

Member States shall apprise the Commission of any subsequent changes to this information.

2. The Commission shall make the information notified in accordance with paragraph 1 publicly available through publication in the *Official Journal of the European Union* and through any other appropriate means.

Article 26

Implementing measures

The measures designed to amend non-essential elements of this Regulation, including by supplementing it, relating to updates or technical amendments to the forms in the Annexes shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2).

*Article 27***Committee**

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

*Article 28***Review**

By 1 January 2014, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European Small Claims Procedure, including the limit of the value of the claim referred to in Article 2(1). That report shall contain an assessment of the procedure as it has operated and an extended impact assessment for each Member State.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 11 July 2007.

For the European Parliament
The President
H.-G. PÖTTERING

To that end and in order to ensure that best practice in the European Union is duly taken into account and reflects the principles of better legislation, Member States shall provide the Commission with information relating to the cross-border operation of the European Small Claims Procedure. This information shall cover court fees, speed of the procedure, efficiency, ease of use and the internal small claims procedures of the Member States.

The Commission's report shall be accompanied, if appropriate, by proposals for adaptation.

*Article 29***Entry into force**

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2009, with the exception of Article 25, which shall apply from 1 January 2008.

For the Council
The President
M. LOBO ANTUNES

ANNEX I

EUROPEAN SMALL CLAIMS PROCEDURE

FORM A

CLAIM FORM

(Article 4(1) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

Case number (*):

Received by the court/tribunal on: ____/____/____ (*)

(*) To be filled in by the court/tribunal.

IMPORTANT INFORMATION

PLEASE READ THE GUIDELINES AT THE BEGINNING OF EACH SECTION – THEY WILL HELP YOU TO FILL IN THIS FORM

Language

Fill in this form in the language of the court/tribunal to which you are sending your application. Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm. This may help you in filling in the form in the required language.

Supporting documents

Please note that the claim form should be accompanied, where appropriate, by any relevant supporting documents. However, this does not prevent you from submitting, where appropriate, further evidence during the procedure.

A copy of the claim form and, where appropriate, of the supporting documents, will be served on the defendant. The defendant will have an opportunity to submit a response.

1. Court/tribunal

In this field you should identify the court/tribunal before which you are making your claim. When deciding which court/tribunal to choose, you need to consider the grounds for the court's/tribunal's jurisdiction. A non-exhaustive list of possible grounds of jurisdiction is included in section 4.

1. Before which court/tribunal are you making your claim?

1.1. Name:

1.2. Street and number/PO box:

1.3. City and postal code:

1.4. Country:

2. Claimant

This field must identify you as the claimant and your representative, if any. Please note that it is not mandatory to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a PO Box as the address and you should therefore include the street name and number with a postcode. Failure to do so may result in the document not being served.

'Other details' may contain information that helps to identify you, for example, your date of birth, occupation, position in the company, personal ID code and the company registry code in certain Member States.

Where there is more than one claimant, please use additional sheets.

2. The claimant's details

- 2.1. Surname, first name/name of company or organisation:
- 2.2. Street and number/PO box:
- 2.3. City and postal code:
- 2.4. Country:
- 2.5. Telephone (*):
- 2.6. E-mail (*):
- 2.7. Claimant's representative, if any, and contact details (*):
- 2.8. Other details (*):

3. Defendant

In this field you should identify the defendant and, if known, his representative. Please note that it is not mandatory for the defendant to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a P.O. Box as the address and therefore you should include the street name and number with a postcode. Failure to do so may result in the document not being served.

'Other details' may contain information that helps to identify the person, for example the date of birth, occupation, position in the company, personal ID code and company registry code in certain Member States. If there is more than one defendant, please use additional sheets.

3. The defendant's details

- 3.1. Surname, first name/name of company or organisation:
- 3.2. Street and number/PO box:
- 3.3. City and postal code:
- 3.4. Country:
- 3.5. Telephone (*):
- 3.6. E-mail (*):
- 3.7. Defendant's representative, if known, and contact details (*):
- 3.8. Other details (*):

4. Jurisdiction

Your application must be lodged with the court/tribunal that has jurisdiction to deal with it. The court/tribunal must have jurisdiction in accordance with the rules of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

This section includes a non-exhaustive list of possible grounds for jurisdiction.

Information on the rules of jurisdiction can be found on the website of the European Judicial Atlas at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm.

You can also look at http://ec.europa.eu/civiljustice/glossary/glossary_en.htm for an explanation of some of the legal terms employed.

(*) Optional.

4. On what ground do you consider the court/tribunal to have jurisdiction?

- 4.1. Domicile of the defendant ☐
- 4.2. Domicile of the consumer ☐
- 4.3. Domicile of the policyholder, the insured or the beneficiary in insurance matters ☐
- 4.4. Place of performance of the obligation in question ☐
- 4.5. Place of the harmful event ☐
- 4.6. Place where the immovable property is situated ☐
- 4.7. Choice of court/tribunal agreed by the parties ☐
- 4.8. Other (please specify): _____

5. Cross-border nature of the case

In order to make use of the European Small Claims Procedure, your case must be of a cross-border nature. A case is of a cross-border nature if at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court/tribunal.

5. Cross-border nature of the case

- 5.1. Country of domicile or habitual residence of claimant: _____
- 5.2. Country of domicile or habitual residence of defendant: _____
- 5.3. Member State of the court/tribunal: _____

6. Bank details (optional)

In field 6.1. you may inform the court/tribunal by which means you intend to pay the application fee. Please note that not all methods are necessarily available at the court/tribunal to which you are sending your application. You should verify which methods of payment will be accepted by the court/tribunal. You can do this by contacting the court/tribunal concerned or by consulting the website of the European Judicial Network in Civil and Commercial Matters at <http://ec.europa.eu/civiljustice>.

If you choose to pay by credit card or to allow the court/tribunal to collect the fee from your bank account, you should give the necessary credit card or bank account details in the Appendix to this form. The Appendix will be for the information of the court/tribunal only and will not be forwarded to the defendant.

In field 6.2. you are given the possibility of indicating by which means you wish to receive payment from the defendant, for example if the defendant wishes to pay immediately even before the judgment is given. If you wish to be paid by bank transfer, please give the necessary bank details.

6. Bank details (*)

- 6.1. How will you pay the application fee?
- 6.1.1. By bank transfer ☐
- 6.1.2. By credit card ☐ (please fill in the Appendix)
- 6.1.3. Direct debit from your bank account ☐ (please fill in the Appendix)
- 6.1.4. Other (please specify): _____
- 6.2. To which account do you wish the defendant to pay any amount claimed or awarded?
- 6.2.1. Account holder: _____
- 6.2.2. Bank name, BIC or other relevant bank code: _____
- 6.2.3. Account number/IBAN: _____

7. Claim

Scope: Please note that the European Small Claims Procedure has a limited scope. No claims of a value higher than EUR 2000 or which are listed in Article 2 of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure can be dealt with under this procedure. If your claim does not relate to an action within the scope of that Regulation in accordance with Article 2, proceedings will continue before the courts/tribunals with jurisdiction in accordance with the rules of ordinary civil procedure. If you do not wish to continue proceedings in that event, you should withdraw your application.

Monetary or other claim: You should indicate whether you are claiming money and/or something else (non-monetary claim), for example, delivery of goods, and then fill in respectively either 7.1. and/or 7.2. If your claim is not for money, please indicate the estimated value of your claim. In the case of a non-monetary claim, you should indicate whether you have a secondary claim for compensation if it is not possible to satisfy the original claim.

If you wish to claim the costs of the proceedings (e.g. translation costs, lawyers' fees, costs relating to the service of documents etc.), then you should indicate this in 7.3. Please note that rules regarding the costs which courts/tribunals can award vary between different Member States. Details of categories of costs in the Member States can be found on the website of the European Judicial Network in Civil and Commercial Matters at <http://ec.europa.eu/civiljustice>.

If you wish to claim any contractual interest, for example on a loan, you should indicate the rate and from what date it runs. The court/tribunal may award statutory interest on your claim, if you are successful. If you wish to claim interest, please indicate this and the date from which the interest should run.

7. About your claim

☐ 7.1. Claim for money

7.1.1. Amount of principal (excluding interest and costs): _____

7.1.2. Currency

- | | | |
|---|---|---|
| <input type="checkbox"/> Euro (EUR) | <input type="checkbox"/> Bulgarian lev (BGN) | <input type="checkbox"/> Cypriot pound (CYP) |
| <input type="checkbox"/> Czech koruna (CZK) | <input type="checkbox"/> Estonian kroon (EEK) | <input type="checkbox"/> Pound Sterling (GBP) |
| <input type="checkbox"/> Hungarian forint (HUF) | <input type="checkbox"/> Latvian lats (LVL) | <input type="checkbox"/> Lithuanian litas (LTL) |
| <input type="checkbox"/> Maltese lira (MTL) | <input type="checkbox"/> Polish zloty (PLN) | <input type="checkbox"/> Romanian leu (RON) |
| <input type="checkbox"/> Swedish kronor (SEK) | <input type="checkbox"/> Slovak koruna (SKK) | |

☐ Other (please specify): _____

☐ 7.2. Other claim:

7.2.1. Please specify what you are claiming: _____

7.2.2. Estimated value of the claim: _____

Currency:

- | | | |
|---|---|---|
| <input type="checkbox"/> Euro (EUR) | <input type="checkbox"/> Bulgarian lev (BGN) | <input type="checkbox"/> Cypriot pound (CYP) |
| <input type="checkbox"/> Czech koruna (CZK) | <input type="checkbox"/> Estonian kroon (EEK) | <input type="checkbox"/> Pound Sterling (GBP) |
| <input type="checkbox"/> Hungarian forint (HUF) | <input type="checkbox"/> Latvian lats (LVL) | <input type="checkbox"/> Lithuanian litas (LTL) |
| <input type="checkbox"/> Maltese lira (MTL) | <input type="checkbox"/> Polish zloty (PLN) | <input type="checkbox"/> Romanian leu (RON) |
| <input type="checkbox"/> Swedish kronor (SEK) | <input type="checkbox"/> Slovak koruna (SKK) | |

☐ Other (please specify): _____

7.3. Are you claiming the costs of proceedings?

7.3.1. Yes ☐

7.3.2. No ☐

7.3.3. If yes, please specify which costs and indicate the amount claimed or incurred so far:

7.4. Are you claiming interest?

Yes

☐

No

☐

If yes, is the interest:

Contractual?

☐

If so, go to 7.4.1

Statutory?

☐

If so, go to 7.4.2

7.4.1. If contractual

(1) the rate is:

☐

_____ %

☐

_____ %

above the base rate of the
ECB☐

other: _____

(2) the interest should run from: ____/____/____ (date)

7.4.2. If statutory

the interest should run from: ____/____/____ (date)

8. Details of claim

In 8.1. you should describe briefly the substance of your claim.

In 8.2. you should describe any relevant supporting evidence. This could, for example, be written evidence (e.g. contracts, receipts, etc.) or oral or written statements from witnesses. For each piece of evidence, please indicate which aspect of your claim it is intended to support.

If space is insufficient, you can add additional sheets.

8. Details of claim

8.1. Please give reasons for your claim, for example what happened, where and when.

8.2. Please describe the evidence you wish to put forward to support your claim and state which points of the claim it supports. Where appropriate, you should add relevant supporting documents.

8.2.1. Written evidence

☐

please specify below

8.2.2. Witnesses

☐

please specify below

8.2.3. Other

☐

please specify below

Oral hearing: Please note that the European Small Claims Procedure is a written procedure. However, you can request, in this form or at a later stage, that an oral hearing be held. The court/tribunal may decide to hold an oral hearing if it considers it necessary for the fair conduct of the proceedings or it may refuse it, having regard to all the circumstances of the case.

8.3. Do you want an oral hearing to be held?

Yes

☐

No

☐

If yes, please indicate reasons (*)

9. *Certificate*

A judgment given in a Member State in the European Small Claims Procedure can be recognised and enforced in another Member State. If you intend to ask for recognition and enforcement in a Member State other than that of the court/tribunal, you can request in this form that the court/tribunal, after having made a decision in your favour, issue a certificate concerning that judgment.

9. *Certificate*

I ask the court/tribunal to issue a certificate concerning the judgment

Yes ☐

No ☐

10. *Date and signature*

Please make sure that you write your name clearly and sign and date your application at the end.

10. *Date and signature*

I hereby request that the court/tribunal give a judgment against the defendant on the basis of my claim.

I declare that the information provided is true to the best of my knowledge and is given in good faith.

Done at: _____

Date: ____/____/____

Name and signature:

*Appendix to the claim form (Form A)***Bank details (*) for the purposes of payment of the application fee**

Account holder/credit card holder:

Bank name, BIC or other relevant bank code/credit card company:

Account number or IBAN/credit card number, expiry date and security number of the credit card:

(*) Optional.

ANNEX II

EUROPEAN SMALL CLAIMS PROCEDURE

FORM B

REQUEST BY THE COURT OR TRIBUNAL TO COMPLETE AND/OR RECTIFY THE CLAIM FORM

(Article 4(4) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

To be filled in by the court/tribunal

Case number:

Received by the court/tribunal on: ____/____/____.

1. *Court/tribunal*

1.1. Name:

1.2. Street and number/PO box:

1.3. City and postal code:

1.4. Country:

2. *Claimant*

2.1. Surname, first name/name of company or organisation:

2.2. Street and number/PO box:

2.3. City and postal code:

2.4. Country:

2.5. Telephone (*):

2.6. E-mail (*):

2.7. Claimant's representative, if any, and contact details (*):

2.8. Other details (*):

3. *Defendant*

3.1. Surname, first name/name of company or organisation:

3.2. Street and number/PO box:

3.3. City and postal code:

3.4. Country:

3.5. Telephone (*):

3.6. E-mail (*):

3.7. Defendant's representative, if any, and contact details (*):

3.8. Other details (*):

(*) Optional.

The court/tribunal has examined your claim form and considers it to be inadequate or insufficiently clear or not properly filled in: please complete and/or rectify your form in the language of the court/tribunal as indicated below as soon as possible and at the latest by _____.

The court/tribunal shall dismiss your application under the conditions provided for in Regulation (EC) No 861(*)/2007 if you fail to complete and/or rectify it within the time limit set out above.

Your claim form has not been filled in the correct language. Please fill it in one of the following languages.

Bulgarian	<input type="checkbox"/>	Czech	<input type="checkbox"/>	German	<input type="checkbox"/>
Estonian	<input type="checkbox"/>	Spanish	<input type="checkbox"/>	Greek	<input type="checkbox"/>
French	<input type="checkbox"/>	Irish	<input type="checkbox"/>	Italian	<input type="checkbox"/>
Latvian	<input type="checkbox"/>	Lithuanian	<input type="checkbox"/>	Hungarian	<input type="checkbox"/>
Maltese	<input type="checkbox"/>	Dutch	<input type="checkbox"/>	Polish	<input type="checkbox"/>
Portuguese	<input type="checkbox"/>	Romanian	<input type="checkbox"/>	Slovak	<input type="checkbox"/>
Slovene	<input type="checkbox"/>	Finnish	<input type="checkbox"/>	Swedish	<input type="checkbox"/>
English	<input type="checkbox"/>	Other: (please specify)	_____		

The following sections of the claim form must be completed and/or rectified as stated below:

—
—
—
—

Done at:

Date: ____/____/____

Signature and/or stamp:

ANNEX III

EUROPEAN SMALL CLAIMS PROCEDURE

FORM C

ANSWER FORM

(Article 5(2) and 5(3) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

IMPORTANT INFORMATION AND GUIDELINES FOR THE DEFENDANT

A claim as set out in the attached claim form has been submitted against you using the European Small Claims Procedure.

You can answer by filling in Part II of this form and returning it to the court/tribunal, or in any other appropriate way, within 30 days after the claim form has been served on you together with the answer form.

Please note that if you do not answer within 30 days, the court/tribunal shall give a judgment.

Please make sure that you write your name clearly and sign and date the answer form at the end.

You should also read the guidelines included in the claim form; these may help you to prepare your response.

Language: You should reply to the claim in the language of the court/tribunal which has sent you this form.

Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm. This may help you in filling in the form in the required language.

Oral hearing: Please note that the European Small Claims Procedure is a written procedure. However, you can ask for an oral hearing to be held. Please be aware that having regard to the circumstances of the case, the court/tribunal can refuse this request.

Supporting documents: You can indicate possible means of evidence, and add, where appropriate, supporting documents.

Counterclaim: If you want to make a claim against the claimant (counterclaim), you should fill in and attach a separate Form A which you can find on the Internet at http://ec.europa.eu/justice_home/judicialatlascivil/html/fillinginformation_en.htm or obtain from the court/tribunal which sent you this form. Please note that for the purposes of the counterclaim you are considered to be the claimant.

Correcting your details: You can also correct or supplement information about yourself (e.g. contact details, representative etc.) in section 6 'Other information'.

Extra space: If space is insufficient, you can add additional sheets.

Part I (to be filled in by the court/tribunal)

Name of claimant:

Name of defendant:

Court/tribunal:

Claim:

Case number:

Part II (to be filled in by the defendant)

1. Do you accept the claim?

Yes ☐No ☐Partially ☐

If you have answered 'no' or 'partially', please indicate reasons:

The claim is outside the scope of the European Small Claims Procedure ☐
 please specify below

Other ☐
 please specify below

2. If you do not accept the claim please describe the evidence you wish to put forward to contest it. Please state which points of your answer the evidence supports. Where appropriate, you should add relevant supporting documents.

2.1. Written evidence ☐ please specify below2.2. Witnesses ☐ please specify below2.3. Other ☐ please specify below

3. Do you want an oral hearing to be held?

Yes ☐No ☐

If yes, please indicate reasons (*):

4. Are you claiming the costs of proceedings?

4.1. Yes ☐4.2. No ☐

4.3. If yes, please specify which costs and if possible, indicate the amount claimed or incurred so far:

5. Do you want to make a counterclaim?

5.1. Yes ☐5.2. No ☐

5.3. If yes, please fill in and attach a separate Form A

6. Other information (*)

7. Date and signature

I declare that the information provided is true to the best of my knowledge and is given in good faith.

Done at: _____

Date: __/__/____

Name and signature:

(*) Optional.

ANNEX IV

EUROPEAN SMALL CLAIMS PROCEDURE

FORM D

CERTIFICATE CONCERNING A JUDGMENT IN THE EUROPEAN SMALL CLAIMS PROCEDURE

(Article 20(2) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

To be filled in by the court/tribunal

1. *Court/tribunal*
- 1.1. Name:
- 1.2. Street and number/PO box:
- 1.3. City and postal code:
- 1.4. Country:
2. *Claimant*
- 2.1. Surname, first name/name of company or organisation:
- 2.2. Street and number/PO box:
- 2.3. City and postal code:
- 2.4. Country:
- 2.5. Telephone (*):
- 2.6. E-mail (*):
- 2.7. Claimant's representative, if any, and contact details (*):
- 2.8. Other details (*):
3. *Defendant*
- 3.1. Surname, first name/name of company or organisation:
- 3.2. Street and number/PO box:
- 3.3. City and postal code:
- 3.4. Country:
- 3.5. Telephone (*):
- 3.6. E-mail (*):
- 3.7. Defendant's representative, if any, and contact details (*):
- 3.8. Other details (*):

(*) Optional.

4. Judgment**4.1. Date:****4.2. Case number:****4.3. The substance of the judgment:****4.3.1. The court/tribunal has ordered _____ to pay to _____****(1) Principal:****(2) Interest:****(3) Costs:****4.3.2. The court/tribunal has made an order against _____ to _____****(If the judgment was given by an appeal court or in the case of a review of a judgment.)****This judgment supersedes the judgment given on ____/____/____, case number _____, and any certificate relative thereto.****THE JUDGMENT WILL BE RECOGNISED AND ENFORCED IN ANOTHER MEMBER STATE WITHOUT THE NEED FOR A DECLARATION OF ENFORCEABILITY AND WITHOUT ANY POSSIBILITY OF OPPOSING ITS RECOGNITION.****Done at: _____****Date: ____/____/____****Signature and/or stamp**

3f

Council Regulation (EC) No 1346/2000
of 29 May 2000 on insolvency proceedings



I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1346/2000**of 29 May 2000****on insolvency proceedings**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67(1) thereof,

Having regard to the initiative of the Federal Republic of Germany and the Republic of Finland,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas:

- (1) The European Union has set out the aim of establishing an area of freedom, security and justice.
- (2) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively and this Regulation needs to be adopted in order to achieve this objective which comes within the scope of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.
- (3) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Community law. While the insolvency of such undertakings also affects the proper functioning of the internal market, there is a need for a Community act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.

- (4) It is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (forum shopping).
- (5) These objectives cannot be achieved to a sufficient degree at national level and action at Community level is therefore justified.
- (6) In accordance with the principle of proportionality this Regulation should be confined to provisions governing jurisdiction for opening insolvency proceedings and judgments which are delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings. In addition, this Regulation should contain provisions regarding the recognition of those judgments and the applicable law which also satisfy that principle.
- (7) Insolvency proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings are excluded from the scope of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ⁽³⁾, as amended by the Conventions on Accession to this Convention ⁽⁴⁾.
- (8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Community law measure which is binding and directly applicable in Member States.

⁽¹⁾ Opinion delivered on 2 March 2000 (not yet published in the Official Journal).

⁽²⁾ Opinion delivered on 26 January 2000 (not yet published in the Official Journal).

⁽³⁾ OJ L 299, 31.12.1972, p. 32.

⁽⁴⁾ OJ L 204, 2.8.1975, p. 28; OJ L 304, 30.10.1978, p. 1; OJ L 388, 31.12.1982, p. 1; OJ L 285, 3.10.1989, p. 1; OJ C 15, 15.1.1997, p. 1.

- (9) This Regulation should apply to insolvency proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. The insolvency proceedings to which this Regulation applies are listed in the Annexes. Insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties and collective investment undertakings should be excluded from the scope of this Regulation. Such undertakings should not be covered by this Regulation since they are subject to special arrangements and, to some extent, the national supervisory authorities have extremely wide-ranging powers of intervention.
- (10) Insolvency proceedings do not necessarily involve the intervention of a judicial authority; the expression 'court' in this Regulation should be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened and should be collective insolvency proceedings which entail the partial or total divestment of the debtor and the appointment of a liquidator.
- (11) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope in the entire Community. The application without exception of the law of the State of opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing laws on security interests to be found in the Community. Furthermore, the preferential rights enjoyed by some creditors in the insolvency proceedings are, in some cases, completely different. This Regulation should take account of this in two different ways. On the one hand, provision should be made for special rules on applicable law in the case of particularly significant rights and legal relationships (e.g. rights in rem and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of opening should also be allowed alongside main insolvency proceedings with universal scope.
- (12) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of his main interests. These proceedings have universal scope and aim at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary proceedings to be opened to run in parallel with the main proceedings. Secondary proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main proceedings satisfy the need for unity in the Community.
- (13) The 'centre of main interests' should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.
- (14) This Regulation applies only to proceedings where the centre of the debtor's main interests is located in the Community.
- (15) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State must be established by the national law of the Member State concerned.
- (16) The court having jurisdiction to open the main insolvency proceedings should be enabled to order provisional and protective measures from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are very important to guarantee the effectiveness of the insolvency proceedings. In that connection this Regulation should afford different possibilities. On the one hand, the court competent for the main insolvency proceedings should be able also to order provisional protective measures covering assets situated in the territory of other Member States. On the other hand, a liquidator temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those States.
- (17) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and creditors of the local establishment or to cases where main proceedings cannot be opened under the law of the Member State where the debtor has the centre of his main interest. The reason for this restriction is that cases where territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary. If the main insolvency proceedings are opened, the territorial proceedings become secondary.

- (18) Following the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment is not restricted by this Regulation. The liquidator in the main proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.
- (19) Secondary insolvency proceedings may serve different purposes, besides the protection of local interests. Cases may arise where the estate of the debtor is too complex to administer as a unit or where differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening to the other States where the assets are located. For this reason the liquidator in the main proceedings may request the opening of secondary proceedings when the efficient administration of the estate so requires.
- (20) Main insolvency proceedings and secondary proceedings can, however, contribute to the effective realisation of the total assets only if all the concurrent proceedings pending are coordinated. The main condition here is that the various liquidators must cooperate closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the liquidator in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. For example, he should be able to propose a restructuring plan or composition or apply for realisation of the assets in the secondary insolvency proceedings to be suspended.
- (21) Every creditor, who has his habitual residence, domicile or registered office in the Community, should have the right to lodge his claims in each of the insolvency proceedings pending in the Community relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. However, in order to ensure equal treatment of creditors, the distribution of proceeds must be coordinated. Every creditor should be able to keep what he has received in the course of insolvency proceedings but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.
- (22) This Regulation should provide for immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the State in which the proceedings were opened extend to all other Member States. Recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise the court's decision.
- (23) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of the proceedings should be applicable (*lex concursus*). This rule on conflict of laws should be valid both for the main proceedings and for local proceedings; the *lex concursus* determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.
- (24) Automatic recognition of insolvency proceedings to which the law of the opening State normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, provisions should be made for a number of exceptions to the general rule.
- (25) There is a particular need for a special reference diverging from the law of the opening State in the case of rights in rem, since these are of considerable importance for the granting of credit. The basis, validity and extent of such a right in rem should therefore normally be determined according to the *lex situs* and not be affected by the opening of insolvency proceedings. The proprietor of the right in rem should therefore be able to continue to assert his right to segregation or separate settlement of the collateral security. Where assets are subject to rights in rem under the *lex situs* in one Member State but the main proceedings are being carried out in another Member State, the liquidator in the main proceedings should be able to request the opening of secondary proceedings in the jurisdiction where the rights in rem arise if the debtor has an establishment there. If a secondary proceeding is not opened, the surplus on sale of the asset covered by rights in rem must be paid to the liquidator in the main proceedings.

- (26) If a set-off is not permitted under the law of the opening State, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off will acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.
- (27) There is also a need for special protection in the case of payment systems and financial markets. This applies for example to the position-closing agreements and netting agreements to be found in such systems as well as to the sale of securities and to the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems⁽¹⁾. For such transactions, the only law which is material should thus be that applicable to the system or market concerned. This provision is intended to prevent the possibility of mechanisms for the payment and settlement of transactions provided for in the payment and set-off systems or on the regulated financial markets of the Member States being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules in this Regulation.
- (28) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment must be determined by the law applicable to the agreement in accordance with the general rules on conflict of law. Any other insolvency-law questions, such as whether the employees' claims are protected by preferential rights and what status such preferential rights may have, should be determined by the law of the opening State.
- (29) For business considerations, the main content of the decision opening the proceedings should be published in the other Member States at the request of the liquidator. If there is an establishment in the Member State concerned, there may be a requirement that publication is compulsory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.
- (30) It may be the case that some of the persons concerned are not in fact aware that proceedings have been opened
- and act in good faith in a way that conflicts with the new situation. In order to protect such persons who make a payment to the debtor because they are unaware that foreign proceedings have been opened when they should in fact have made the payment to the foreign liquidator, it should be provided that such a payment is to have a debt-discharging effect.
- (31) This Regulation should include Annexes relating to the organisation of insolvency proceedings. As these Annexes relate exclusively to the legislation of Member States, there are specific and substantiated reasons for the Council to reserve the right to amend these Annexes in order to take account of any amendments to the domestic law of the Member States.
- (32) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (33) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,
- HAS ADOPTED THIS REGULATION:
- CHAPTER I
- GENERAL PROVISIONS
- Article 1
- Scope
1. This Regulation shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator.
2. This Regulation shall not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings.
- (30) It may be the case that some of the persons concerned are not in fact aware that proceedings have been opened

⁽¹⁾ OJ L 166, 11.6.1998, p. 45.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'insolvency proceedings' shall mean the collective proceedings referred to in Article 1(1). These proceedings are listed in Annex A;
- (b) 'liquidator' shall mean any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs. Those persons and bodies are listed in Annex C;
- (c) 'winding-up proceedings' shall mean insolvency proceedings within the meaning of point (a) involving realising the assets of the debtor, including where the proceedings have been closed by a composition or other measure terminating the insolvency, or closed by reason of the insufficiency of the assets. Those proceedings are listed in Annex B;
- (d) 'court' shall mean the judicial body or any other competent body of a Member State empowered to open insolvency proceedings or to take decisions in the course of such proceedings;
- (e) 'judgment' in relation to the opening of insolvency proceedings or the appointment of a liquidator shall include the decision of any court empowered to open such proceedings or to appoint a liquidator;
- (f) 'the time of the opening of proceedings' shall mean the time at which the judgment opening proceedings becomes effective, whether it is a final judgment or not;
- (g) 'the Member State in which assets are situated' shall mean, in the case of:
 - tangible property, the Member State within the territory of which the property is situated,
 - property and rights ownership of or entitlement to which must be entered in a public register, the Member State under the authority of which the register is kept,
 - claims, the Member State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1);
- (h) 'establishment' shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

Article 3

International jurisdiction

1. The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.

2. Where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3. Where insolvency proceedings have been opened under paragraph 1, any proceedings opened subsequently under paragraph 2 shall be secondary proceedings. These latter proceedings must be winding-up proceedings.

4. Territorial insolvency proceedings referred to in paragraph 2 may be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 only:

- (a) where insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or
- (b) where the opening of territorial insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in the Member State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment.

Article 4

Law applicable

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened, hereafter referred to as the 'State of the opening of proceedings'.

2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. It shall determine in particular:

- (a) against which debtors insolvency proceedings may be brought on account of their capacity;
- (b) the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
- (c) the respective powers of the debtor and the liquidator;
- (d) the conditions under which set-offs may be invoked;
- (e) the effects of insolvency proceedings on current contracts to which the debtor is party;
- (f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending;
- (g) the claims which are to be lodged against the debtor's estate and the treatment of claims arising after the opening of insolvency proceedings;
- (h) the rules governing the lodging, verification and admission of claims;
- (i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;
- (j) the conditions for and the effects of closure of insolvency proceedings, in particular by composition;
- (k) creditors' rights after the closure of insolvency proceedings;
- (l) who is to bear the costs and expenses incurred in the insolvency proceedings;
- (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 5

Third parties' rights in rem

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:

- (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
- (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
- (c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
- (d) a right in rem to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

Article 6

Set-off

1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

Article 7

Reservation of title

1. The opening of insolvency proceedings against the purchaser of an asset shall not affect the seller's rights based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of opening of proceedings.

2. The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.

3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

Article 8

Contracts relating to immoveable property

The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immoveable property shall be governed solely by the law of the Member State within the territory of which the immoveable property is situated.

Article 9

Payment systems and financial markets

1. Without prejudice to Article 5, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.

2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

Article 10

Contracts of employment

The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.

Article 11

Effects on rights subject to registration

The effects of insolvency proceedings on the rights of the debtor in immoveable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.

Article 12

Community patents and trade marks

For the purposes of this Regulation, a Community patent, a Community trade mark or any other similar right established by Community law may be included only in the proceedings referred to in Article 3(1).

Article 13

Detrimental acts

Article 4(2)(m) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

- the said act is subject to the law of a Member State other than that of the State of the opening of proceedings, and
- that law does not allow any means of challenging that act in the relevant case.

Article 14

Protection of third-party purchasers

Where, by an act concluded after the opening of insolvency proceedings, the debtor disposes, for consideration, of:

- an immoveable asset, or
- a ship or an aircraft subject to registration in a public register, or
- securities whose existence presupposes registration in a register laid down by law,

the validity of that act shall be governed by the law of the State within the territory of which the immoveable asset is situated or under the authority of which the register is kept.

Article 15

Effects of insolvency proceedings on lawsuits pending

The effects of insolvency proceedings on a lawsuit pending concerning an asset or a right of which the debtor has been divested shall be governed solely by the law of the Member State in which that lawsuit is pending.

CHAPTER II

RECOGNITION OF INSOLVENCY PROCEEDINGS

Article 16

Principle

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings.

This rule shall also apply where, on account of his capacity, insolvency proceedings cannot be brought against the debtor in other Member States.

2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

Article 17

Effects of recognition

1. The judgment opening the proceedings referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under this law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.

2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of the creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

Article 18

Powers of the liquidator

1. The liquidator appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on him by the law of the State of the opening of proceedings in another Member State, as long as no other insolvency proceedings have been opened there nor any preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in that State. He may in particular remove the debtor's assets from the territory of the Member State in which they are situated, subject to Articles 5 and 7.

2. The liquidator appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. He may also bring any action to set aside which is in the interests of the creditors.

3. In exercising his powers, the liquidator shall comply with the law of the Member State within the territory of which he intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures or the right to rule on legal proceedings or disputes.

Article 19

Proof of the liquidator's appointment

The liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which he intends to act may be required. No legalisation or other similar formality shall be required.

Article 20

Return and imputation

1. A creditor who, after the opening of the proceedings referred to in Article 3(1) obtains by any means, in particular through enforcement, total or partial satisfaction of his claim on the assets belonging to the debtor situated within the territory of another Member State, shall return what he has obtained to the liquidator, subject to Articles 5 and 7.

2. In order to ensure equal treatment of creditors a creditor who has, in the course of insolvency proceedings, obtained a dividend on his claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

Article 21

Publication

1. The liquidator may request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in any other Member State in accordance with the publication procedures provided for in that State. Such publication shall also specify the liquidator appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or Article 3(2).

2. However, any Member State within the territory of which the debtor has an establishment may require mandatory publication. In such cases, the liquidator or any authority empowered to that effect in the Member State where the proceedings referred to in Article 3(1) are opened shall take all necessary measures to ensure such publication.

Article 22

Registration in a public register

1. The liquidator may request that the judgment opening the proceedings referred to in Article 3(1) be registered in the land register, the trade register and any other public register kept in the other Member States.

2. However, any Member State may require mandatory registration. In such cases, the liquidator or any authority empowered to that effect in the Member State where the proceedings referred to in Article 3(1) have been opened shall take all necessary measures to ensure such registration.

Article 23

Costs

The costs of the publication and registration provided for in Articles 21 and 22 shall be regarded as costs and expenses incurred in the proceedings.

Article 24

Honouring of an obligation to a debtor

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings.

2. Where such an obligation is honoured before the publication provided for in Article 21 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings; where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

Article 25

Recognition and enforceability of other judgments

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in

accordance with Article 16 and which concern the course and closure of insolvency proceedings, and compositions approved by that court shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 31 to 51, with the exception of Article 34(2), of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Conventions of Accession to this Convention.

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.

The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings.

2. The recognition and enforcement of judgments other than those referred to in paragraph 1 shall be governed by the Convention referred to in paragraph 1, provided that that Convention is applicable.

3. The Member States shall not be obliged to recognise or enforce a judgment referred to in paragraph 1 which might result in a limitation of personal freedom or postal secrecy.

Article 26⁽¹⁾

Public policy

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

CHAPTER III

SECONDARY INSOLVENCY PROCEEDINGS

Article 27

Opening of proceedings

The opening of the proceedings referred to in Article 3(1) by a court of a Member State and which is recognised in another Member State (main proceedings) shall permit the opening in that other Member State, a court of which has jurisdiction pursuant to Article 3(2), of secondary insolvency proceedings without the debtor's insolvency being examined in that other State. These latter proceedings must be among the proceedings listed in Annex B. Their effects shall be restricted to the assets of the debtor situated within the territory of that other Member State.

⁽¹⁾ Note the Declaration by Portugal concerning the application of Articles 26 and 37 (OJ C 183, 30.6.2000, p. 1).

*Article 28***Applicable law**

Save as otherwise provided in this Regulation, the law applicable to secondary proceedings shall be that of the Member State within the territory of which the secondary proceedings are opened.

*Article 29***Right to request the opening of proceedings**

The opening of secondary proceedings may be requested by:

- (a) the liquidator in the main proceedings;
- (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is requested.

*Article 30***Advance payment of costs and expenses**

Where the law of the Member State in which the opening of secondary proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

*Article 31***Duty to cooperate and communicate information**

1. Subject to the rules restricting the communication of information, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to communicate information to each other. They shall immediately communicate any information which may be relevant to the other proceedings, in particular the progress made in lodging and verifying claims and all measures aimed at terminating the proceedings.
2. Subject to the rules applicable to each of the proceedings, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to cooperate with each other.
3. The liquidator in the secondary proceedings shall give the liquidator in the main proceedings an early opportunity of submitting proposals on the liquidation or use of the assets in the secondary proceedings.

*Article 32***Exercise of creditors' rights**

1. Any creditor may lodge his claim in the main proceedings and in any secondary proceedings.
2. The liquidators in the main and any secondary proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served thereby, subject to the right of creditors to oppose that or to withdraw the lodgement of their claims where the law applicable so provides.
3. The liquidator in the main or secondary proceedings shall be empowered to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

*Article 33***Stay of liquidation**

1. The court, which opened the secondary proceedings, shall stay the process of liquidation in whole or in part on receipt of a request from the liquidator in the main proceedings, provided that in that event it may require the liquidator in the main proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary proceedings and of individual classes of creditors. Such a request from the liquidator may be rejected only if it is manifestly of no interest to the creditors in the main proceedings. Such a stay of the process of liquidation may be ordered for up to three months. It may be continued or renewed for similar periods.
2. The court referred to in paragraph 1 shall terminate the stay of the process of liquidation:
 - at the request of the liquidator in the main proceedings,
 - of its own motion, at the request of a creditor or at the request of the liquidator in the secondary proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main proceedings or in the secondary proceedings.

*Article 34***Measures ending secondary insolvency proceedings**

1. Where the law applicable to secondary proceedings allows for such proceedings to be closed without liquidation by a rescue plan, a composition or a comparable measure, the liquidator in the main proceedings shall be empowered to propose such a measure himself.

Closure of the secondary proceedings by a measure referred to in the first subparagraph shall not become final without the consent of the liquidator in the main proceedings; failing his agreement, however, it may become final if the financial interests of the creditors in the main proceedings are not affected by the measure proposed.

2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary proceedings, such as a stay of payment or discharge of debt, may not have effect in respect of the debtor's assets not covered by those proceedings without the consent of all the creditors having an interest.

3. During a stay of the process of liquidation ordered pursuant to Article 33, only the liquidator in the main proceedings or the debtor, with the former's consent, may propose measures laid down in paragraph 1 of this Article in the secondary proceedings; no other proposal for such a measure shall be put to the vote or approved.

*Article 35***Assets remaining in the secondary proceedings**

If by the liquidation of assets in the secondary proceedings it is possible to meet all claims allowed under those proceedings, the liquidator appointed in those proceedings shall immediately transfer any assets remaining to the liquidator in the main proceedings.

*Article 36***Subsequent opening of the main proceedings**

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles 31 to 35 shall apply to those opened first, in so far as the progress of those proceedings so permits.

*Article 37⁽¹⁾***Conversion of earlier proceedings**

The liquidator in the main proceedings may request that proceedings listed in Annex A previously opened in another Member State be converted into winding-up proceedings if this proves to be in the interests of the creditors in the main proceedings.

The court with jurisdiction under Article 3(2) shall order conversion into one of the proceedings listed in Annex B.

*Article 38***Preservation measures**

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of the debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

CHAPTER IV

PROVISION OF INFORMATION FOR CREDITORS AND LODGEMENT OF THEIR CLAIMS*Article 39***Right to lodge claims**

Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States, shall have the right to lodge claims in the insolvency proceedings in writing.

*Article 40***Duty to inform creditors**

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the liquidator appointed by it shall immediately inform known creditors who have their habitual residences, domiciles or registered offices in the other Member States.

⁽¹⁾ Note the Declaration by Portugal concerning the application of Articles 26 and 37 (OJ C 183, 30.6.2000, p. 1).

2. That information, provided by an individual notice, shall in particular include time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims and the other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured in rem need lodge their claims.

Article 41

Content of the lodgement of a claim

A creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preference, security in rem or a reservation of title in respect of the claim and what assets are covered by the guarantee he is invoking.

Article 42

Languages

1. The information provided for in Article 40 shall be provided in the official language or one of the official languages of the State of the opening of proceedings. For that purpose a form shall be used bearing the heading 'Invitation to lodge a claim. Time limits to be observed' in all the official languages of the institutions of the European Union.

2. Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings may lodge his claim in the official language or one of the official languages of that other State. In that event, however, the lodgement of his claim shall bear the heading 'Lodgement of claim' in the official language or one of the official languages of the State of the opening of proceedings. In addition, he may be required to provide a translation into the official language or one of the official languages of the State of the opening of proceedings.

CHAPTER V

TRANSITIONAL AND FINAL PROVISIONS

Article 43

Applicability in time

The provisions of this Regulation shall apply only to insolvency proceedings opened after its entry into force. Acts done by a debtor before the entry into force of this Regulation shall continue to be governed by the law which was applicable to them at the time they were done.

Article 44

Relationship to Conventions

1. After its entry into force, this Regulation replaces, in respect of the matters referred to therein, in the relations between Member States, the Conventions concluded between two or more Member States, in particular:

- (a) the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;
- (b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;
- (c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;
- (d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;
- (e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;
- (f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;
- (g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;
- (h) the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962;
- (i) the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;
- (j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1933;
- (k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990.

2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of this Regulation.

3. This Regulation shall not apply:

Article 45

Amendment of the Annexes

The Council, acting by qualified majority on the initiative of one of its members or on a proposal from the Commission, may amend the Annexes.

Article 46

Reports

No later than 1 June 2012, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied if need be by a proposal for adaptation of this Regulation.

Article 47

Entry into force

This Regulation shall enter into force on 31 May 2002.

(a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that State with one or more third countries before the entry into force of this Regulation;

(b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time this Regulation enters into force.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 29 May 2000.

For the Council

The President

A. COSTA

ANNEX A

Insolvency proceedings referred to in Article 2(a)

BELGIË—BELGIQUE

- Het faillissement/La faillite
- Het gerechtelijk akkoord/Le concordat judiciaire
- De collectieve schuldenregeling/Le règlement collectif de dettes

- Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution
- Company examinership

DEUTSCHLAND

- Das Konkursverfahren
- Das gerichtliche Vergleichsverfahren
- Das Gesamtvollstreckungsverfahren
- Das Insolvenzverfahren

ITALIA

- Fallimento
- Concordato preventivo
- Liquidazione coatta amministrativa
- Amministrazione straordinaria
- Amministrazione controllata

ΕΛΛΑΣ

- Πτώχευση
- Η ειδική εκκαθάριση
- Η προσωρινή διαχείριση εταιρίας. Η διοίκηση και η διαχείριση των πιστωτών
- Η υπαγωγή επιχείρησης υπό επίτροπο με σκοπό τη σύναψη συμβιβασμού με τους πιστωτές

LUXEMBOURG

- Faillite
- Gestion contrôlée
- Concordat préventif de faillite (par abandon d'actif)
- Régime spécial de liquidation du notariat

ESPAÑA

- Concurso de acreedores
- Quiebra
- Suspensión de pagos

NEDERLAND

- Het faillissement
- De surséance van betaling
- De schuldsaneringsregeling natuurlijke personen

FRANCE

- Liquidation judiciaire
- Redressement judiciaire avec nomination d'un administrateur

ÖSTERREICH

- Das Konkursverfahren
- Das Ausgleichsverfahren

IRELAND

- Compulsory winding up by the court
- Bankruptcy
- The administration in bankruptcy of the estate of persons dying insolvent
- Winding-up in bankruptcy of partnerships
- Creditors' voluntary winding up (with confirmation of a Court)

PORTUGAL

- O processo de falência
- Os processos especiais de recuperação de empresa, ou seja:
 - A concordata
 - A reconstituição empresarial
 - A reestruturação financeira
 - A gestão controlada

SUOMI—FINLAND

- Konkurssi/konkurs
- Yrityssaneeraus/företagssanering

SVERIGE

- Konkurs
- Företagsrekonstruktion

UNITED KINGDOM

- Winding up by or subject to the supervision of the court
- Creditors' voluntary winding up (with confirmation by the court)
- Administration
- Voluntary arrangements under insolvency legislation
- Bankruptcy or sequestration

ANNEX B

Winding up proceedings referred to in Article 2(c)

BELGIË—BELGIQUE

— Het faillissement/La faillite

— Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution

DEUTSCHLAND

— Das Konkursverfahren

— Das Gesamtvollstreckungsverfahren

— Das Insolvenzverfahren

ITALIA

— Fallimento

— Liquidazione coatta amministrativa

ΕΛΛΑΣ

— Πτώχευση

— Η ειδική εκκαθάριση

LUXEMBOURG

— Faillite

— Régime spécial de liquidation du notariat

ESPAÑA

— Concurso de acreedores

— Quiebra

— Suspensión de pagos basada en la insolvencia definitiva

NEDERLAND

— Het faillissement

— De schuldsaneringsregeling natuurlijke personen

ÖSTERREICH

— Das Konkursverfahren

FRANCE

— Liquidation judiciaire

PORTUGAL

— O processo de falência

IRELAND

— Compulsory winding up

— Bankruptcy

— The administration in bankruptcy of the estate of persons dying insolvent

— Winding-up in bankruptcy of partnerships

— Creditors' voluntary winding up (with confirmation of a court)

SUOMI—FINLAND

— Konkurssi/konkurs

SVERIGE

— Konkurs

UNITED KINGDOM

— Winding up by or subject to the supervision of the court

— Creditors' voluntary winding up (with confirmation by the court)

— Bankruptcy or sequestration

ANNEX C

Liquidators referred to in Article 2(b)

BELGIË—BELGIQUE

- De curator/Le curateur
- De commissaris inzake opschorting/Le commissaire au sursis
- De schuldbemiddelaar/Le médiateur de dettes

DEUTSCHLAND

- Konkursverwalter
- Vergleichsverwalter
- Sachwalter (nach der Vergleichsordnung)
- Verwalter
- Insolvenzverwalter
- Sachwalter (nach der Insolvenzordnung)
- Treuhänder
- Vorläufiger Insolvenzverwalter

ΕΛΛΑΣ

- Ο σύνδικος
- Ο προσωρινός διαχειριστής. Η διοικούσα επιτροπή των πιστωτών
- Ο ειδικός εκκαθαριστής
- Ο επίτροπος

ESPAÑA

- Depositario-administrador
- Interventor o Interventores
- Síndicos
- Comisario

FRANCE

- Représentant des créanciers
- Mandataire liquidateur
- Administrateur judiciaire
- Commissaire à l'exécution de plan

IRELAND

- Liquidator
- Official Assignee
- Trustee in bankruptcy
- Provisional Liquidator
- Examiner

ITALIA

- Curatore
- Commissario

LUXEMBOURG

- Le curateur
- Le commissaire
- Le liquidateur
- Le conseil de gérance de la section d'assainissement du notariat

NEDERLAND

- De curator in het faillissement
- De bewindvoerder in de surséance van betaling
- De bewindvoerder in de schuldsaneringsregeling natuurlijke personen

ÖSTERREICH

- Masseverwalter
- Ausgleichsverwalter
- Sachwalter
- Treuhänder
- Besondere Verwalter
- Vorläufiger Verwalter
- Konkursgericht

PORTUGAL

- Gestor judicial
- Liquidatário judicial
- Comissão de credores

SUOMI—FINLAND

- Pesänhoitaja/boförvaltare
- Selvittäjä/utredare

SVERIGE

- Förvaltare
- God man
- Rekonstruktör

UNITED KINGDOM

- Liquidator
 - Supervisor of a voluntary arrangement
 - Administrator
 - Official Receiver
 - Trustee
 - Judicial factor
-

Free circulation of judgments in the area of family law

4a

Council Regulation (EC) No 2201/2003
of 27 November 2003 concerning jurisdiction
and the recognition and enforcement
of judgments in matrimonial matters
and the matters of parental responsibility,
repealing Regulation (EC) No 1347/2000



I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2201/2003**of 27 November 2003****concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽³⁾,

Whereas:

- (1) The European Community has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.
- (2) The Tampere European Council endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area, and identified visiting rights as a priority.
- (3) Council Regulation (EC) No 1347/2000 ⁽⁴⁾ sets out rules on jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility for the children of both spouses rendered on the occasion of the matrimonial proceedings. The content of this Regulation was substantially taken over from the Convention of 28 May 1998 on the same subject matter ⁽⁵⁾.

- (4) On 3 July 2000 France presented an initiative for a Council Regulation on the mutual enforcement of judgments on rights of access to children ⁽⁶⁾.

- (5) In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding.

- (6) Since the application of the rules on parental responsibility often arises in the context of matrimonial proceedings, it is more appropriate to have a single instrument for matters of divorce and parental responsibility.

- (7) The scope of this Regulation covers civil matters, whatever the nature of the court or tribunal.

- (8) As regards judgments on divorce, legal separation or marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures.

- (9) As regards the property of the child, this Regulation should apply only to measures for the protection of the child, i.e. (i) the designation and functions of a person or body having charge of the child's property, representing or assisting the child, and (ii) the administration, conservation or disposal of the child's property. In this context, this Regulation should, for instance, apply in cases where the parents are in dispute as regards the administration of the child's property. Measures relating to the child's property which do not concern the protection of the child should continue to be governed by Council Regulation (EC) No 44/2001 of

⁽¹⁾ OJ C 203 E, 27.8.2002, p. 155.

⁽²⁾ Opinion delivered on 20 September 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 61, 14.3.2003, p. 76.

⁽⁴⁾ OJ L 160, 30.6.2000, p. 19.

⁽⁵⁾ At the time of the adoption of Regulation (EC) No 1347/2000 the Council took note of the explanatory report concerning that Convention prepared by Professor Alegria Borrás (OJ C 221, 16.7.1998, p. 27).

⁽⁶⁾ OJ C 234, 15.8.2000, p. 7.

22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾.

extrajudicial documents in civil or commercial matters ⁽²⁾ should apply to the service of documents in proceedings instituted pursuant to this Regulation.

- (10) This Regulation is not intended to apply to matters relating to social security, public measures of a general nature in matters of education or health or to decisions on the right of asylum and on immigration. In addition it does not apply to the establishment of parenthood, since this is a different matter from the attribution of parental responsibility, nor to other questions linked to the status of persons. Moreover, it does not apply to measures taken as a result of criminal offences committed by children.
- (11) Maintenance obligations are excluded from the scope of this Regulation as these are already covered by Council Regulation No 44/2001. The courts having jurisdiction under this Regulation will generally have jurisdiction to rule on maintenance obligations by application of Article 5(2) of Council Regulation No 44/2001.
- (12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.
- (13) In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. However, in this case the second court should not be allowed to transfer the case to a third court.
- (14) This Regulation should have effect without prejudice to the application of public international law concerning diplomatic immunities. Where jurisdiction under this Regulation cannot be exercised by reason of the existence of diplomatic immunity in accordance with international law, jurisdiction should be exercised in accordance with national law in a Member State in which the person concerned does not enjoy such immunity.
- (15) Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and
- (16) This Regulation should not prevent the courts of a Member State from taking provisional, including protective measures, in urgent cases, with regard to persons or property situated in that State.
- (17) In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. Should that judgment entail the return of the child, the return should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained.
- (18) Where a court has decided not to return a child on the basis of Article 13 of the 1980 Hague Convention, it should inform the court having jurisdiction or central authority in the Member State where the child was habitually resident prior to the wrongful removal or retention. Unless the court in the latter Member State has been seised, this court or the central authority should notify the parties. This obligation should not prevent the central authority from also notifying the relevant public authorities in accordance with national law.
- (19) The hearing of the child plays an important role in the application of this Regulation, although this instrument is not intended to modify national procedures applicable.
- (20) The hearing of a child in another Member State may take place under the arrangements laid down in Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters ⁽³⁾.
- (21) The recognition and enforcement of judgments given in a Member State should be based on the principle of

⁽¹⁾ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 1496/2002 (OJ L 225, 22.8.2002, p. 13).

⁽²⁾ OJ L 160, 30.6.2000, p. 37.

⁽³⁾ OJ L 174, 27.6.2001, p. 1.

- mutual trust and the grounds for non-recognition should be kept to the minimum required.
- (22) Authentic instruments and agreements between parties that are enforceable in one Member State should be treated as equivalent to 'judgments' for the purpose of the application of the rules on recognition and enforcement.
- (23) The Tampere European Council considered in its conclusions (point 34) that judgments in the field of family litigation should be 'automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement'. This is why judgments on rights of access and judgments on return that have been certified in the Member State of origin in accordance with the provisions of this Regulation should be recognised and enforceable in all other Member States without any further procedure being required. Arrangements for the enforcement of such judgments continue to be governed by national law.
- (24) The certificate issued to facilitate enforcement of the judgment should not be subject to appeal. It should be rectified only where there is a material error, i.e. where it does not correctly reflect the judgment.
- (25) Central authorities should cooperate both in general matter and in specific cases, including for purposes of promoting the amicable resolution of family disputes, in matters of parental responsibility. To this end central authorities shall participate in the European Judicial Network in civil and commercial matters created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters ⁽¹⁾.
- (26) The Commission should make publicly available and update the lists of courts and redress procedures communicated by the Member States.
- (27) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (28) This Regulation replaces Regulation (EC) No 1347/2000 which is consequently repealed.
- (29) For the proper functioning of this Regulation, the Commission should review its application and propose such amendments as may appear necessary.
- (30) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (31) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation and is therefore not bound by it nor subject to its application.
- (32) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (33) This Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THE PRESENT REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

- (a) divorce, legal separation or marriage annulment;
- (b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

⁽¹⁾ OJ L 174, 27.6.2001, p. 25.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

- (a) rights of custody and rights of access;
- (b) guardianship, curatorship and similar institutions;
- (c) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
- (d) the placement of the child in a foster family or in institutional care;
- (e) measures for the protection of the child relating to the administration, conservation or disposal of the child's property.

3. This Regulation shall not apply to:

- (a) the establishment or contesting of a parent-child relationship;
- (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- (c) the name and forenames of the child;
- (d) emancipation;
- (e) maintenance obligations;
- (f) trusts or succession;
- (g) measures taken as a result of criminal offences committed by children.

Article 2

Definitions

For the purposes of this Regulation:

- 1. the term 'court' shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;
- 2. the term 'judge' shall mean the judge or an official having powers equivalent to those of a judge in the matters falling within the scope of the Regulation;
- 3. the term 'Member State' shall mean all Member States with the exception of Denmark;

4. the term 'judgment' shall mean a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision;

5. the term 'Member State of origin' shall mean the Member State where the judgment to be enforced was issued;

6. the term 'Member State of enforcement' shall mean the Member State where enforcement of the judgment is sought;

7. the term 'parental responsibility' shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;

8. the term 'holder of parental responsibility' shall mean any person having parental responsibility over a child;

9. the term 'rights of custody' shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;

10. the term 'rights of access' shall include in particular the right to take a child to a place other than his or her habitual residence for a limited period of time;

11. the term 'wrongful removal or retention' shall mean a child's removal or retention where:

- (a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention;

and

- (b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.

CHAPTER II

Article 5

JURISDICTION

Conversion of legal separation into divorce

SECTION 1

Without prejudice to Article 3, a court of a Member State that has given a judgment on a legal separation shall also have jurisdiction for converting that judgment into a divorce, if the law of that Member State so provides.

Divorce, legal separation and marriage annulment

Article 3

General jurisdiction

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her 'domicile' there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the 'domicile' of both spouses.

2. For the purpose of this Regulation, 'domicile' shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.

Article 4

Counterclaim

The court in which proceedings are pending on the basis of Article 3 shall also have jurisdiction to examine a counterclaim, insofar as the latter comes within the scope of this Regulation.

Article 6

Exclusive nature of jurisdiction under Articles 3, 4 and 5

A spouse who:

- (a) is habitually resident in the territory of a Member State; or
- (b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her 'domicile' in the territory of one of the latter Member States,

may be sued in another Member State only in accordance with Articles 3, 4 and 5.

Article 7

Residual jurisdiction

1. Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5, jurisdiction shall be determined, in each Member State, by the laws of that State.

2. As against a respondent who is not habitually resident and is not either a national of a Member State or, in the case of the United Kingdom and Ireland, does not have his 'domicile' within the territory of one of the latter Member States, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.

SECTION 2

Parental responsibility

Article 8

General jurisdiction

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.

Article 9

Continuing jurisdiction of the child's former habitual residence

1. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child's former habitual residence shall, by way of exception to Article 8, retain jurisdiction during a three-month period following the move for the purpose of modifying a judgment on access rights issued in that Member State before the child moved, where the holder of access rights pursuant to the judgment on access rights continues to have his or her habitual residence in the Member State of the child's former habitual residence.

2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the courts of the Member State of the child's new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.

Article 10

Jurisdiction in cases of child abduction

In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention;

or

(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

(i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

(ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);

(iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);

(iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.

Article 11

Return of the child

1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter 'the 1980 Hague Convention'), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

5. A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the

relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.

Article 12

Prorogation of jurisdiction

1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

- (a) at least one of the spouses has parental responsibility in relation to the child;

and

- (b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

2. The jurisdiction conferred in paragraph 1 shall cease as soon as:

- (a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

- (b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

- (c) the proceedings referred to in (a) and (b) have come to an end for another reason.

3. The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

- (a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;

and

- (b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.

4. Where the child has his or her habitual residence in the territory of a third State which is not a contracting party to the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, jurisdiction under this Article shall be deemed to be in the child's interest, in particular if it is found impossible to hold proceedings in the third State in question.

Article 13

Jurisdiction based on the child's presence

1. Where a child's habitual residence cannot be established and jurisdiction cannot be determined on the basis of Article 12, the courts of the Member State where the child is present shall have jurisdiction.

2. Paragraph 1 shall also apply to refugee children or children internationally displaced because of disturbances occurring in their country.

Article 14

Residual jurisdiction

Where no court of a Member State has jurisdiction pursuant to Articles 8 to 13, jurisdiction shall be determined, in each Member State, by the laws of that State.

Article 15

Transfer to a court better placed to hear the case

1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

- (a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or
- (b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

- (a) upon application from a party; or
- (b) of the court's own motion; or
- (c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

A transfer made of the court's own motion or by application of a court of another Member State must be accepted by at least one of the parties.

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

- (a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or
- (b) is the former habitual residence of the child; or
- (c) is the place of the child's nationality; or
- (d) is the habitual residence of a holder of parental responsibility; or
- (e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

4. The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5. The courts of that other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

6. The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.

SECTION 3

Common provisions

Article 16

Seising of a Court

1. A court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

or

- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Article 17

Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 18

Examination as to admissibility

1. Where a respondent habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

2. Article 19 of Regulation (EC) No 1348/2000 shall apply instead of the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

3. Where the provisions of Regulation (EC) No 1348/2000 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 19

Lis pendens and dependent actions

1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.

Article 20

Provisional, including protective, measures

1. In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of

persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

2. The measures referred to in paragraph 1 shall cease to apply when the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate.

CHAPTER III

RECOGNITION AND ENFORCEMENT

SECTION 1

Recognition

Article 21

Recognition of a judgment

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

3. Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised.

The local jurisdiction of the court appearing in the list notified by each Member State to the Commission pursuant to Article 68 shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

4. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.

*Article 22***Grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment**

A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;
- (b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;
- (c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or
- (d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

*Article 23***Grounds of non-recognition for judgments relating to parental responsibility**

A judgment relating to parental responsibility shall not be recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;
- (b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;
- (c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;
- (d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;

(e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;

(f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

or

(g) if the procedure laid down in Article 56 has not been complied with.

*Article 24***Prohibition of review of jurisdiction of the court of origin**

The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Articles 22(a) and 23(a) may not be applied to the rules relating to jurisdiction set out in Articles 3 to 14.

*Article 25***Differences in applicable law**

The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

*Article 26***Non-review as to substance**

Under no circumstances may a judgment be reviewed as to its substance.

*Article 27***Stay of proceedings**

1. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the Member State of origin by reason of an appeal.

SECTION 2

Application for a declaration of enforceability

Article 28

Enforceable judgments

1. A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland or in Northern Ireland only when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 29

Jurisdiction of local courts

1. An application for a declaration of enforceability shall be submitted to the court appearing in the list notified by each Member State to the Commission pursuant to Article 68.

2. The local jurisdiction shall be determined by reference to the place of habitual residence of the person against whom enforcement is sought or by reference to the habitual residence of any child to whom the application relates.

Where neither of the places referred to in the first subparagraph can be found in the Member State of enforcement, the local jurisdiction shall be determined by reference to the place of enforcement.

Article 30

Procedure

1. The procedure for making the application shall be governed by the law of the Member State of enforcement.

2. The applicant must give an address for service within the area of jurisdiction of the court applied to. However, if the law of the Member State of enforcement does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

3. The documents referred to in Articles 37 and 39 shall be attached to the application.

Article 31

Decision of the court

1. The court applied to shall give its decision without delay. Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application.

2. The application may be refused only for one of the reasons specified in Articles 22, 23 and 24.

3. Under no circumstances may a judgment be reviewed as to its substance.

Article 32

Notice of the decision

The appropriate officer of the court shall without delay bring to the notice of the applicant the decision given on the application in accordance with the procedure laid down by the law of the Member State of enforcement.

Article 33

Appeal against the decision

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal shall be lodged with the court appearing in the list notified by each Member State to the Commission pursuant to Article 68.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the appeal is brought by the applicant for a declaration of enforceability, the party against whom enforcement is sought shall be summoned to appear before the appellate court. If such person fails to appear, the provisions of Article 18 shall apply.

5. An appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him or at his residence. No extension of time may be granted on account of distance.

*Article 34***Courts of appeal and means of contest**

The judgment given on appeal may be contested only by the proceedings referred to in the list notified by each Member State to the Commission pursuant to Article 68.

*Article 35***Stay of proceedings**

1. The court with which the appeal is lodged under Articles 33 or 34 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged in the Member State of origin, or if the time for such appeal has not yet expired. In the latter case, the court may specify the time within which an appeal is to be lodged.

2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

*Article 36***Partial enforcement**

1. Where a judgment has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.

2. An applicant may request partial enforcement of a judgment.

*SECTION 3***Provisions common to Sections 1 and 2***Article 37***Documents**

1. A party seeking or contesting recognition or applying for a declaration of enforceability shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

and

(b) the certificate referred to in Article 39.

2. In addition, in the case of a judgment given in default, the party seeking recognition or applying for a declaration of enforceability shall produce:

(a) the original or certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document;

or

(b) any document indicating that the defendant has accepted the judgment unequivocally.

*Article 38***Absence of documents**

1. If the documents specified in Article 37(1)(b) or (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

2. If the court so requires, a translation of such documents shall be furnished. The translation shall be certified by a person qualified to do so in one of the Member States.

*Article 39***Certificate concerning judgments in matrimonial matters and certificate concerning judgments on parental responsibility**

The competent court or authority of a Member State of origin shall, at the request of any interested party, issue a certificate using the standard form set out in Annex I (judgments in matrimonial matters) or in Annex II (judgments on parental responsibility).

*SECTION 4***Enforceability of certain judgments concerning rights of access and of certain judgments which require the return of the child***Article 40***Scope**

1. This Section shall apply to:

(a) rights of access;

and

(b) the return of a child entailed by a judgment given pursuant to Article 11(8).

2. The provisions of this Section shall not prevent a holder of parental responsibility from seeking recognition and enforcement of a judgment in accordance with the provisions in Sections 1 and 2 of this Chapter.

Article 41

Rights of access

1. The rights of access referred to in Article 40(1)(a) granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law of a judgment granting access rights, the court of origin may declare that the judgment shall be enforceable, notwithstanding any appeal.

2. The judge of origin shall issue the certificate referred to in paragraph 1 using the standard form in Annex III (certificate concerning rights of access) only if:

(a) where the judgment was given in default, the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defense, or, the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally;

(b) all parties concerned were given an opportunity to be heard;

and

(c) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The certificate shall be completed in the language of the judgment.

3. Where the rights of access involve a cross-border situation at the time of the delivery of the judgment, the certificate shall be issued ex officio when the judgment becomes enforceable, even if only provisionally. If the situation subsequently acquires a cross-border character, the certificate shall be issued at the request of one of the parties.

Article 42

Return of the child

1. The return of a child referred to in Article 40(1)(b) entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child mentioned in Article 11(b)(8), the court of origin may declare the judgment enforceable.

2. The judge of origin who delivered the judgment referred to in Article 40(1)(b) shall issue the certificate referred to in paragraph 1 only if:

(a) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity;

(b) the parties were given an opportunity to be heard; and

(c) the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

In the event that the court or any other authority takes measures to ensure the protection of the child after its return to the State of habitual residence, the certificate shall contain details of such measures.

The judge of origin shall of his or her own motion issue that certificate using the standard form in Annex IV (certificate concerning return of the child(ren)).

The certificate shall be completed in the language of the judgment.

Article 43

Rectification of the certificate

1. The law of the Member State of origin shall be applicable to any rectification of the certificate.

2. No appeal shall lie against the issuing of a certificate pursuant to Articles 41(1) or 42(1).

*Article 44***Effects of the certificate**

The certificate shall take effect only within the limits of the enforceability of the judgment.

*Article 45***Documents**

1. A party seeking enforcement of a judgment shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

and

(b) the certificate referred to in Article 41(1) or Article 42(1).

2. For the purposes of this Article,

— the certificate referred to in Article 41(1) shall be accompanied by a translation of point 12 relating to the arrangements for exercising right of access,

— the certificate referred to in Article 42(1) shall be accompanied by a translation of its point 14 relating to the arrangements for implementing the measures taken to ensure the child's return.

The translation shall be into the official language or one of the official languages of the Member State of enforcement or any other language that the Member State of enforcement expressly accepts. The translation shall be certified by a person qualified to do so in one of the Member States.

SECTION 5***Authentic instruments and agreements****Article 46*

Documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgments.

SECTION 6***Other provisions****Article 47***Enforcement procedure**

1. The enforcement procedure is governed by the law of the Member State of enforcement.

2. Any judgment delivered by a court of another Member State and declared to be enforceable in accordance with Section 2 or certified in accordance with Article 41(1) or Article 42(1) shall be enforced in the Member State of enforcement in the same conditions as if it had been delivered in that Member State.

In particular, a judgment which has been certified according to Article 41(1) or Article 42(1) cannot be enforced if it is irreconcilable with a subsequent enforceable judgment.

*Article 48***Practical arrangements for the exercise of rights of access**

1. The courts of the Member State of enforcement may make practical arrangements for organising the exercise of rights of access, if the necessary arrangements have not or have not sufficiently been made in the judgment delivered by the courts of the Member State having jurisdiction as to the substance of the matter and provided the essential elements of this judgment are respected.

2. The practical arrangements made pursuant to paragraph 1 shall cease to apply pursuant to a later judgment by the courts of the Member State having jurisdiction as to the substance of the matter.

*Article 49***Costs**

The provisions of this Chapter, with the exception of Section 4, shall also apply to the determination of the amount of costs and expenses of proceedings under this Regulation and to the enforcement of any order concerning such costs and expenses.

*Article 50***Legal aid**

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedures provided for in Articles 21, 28, 41, 42 and 48 to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement.

*Article 51***Security, bond or deposit**

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for

enforcement of a judgment given in another Member State on the following grounds:

- (a) that he or she is not habitually resident in the Member State in which enforcement is sought; or
- (b) that he or she is either a foreign national or, where enforcement is sought in either the United Kingdom or Ireland, does not have his or her 'domicile' in either of those Member States.

Article 52

Legalisation or other similar formality

No legalisation or other similar formality shall be required in respect of the documents referred to in Articles 37, 38 and 45 or in respect of a document appointing a representative ad litem.

CHAPTER IV

COOPERATION BETWEEN CENTRAL AUTHORITIES IN MATTERS OF PARENTAL RESPONSIBILITY

Article 53

Designation

Each Member State shall designate one or more central authorities to assist with the application of this Regulation and shall specify the geographical or functional jurisdiction of each. Where a Member State has designated more than one central authority, communications shall normally be sent direct to the relevant central authority with jurisdiction. Where a communication is sent to a central authority without jurisdiction, the latter shall be responsible for forwarding it to the central authority with jurisdiction and informing the sender accordingly.

Article 54

General functions

The central authorities shall communicate information on national laws and procedures and take measures to improve the application of this Regulation and strengthening their cooperation. For this purpose the European Judicial Network in civil and commercial matters created by Decision No 2001/470/EC shall be used.

Article 55

Cooperation on cases specific to parental responsibility

The central authorities shall, upon request from a central authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting

directly or through public authorities or other bodies, take all appropriate steps in accordance with the law of that Member State in matters of personal data protection to:

- (a) collect and exchange information:
 - (i) on the situation of the child;
 - (ii) on any procedures under way; or
 - (iii) on decisions taken concerning the child;
- (b) provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions on their territory, in particular concerning rights of access and the return of the child;
- (c) facilitate communications between courts, in particular for the application of Article 11(6) and (7) and Article 15;
- (d) provide such information and assistance as is needed by courts to apply Article 56; and
- (e) facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end.

Article 56

Placement of a child in another Member State

1. Where a court having jurisdiction under Articles 8 to 15 contemplates the placement of a child in institutional care or with a foster family and where such placement is to take place in another Member State, it shall first consult the central authority or other authority having jurisdiction in the latter State where public authority intervention in that Member State is required for domestic cases of child placement.
2. The judgment on placement referred to in paragraph 1 may be made in the requesting State only if the competent authority of the requested State has consented to the placement.
3. The procedures for consultation or consent referred to in paragraphs 1 and 2 shall be governed by the national law of the requested State.
4. Where the authority having jurisdiction under Articles 8 to 15 decides to place the child in a foster family, and where such placement is to take place in another Member State and where no public authority intervention is required in the latter Member State for domestic cases of child placement, it shall so inform the central authority or other authority having jurisdiction in the latter State.

Article 57

Working method

1. Any holder of parental responsibility may submit, to the central authority of the Member State of his or her habitual residence or to the central authority of the Member State where the child is habitually resident or present, a request for assistance as mentioned in Article 55. In general, the request shall include all available information of relevance to its enforcement. Where the request for assistance concerns the recognition or enforcement of a judgment on parental responsibility that falls within the scope of this Regulation, the holder of parental responsibility shall attach the relevant certificates provided for in Articles 39, 41(1) or 42(1).

2. Member States shall communicate to the Commission the official language or languages of the Community institutions other than their own in which communications to the central authorities can be accepted.

3. The assistance provided by the central authorities pursuant to Article 55 shall be free of charge.

4. Each central authority shall bear its own costs.

Article 58

Meetings

1. In order to facilitate the application of this Regulation, central authorities shall meet regularly.

2. These meetings shall be convened in compliance with Decision No 2001/470/EC establishing a European Judicial Network in civil and commercial matters.

CHAPTER V

RELATIONS WITH OTHER INSTRUMENTS

Article 59

Relation with other instruments

1. Subject to the provisions of Articles 60, 63, 64 and paragraph 2 of this Article, this Regulation shall, for the Member States, supersede conventions existing at the time of entry into force of this Regulation which have been concluded between two or more Member States and relate to matters governed by this Regulation.

2. (a) Finland and Sweden shall have the option of declaring that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law

provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, will apply, in whole or in part, in their mutual relations, in place of the rules of this Regulation. Such declarations shall be annexed to this Regulation and published in the *Official Journal of the European Union*. They may be withdrawn, in whole or in part, at any moment by the said Member States.

(b) The principle of non-discrimination on the grounds of nationality between citizens of the Union shall be respected.

(c) The rules of jurisdiction in any future agreement to be concluded between the Member States referred to in subparagraph (a) which relate to matters governed by this Regulation shall be in line with those laid down in this Regulation.

(d) Judgments handed down in any of the Nordic States which have made the declaration provided for in subparagraph (a) under a forum of jurisdiction corresponding to one of those laid down in Chapter II of this Regulation, shall be recognised and enforced in the other Member States under the rules laid down in Chapter III of this Regulation.

3. Member States shall send to the Commission:

(a) a copy of the agreements and uniform laws implementing these agreements referred to in paragraph 2(a) and (c);

(b) any denunciations of, or amendments to, those agreements or uniform laws.

Article 60

Relations with certain multilateral conventions

In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

(a) the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors;

(b) the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages;

(c) the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations;

(d) the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;

and

(e) the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

Article 61

Relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children

As concerns the relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, this Regulation shall apply:

- (a) where the child concerned has his or her habitual residence on the territory of a Member State;
- (b) as concerns the recognition and enforcement of a judgment given in a court of a Member State on the territory of another Member State, even if the child concerned has his or her habitual residence on the territory of a third State which is a contracting Party to the said Convention.

Article 62

Scope of effects

- 1. The agreements and conventions referred to in Articles 59(1), 60 and 61 shall continue to have effect in relation to matters not governed by this Regulation.
- 2. The conventions mentioned in Article 60, in particular the 1980 Hague Convention, continue to produce effects between the Member States which are party thereto, in compliance with Article 60.

Article 63

Treaties with the Holy See

- 1. This Regulation shall apply without prejudice to the International Treaty (Concordat) between the Holy See and Portugal, signed at the Vatican City on 7 May 1940.
- 2. Any decision as to the invalidity of a marriage taken under the Treaty referred to in paragraph 1 shall be recognised in the Member States on the conditions laid down in Chapter III, Section 1.

3. The provisions laid down in paragraphs 1 and 2 shall also apply to the following international treaties (Concordats) with the Holy See:

- (a) 'Concordato lateranense' of 11 February 1929 between Italy and the Holy See, modified by the agreement, with additional Protocol signed in Rome on 18 February 1984;
- (b) Agreement between the Holy See and Spain on legal affairs of 3 January 1979.

4. Recognition of the decisions provided for in paragraph 2 may, in Italy or in Spain, be subject to the same procedures and the same checks as are applicable to decisions of the ecclesiastical courts handed down in accordance with the international treaties concluded with the Holy See referred to in paragraph 3.

5. Member States shall send to the Commission:

- (a) a copy of the Treaties referred to in paragraphs 1 and 3;
- (b) any denunciations of or amendments to those Treaties.

CHAPTER VI

TRANSITIONAL PROVISIONS

Article 64

1. The provisions of this Regulation shall apply only to legal proceedings instituted, to documents formally drawn up or registered as authentic instruments and to agreements concluded between the parties after its date of application in accordance with Article 72.

2. Judgments given after the date of application of this Regulation in proceedings instituted before that date but after the date of entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter III of this Regulation if jurisdiction was founded on rules which accorded with those provided for either in Chapter II or in Regulation (EC) No 1347/2000 or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

3. Judgments given before the date of application of this Regulation in proceedings instituted after the entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter III of this Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings.

4. Judgments given before the date of application of this Regulation but after the date of entry into force of Regulation (EC) No 1347/2000 in proceedings instituted before the date of entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter III of this Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings and that jurisdiction was founded on rules which accorded with those provided for either in Chapter II of this Regulation or in Regulation (EC) No 1347/2000 or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

CHAPTER VII

FINAL PROVISIONS

Article 65

Review

No later than 1 January 2012, and every five years thereafter, the Commission shall present to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Regulation on the basis of information supplied by the Member States. The report shall be accompanied if need be by proposals for adaptations.

Article 66

Member States with two or more legal systems

With regard to a Member State in which two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units:

- (a) any reference to habitual residence in that Member State shall refer to habitual residence in a territorial unit;
- (b) any reference to nationality, or in the case of the United Kingdom 'domicile', shall refer to the territorial unit designated by the law of that State;
- (c) any reference to the authority of a Member State shall refer to the authority of a territorial unit within that State which is concerned;
- (d) any reference to the rules of the requested Member State shall refer to the rules of the territorial unit in which jurisdiction, recognition or enforcement is invoked.

Article 67

Information on central authorities and languages accepted

The Member States shall communicate to the Commission within three months following the entry into force of this Regulation:

- (a) the names, addresses and means of communication for the central authorities designated pursuant to Article 53;
- (b) the languages accepted for communications to central authorities pursuant to Article 57(2);

and

- (c) the languages accepted for the certificate concerning rights of access pursuant to Article 45(2).

The Member States shall communicate to the Commission any changes to this information.

The Commission shall make this information publicly available.

Article 68

Information relating to courts and redress procedures

The Member States shall notify to the Commission the lists of courts and redress procedures referred to in Articles 21, 29, 33 and 34 and any amendments thereto.

The Commission shall update this information and make it publicly available through the publication in the *Official Journal of the European Union* and any other appropriate means.

Article 69

Amendments to the Annexes

Any amendments to the standard forms in Annexes I to IV shall be adopted in accordance with the consultative procedure set out in Article 70(2).

Article 70

Committee

1. The Commission shall be assisted by a committee (committee).
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. The committee shall adopt its rules of procedure.

*Article 71***Repeal of Regulation (EC) No 1347/2000**

1. Regulation (EC) No 1347/2000 shall be repealed as from the date of application of this Regulation.
2. Any reference to Regulation (EC) No 1347/2000 shall be construed as a reference to this Regulation according to the comparative table in Annex V.

*Article 72***Entry into force**

This Regulation shall enter into force on 1 August 2004.

The Regulation shall apply from 1 March 2005, with the exception of Articles 67, 68, 69 and 70, which shall apply from 1 August 2004.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 27 November 2003.

For the Council
The President
R. CASTELLI

ANNEX I

CERTIFICATE REFERRED TO IN ARTICLE 39 CONCERNING JUDGMENTS IN MATRIMONIAL MATTERS ⁽¹⁾

1. Member State of origin
2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel./fax/e-mail
3. Marriage
 - 3.1. Wife
 - 3.1.1. Full name
 - 3.1.2. Address
 - 3.1.3. Country and place of birth
 - 3.1.4. Date of birth
 - 3.2. Husband
 - 3.2.1. Full name
 - 3.2.2. Address
 - 3.2.3. Country and place of birth
 - 3.2.4. Date of birth
 - 3.3. Country, place (where available) and date of marriage
 - 3.3.1. Country of marriage
 - 3.3.2. Place of marriage (where available)
 - 3.3.3. Date of marriage
4. Court which delivered the judgment
 - 4.1. Name of Court
 - 4.2. Place of Court
5. Judgment
 - 5.1. Date
 - 5.2. Reference number
 - 5.3. Type of judgment
 - 5.3.1. Divorce
 - 5.3.2. Marriage annulment
 - 5.3.3. Legal separation

⁽¹⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

5.4. Was the judgment given in default of appearance?

5.4.1. No

5.4.2. Yes ⁽¹⁾

6. Names of parties to whom legal aid has been granted

7. Is the judgment subject to further appeal under the law of the Member State of origin?

7.1. No

7.2. Yes

8. Date of legal effect in the Member State where the judgment was given

8.1. Divorce

8.2. Legal separation

Done at , date

Signature and/or stamp

⁽¹⁾ Documents referred to in Article 37(2) must be attached.

ANNEX II

CERTIFICATE REFERRED TO IN ARTICLE 39 CONCERNING JUDGMENTS ON PARENTAL RESPONSIBILITY ⁽¹⁾

1. Member State of origin
2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel./Fax/e-mail
3. Person(s) with rights of access
 - 3.1. Full name
 - 3.2. Address
 - 3.3. Date and place of birth (where available)
4. Holders of parental responsibility other than those mentioned under 3 ⁽²⁾
 - 4.1.
 - 4.1.1. Full name
 - 4.1.2. Address
 - 4.1.3. Date and place of birth (where available)
 - 4.2.
 - 4.2.1. Full Name
 - 4.2.2. Address
 - 4.2.3. Date and place of birth (where available)
 - 4.3.
 - 4.3.1. Full name
 - 4.3.2. Address
 - 4.3.3. Date and place of birth (where available)
5. Court which delivered the judgment
 - 5.1. Name of Court
 - 5.2. Place of Court
6. Judgment
 - 6.1. Date
 - 6.2. Reference number
 - 6.3. Was the judgment given in default of appearance?
 - 6.3.1. No
 - 6.3.2. Yes ⁽³⁾

⁽¹⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

⁽²⁾ In cases of joint custody, a person already mentioned under item 3 may also be mentioned under item 4.

⁽³⁾ Documents referred to in Article 37(2) must be attached.

- 7. Children who are covered by the judgment ⁽¹⁾
 - 7.1. Full name and date of birth
 - 7.2. Full name and date of birth
 - 7.3. Full name and date of birth
 - 7.4. Full name and date of birth
- 8. Names of parties to whom legal aid has been granted
- 9. Attestation of enforceability and service
 - 9.1. Is the judgment enforceable according to the law of the Member State of origin?
 - 9.1.1. Yes
 - 9.1.2. No
 - 9.2. Has the judgment been served on the party against whom enforcement is sought?
 - 9.2.1. Yes
 - 9.2.1.1. Full name of the party
 - 9.2.1.2. Address
 - 9.2.1.3. Date of service
 - 9.2.2. No
- 10. Specific information on judgments on rights of access where 'exequatur' is requested under Article 28. This possibility is foreseen in Article 40(2).
 - 10.1. Practical arrangements for exercise of rights of access (to the extent stated in the judgment)
 - 10.1.1. Date and time
 - 10.1.1.1. Start
 - 10.1.1.2. End
 - 10.1.2. Place
 - 10.1.3. Specific obligations on holders of parental responsibility
 - 10.1.4. Specific obligations on the person with right of access
 - 10.1.5. Any restrictions attached to the exercise of rights of access
- 11. Specific information for judgments on the return of the child in cases where the 'exequatur' procedure is requested under Article 28. This possibility is foreseen under Article 40(2).
 - 11.1. The judgment entails the return of the child
 - 11.2. Person to whom the child is to be returned (to the extent stated in the judgment)
 - 11.2.1. Full name
 - 11.2.2. Address

Done at , date

Signature and/or stamp

⁽¹⁾ If more than four children are covered, use a second form.

ANNEX III

CERTIFICATE REFERRED TO IN ARTICLE 41(1) CONCERNING JUDGMENTS ON RIGHTS OF ACCESS ⁽¹⁾

1. Member State of origin
2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel./fax/e-mail
3. Person(s) with rights of access
 - 3.1. Full name
 - 3.2. Address
 - 3.3. Date and place of birth (where available)
4. Holders of parental responsibility other than those mentioned under 3 ⁽²⁾ ⁽³⁾
 - 4.1.
 - 4.1.1. Full name
 - 4.1.2. Address
 - 4.1.3. Date and place of birth (where available)
 - 4.2.
 - 4.2.1. Full name
 - 4.2.2. Address
 - 4.2.3. Date and place of birth (where available)
 - 4.3. Other
 - 4.3.1. Full name
 - 4.3.2. Address
 - 4.3.3. Date and place of birth (where available)
5. Court which delivered the judgment
 - 5.1. Name of Court
 - 5.2. Place of Court
6. Judgment
 - 6.1. Date
 - 6.2. Reference number

⁽¹⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

⁽²⁾ In cases of joint custody, a person already mentioned under item 3 may also be mentioned in item 4.

⁽³⁾ Please put a cross in the box corresponding to the person against whom the judgment should be enforced.

- 7. Children who are covered by the judgment ⁽¹⁾
 - 7.1. Full name and date of birth
 - 7.2. Full name and date of birth
 - 7.3. Full name and date of birth
 - 7.4. Full name and date of birth
- 8. Is the judgment enforceable in the Member State of origin?
 - 8.1. Yes
 - 8.2. No
- 9. Where the judgment was given in default of appearance, the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence, or the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally
- 10. All parties concerned were given an opportunity to be heard
- 11. The children were given an opportunity to be heard, unless a hearing was considered inappropriate having regard to their age or degree of maturity
- 12. Practical arrangements for exercise of rights of access (to the extent stated in the judgment)
 - 12.1. Date and time
 - 12.1.1. Start
 - 12.1.2. End
 - 12.2. Place
 - 12.3. Specific obligations on holders of parental responsibility
 - 12.4. Specific obligations on the person with right of access
 - 12.5. Any restrictions attached to the exercise of rights of access
- 13. Names of parties to whom legal aid has been granted

Done at , date

Signature and/or stamp

⁽¹⁾ If more than four children are concerned, use a second form.

ANNEX IV

CERTIFICATE REFERRED TO IN ARTICLE 42(1) CONCERNING THE RETURN OF THE CHILD ⁽¹⁾

1. Member State of origin
2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel./fax/e-mail
3. Person to whom the child has to be returned (to the extent stated in the judgment)
 - 3.1. Full name
 - 3.2. Address
 - 3.3. Date and place of birth (where available)
4. Holders of parental responsibility ⁽²⁾
 - 4.1. Mother
 - 4.1.1. Full name
 - 4.1.2. Address (where available)
 - 4.1.3. Date and place of birth (where available)
 - 4.2. Father
 - 4.2.1. Full name
 - 4.2.2. Address (where available)
 - 4.2.3. Date and place of birth (where available)
 - 4.3. Other
 - 4.3.1. Full name
 - 4.3.2. Address (where available)
 - 4.3.3. Date and place of birth (where available)
5. Respondent (where available)
 - 5.1. Full name
 - 5.2. Address (where available)
6. Court which delivered the judgment
 - 6.1. Name of Court
 - 6.2. Place of Court

⁽¹⁾ Council Regulation (EC) No 2201 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

⁽²⁾ This item is optional.

- 7. Judgment
 - 7.1. Date
 - 7.2. Reference number
 - 8. Children who are covered by the judgment ⁽¹⁾
 - 8.1. Full name and date of birth
 - 8.2. Full name and date of birth
 - 8.3. Full name and date of birth
 - 8.4. Full name and date of birth
 - 9. The judgment entails the return of the child
 - 10. Is the judgment enforceable in the Member State of origin?
 - 10.1. Yes
 - 10.2. No
 - 11. The children were given an opportunity to be heard, unless a hearing was considered inappropriate having regard to their age or degree of maturity
 - 12. The parties were given an opportunity to be heard
 - 13. The judgment entails the return of the children and the court has taken into account in issuing its judgment the reasons for and evidence underlying the decision issued pursuant to Article 13 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
 - 14. Where applicable, details of measures taken by courts or authorities to ensure the protection of the child after its return to the Member State of habitual residence
 - 15. Names of parties to whom legal aid has been granted
- Done at , date

Signature and/or stamp

⁽¹⁾ If more than four children are covered, use a second form.

ANNEX V

COMPARATIVE TABLE WITH REGULATION (EC) No 1347/2000

Articles repealed	Corresponding Articles of new text	Articles repealed	Corresponding Articles of new text
1	1, 2	25	32
2	3	26	33
3	12	27	34
4		28	35
5	4	29	36
6	5	30	50
7	6	31	51
8	7	32	37
9	17	33	39
10	18	34	38
11	16, 19	35	52
12	20	36	59
13	2, 49, 46	37	60, 61
14	21	38	62
15	22, 23	39	
16		40	63
17	24	41	66
18	25	42	64
19	26	43	65
20	27	44	68, 69
21	28	45	70
22	21, 29	46	72
23	30	Annex I	68
24	31	Annex II	68
		Annex III	68
		Annex IV	Annex I
		Annex V	Annex II

ANNEX VI

Declarations by Sweden and Finland pursuant to Article 59(2)(a) of the Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

Declaration by Sweden:

Pursuant to Article 59(2)(a) of the Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Sweden hereby declares that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, will apply in full in relations between Sweden and Finland, in place of the rules of the Regulation.

Declaration by Finland:

Pursuant to Article 59(2)(a) of the Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Finland hereby declares that the Convention of 6 February 1931 between Finland, Denmark, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, will apply in full in relations between Finland and Sweden, in place of the rules of the Regulation.

4b

Council Regulation (EC) No 4/2009
of 18 December 2008 on jurisdiction,
applicable law, recognition and enforcement
of decisions and cooperation in matters
relating to maintenance obligations



I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 4/2009

of 18 December 2008

on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, among others, measures relating to judicial cooperation in civil matters having cross-border implications, in so far as necessary for the proper functioning of the internal market.

- (2) In accordance with Article 65(b) of the Treaty, these measures must aim, *inter alia*, to promote the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.

- (3) In this respect, the Community has among other measures already adopted Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽³⁾, Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters ⁽⁴⁾, Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters ⁽⁵⁾, Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes ⁽⁶⁾, Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility ⁽⁷⁾, Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims ⁽⁸⁾, and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) ⁽⁹⁾.

⁽³⁾ OJ L 12, 16.1.2001, p. 1.

⁽⁴⁾ OJ L 174, 27.6.2001, p. 25.

⁽⁵⁾ OJ L 174, 27.6.2001, p. 1.

⁽⁶⁾ OJ L 26, 31.1.2003, p. 41.

⁽⁷⁾ OJ L 338, 23.12.2003, p. 1.

⁽⁸⁾ OJ L 143, 30.4.2004, p. 15.

⁽⁹⁾ OJ L 324, 10.12.2007, p. 79.

⁽¹⁾ Opinion given on 13 December 2007 (not yet published in the Official Journal) and opinion given on 4 December 2008 following re-consultation (not yet published in the Official Journal).

⁽²⁾ Opinion given following non-obligatory consultation (OJ C 185, 8.8.2006, p. 35).

- (4) The European Council in Tampere on 15 and 16 October 1999 invited the Council and the Commission to establish special common procedural rules to simplify and accelerate the settlement of cross-border disputes concerning, *inter alia*, maintenance claims. It also called for the abolition of intermediate measures required for the recognition and enforcement in the requested State of a decision given in another Member State, particularly a decision relating to a maintenance claim.
- (5) A programme of measures for the enforcement of the principle of mutual recognition of decisions in civil and commercial matters ⁽¹⁾, common to the Commission and to the Council, was adopted on 30 November 2000. That programme provides for the abolition of the exequatur procedure for maintenance claims in order to boost the effectiveness of the means by which maintenance creditors safeguard their rights.
- (6) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme called 'The Hague Programme: strengthening freedom, security and justice in the European Union' (hereinafter referred to as The Hague Programme) ⁽²⁾.
- (7) At its meeting on 2 and 3 June 2005, the Council adopted a Council and Commission Action Plan ⁽³⁾ which implements The Hague Programme in concrete actions and which mentions the necessity of adopting proposals on maintenance obligations.
- (8) In the framework of The Hague Conference on Private International Law, the Community and its Member States took part in negotiations which led to the adoption on 23 November 2007 of the Convention on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter referred to as the 2007 Hague Convention) and the Protocol on the Law Applicable to Maintenance Obligations (hereinafter referred to as the 2007 Hague Protocol). Both those instruments should therefore be taken into account in this Regulation.
- (9) A maintenance creditor should be able to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities.
- (10) In order to achieve this goal, it is advisable to create a Community instrument in matters relating to maintenance obligations bringing together provisions on jurisdiction, conflict of laws, recognition and enforceability, enforcement, legal aid and cooperation between Central Authorities.
- (11) The scope of this Regulation should cover all maintenance obligations arising from a family relationship, parentage, marriage or affinity, in order to guarantee equal treatment of all maintenance creditors. For the purposes of this Regulation, the term 'maintenance obligation' should be interpreted autonomously.
- (12) In order to take account of the various ways of resolving maintenance obligation issues in the Member States, this Regulation should apply both to court decisions and to decisions given by administrative authorities, provided that the latter offer guarantees with regard to, in particular, their impartiality and the right of all parties to be heard. Those authorities should therefore apply all the rules of this Regulation.
- (13) For the reasons set out above, this Regulation should also ensure the recognition and enforcement of court settlements and authentic instruments without affecting the right of either party to such a settlement or instrument to challenge the settlement or instrument before the courts of the Member State of origin.
- (14) It should be provided in this Regulation that for the purposes of an application for the recognition and enforcement of a decision relating to maintenance obligations the term 'creditor' includes public bodies which are entitled to act in place of a person to whom maintenance is owed or to claim reimbursement of benefits provided to the creditor in place of maintenance. Where a public body acts in this capacity, it should be entitled to the same services and the same legal aid as a creditor.
- (15) In order to preserve the interests of maintenance creditors and to promote the proper administration of justice within the European Union, the rules on jurisdiction as they result from Regulation (EC) No 44/2001 should be adapted. The circumstance that the defendant is habitually resident in a third State should no longer entail the non-application of Community rules on jurisdiction, and there should no longer be any referral to national law. This Regulation should therefore determine the cases in which a court in a Member State may exercise subsidiary jurisdiction.
- (16) In order to remedy, in particular, situations of denial of justice this Regulation should provide a forum *necessitatis* allowing a court of a Member State, on an exceptional basis, to hear a case which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when an applicant cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on the forum *necessitatis* should, however, be exercised only if the dispute has a sufficient connection with the Member State of the court seised, for instance the nationality of one of the parties.

⁽¹⁾ OJ C 12, 15.1.2001, p. 1.

⁽²⁾ OJ C 53, 3.3.2005, p. 1.

⁽³⁾ OJ C 198, 12.8.2005, p. 1.

- (17) An additional rule of jurisdiction should provide that, except under specific conditions, proceedings to modify an existing maintenance decision or to have a new decision given can be brought by the debtor only in the State in which the creditor was habitually resident at the time the decision was given and in which he remains habitually resident. To ensure proper symmetry between the 2007 Hague Convention and this Regulation, this rule should also apply as regards decisions given in a third State which is party to the said Convention in so far as that Convention is in force between that State and the Community and covers the same maintenance obligations in that State and in the Community.
- (18) For the purposes of this Regulation, it should be provided that in Ireland the concept of 'domicile' replaces the concept of 'nationality' which is also the case in the United Kingdom, subject to this Regulation being applicable in the latter Member State in accordance with Article 4 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community.
- (19) In order to increase legal certainty, predictability and the autonomy of the parties, this Regulation should enable the parties to choose the competent court by agreement on the basis of specific connecting factors. To protect the weaker party, such a choice of court should not be allowed in the case of maintenance obligations towards a child under the age of 18.
- (20) It should be provided in this Regulation that, for Member States bound by the 2007 Hague Protocol, the rules on conflict of laws in respect of maintenance obligations will be those set out in that Protocol. To that end, a provision referring to the said Protocol should be inserted. The 2007 Hague Protocol will be concluded by the Community in time to enable this Regulation to apply. To take account of a scenario in which the 2007 Hague Protocol does not apply to all the Member States a distinction for the purposes of recognition, enforceability and enforcement of decisions needs to be made in this Regulation between the Member States bound by the 2007 Hague Protocol and those not bound by it.
- (21) It needs to be made clear in this Regulation that these rules on conflict of laws determine only the law applicable to maintenance obligations and do not determine the law applicable to the establishment of the family relationships on which the maintenance obligations are based. The establishment of family relationships continues to be covered by the national law of the Member States, including their rules of private international law.
- (22) In order to ensure swift and efficient recovery of a maintenance obligation and to prevent delaying actions, decisions in matters relating to maintenance obligations given in a Member State should in principle be provisionally enforceable. This Regulation should therefore provide that the court of origin should be able to declare the decision provisionally enforceable even if the national law does not provide for enforceability by operation of law and even if an appeal has been or could still be lodged against the decision under national law.
- (23) To limit the costs of proceedings subject to this Regulation, the greatest possible use of modern communications technologies, particularly for hearing parties, would be helpful.
- (24) The guarantees provided by the application of rules on conflict of laws should provide the justification for having decisions relating to maintenance obligations given in a Member State bound by the 2007 Hague Protocol recognised and regarded as enforceable in all the other Member States without any procedure being necessary and without any form of control on the substance in the Member State of enforcement.
- (25) Recognition in a Member State of a decision relating to maintenance obligations has as its only object to allow the recovery of the maintenance claim determined in the decision. It does not imply the recognition by that Member State of the family relationship, parentage, marriage or affinity underlying the maintenance obligations which gave rise to the decision.
- (26) For decisions on maintenance obligations given in a Member State not bound by the 2007 Hague Protocol, there should be provision in this Regulation for a procedure for recognition and declaration of enforceability. That procedure should be modelled on the procedure and the grounds for refusing recognition set out in Regulation (EC) No 44/2001. To accelerate proceedings and enable the creditor to recover his claim quickly, the court seised should be required to give its decision within a set time, unless there are exceptional circumstances.
- (27) It would also be appropriate to limit as far as possible the formal enforcement requirements likely to increase the costs to be borne by the maintenance creditor. To that end, this Regulation should provide that a maintenance creditor ought not to be required to have a postal address or an authorised representative in the Member State of enforcement, without this otherwise affecting the internal organisation of the Member States in matters relating to enforcement proceedings.
- (28) In order to limit the costs of enforcement proceedings, no translation should be required unless enforcement is contested, and without prejudice to the rules applicable to service of documents.

- (29) In order to guarantee compliance with the requirements of a fair trial, this Regulation should provide for the right of a defendant who did not enter an appearance in the court of origin of a Member State bound by the 2007 Hague Protocol to apply for a review of the decision given against him at the stage of enforcement. However, the defendant must apply for this review within a set period which should start no later than the day on which, in the enforcement proceedings, his property was first made non-disposable in whole or in part. That right to apply for a review should be an extraordinary remedy granted to the defendant in default and not affecting the application of any extraordinary remedies laid down in the law of the Member State of origin provided that those remedies are not incompatible with the right to a review under this Regulation.
- (30) In order to speed up the enforcement in another Member State of a decision given in a Member State bound by the 2007 Hague Protocol it is necessary to limit the grounds of refusal or of suspension of enforcement which may be invoked by the debtor on account of the cross-border nature of the maintenance claim. This limitation should not affect the grounds of refusal or of suspension laid down in national law which are not incompatible with those listed in this Regulation, such as the debtor's discharge of his debt at the time of enforcement or the unattachable nature of certain assets.
- (31) To facilitate cross-border recovery of maintenance claims, provision should be made for a system of cooperation between Central Authorities designated by the Member States. These Authorities should assist maintenance creditors and debtors in asserting their rights in another Member State by submitting applications for recognition, enforceability and enforcement of existing decisions, for the modification of such decisions or for the establishment of a decision. They should also exchange information in order to locate debtors and creditors, and identify their income and assets, as necessary. Lastly, they should cooperate with each other by exchanging general information and promoting cooperation amongst the competent authorities in their Member States.
- (32) A Central Authority designated under this Regulation should bear its own costs, except in specifically determined cases, and should provide assistance for all applicants residing in its Member State. The criterion for determining a person's right to request assistance from a Central Authority should be less strict than the connecting factor of 'habitual residence' used elsewhere in this Regulation. However, the 'residence' criterion should exclude mere presence.
- (33) In order to provide full assistance to maintenance creditors and debtors and to facilitate as much as possible cross-border recovery of maintenance, the Central Authorities should be able to obtain a certain amount of personal information. This Regulation should therefore oblige the Member States to ensure that their Central Authorities have access to such information through the public authorities or administrations which hold the information concerned in the course of their ordinary activities. It should however be left to each Member State to decide on the arrangements for such access. Accordingly, a Member State should be able to designate the public authorities or administrations which will be required to supply the information to the Central Authority in accordance with this Regulation, including, if appropriate, public authorities or administrations already designated in the context of other systems for access to information. Where a Member State designates public authorities or administrations, it should ensure that its Central Authority is able to access the requisite information held by those bodies as provided for in this Regulation. A Member State should also be able to allow its Central Authority to access requisite information from any other legal person which holds it and controls its processing.
- (34) In the context of access to personal data and the use and transmission thereof, the requirements of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾, as transposed into the national law of the Member States, should be complied with.
- (35) For the purposes of the application of this Regulation it is however necessary to define the specific conditions of access to personal data and of the use and transmission of such data. In this context, the opinion of the European Data Protection Supervisor ⁽²⁾ has been taken into consideration. Notification of the data subject should take place in accordance with national law. It should however be possible to defer the notification to prevent the debtor from transferring his assets and thus jeopardising the recovery of the maintenance claim.
- (36) On account of the costs of proceedings it is appropriate to provide for a very favourable legal aid scheme, that is, full coverage of the costs relating to proceedings concerning maintenance obligations in respect of children under the age of 21 initiated via the Central Authorities. Specific rules should therefore be added to the current rules on legal aid in the European Union which exist by virtue of Directive

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ C 242, 7.10.2006, p. 20.

2003/8/EC thus setting up a special legal aid scheme for maintenance obligations. In this context, the competent authority of the requested Member State should be able, exceptionally, to recover costs from an applicant having received free legal aid and lost the case, provided that the person's financial situation so permits. This would apply, in particular, where someone well-off had acted in bad faith.

- (37) In addition, for maintenance obligations other than those referred to in the preceding recital, all parties should be guaranteed the same treatment in terms of legal aid at the time of enforcement of a decision in another Member State. Accordingly, the provisions of this Regulation on continuity of legal aid should be understood as also granting such aid to a party who, while not having received legal aid in the proceedings to obtain or amend a decision in the Member State of origin, did then benefit from such aid in that State in the context of an application for enforcement of the decision. Similarly, a party who benefited from free proceedings before an administrative authority listed in Annex X should, in the Member State of enforcement, benefit from the most favourable legal aid or the most extensive exemption from costs or expenses, provided that he shows that he would have so benefited in the Member State of origin.
- (38) In order to minimise the costs of translating supporting documents the court seised should only require a translation of such documents when this is necessary, without prejudice to the rights of the defence and the rules applicable concerning service of documents.
- (39) To facilitate the application of this Regulation, Member States should be obliged to provide the Commission with the names and contact details of their Central Authorities and with other information. That information should be made available to practitioners and to the public through publication in the *Official Journal of the European Union* or through electronic access to the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC. Furthermore, the use of forms provided for in this Regulation should facilitate and speed up communication between the Central Authorities and make it possible to submit applications electronically.
- (40) The relationship between this Regulation and the bilateral or multilateral conventions and agreements on maintenance obligations to which the Member States are party should be specified. In this context it should be stipulated that Member States which are party to the Convention of 23 March 1962 between Sweden, Denmark, Finland, Iceland and Norway on the recovery of maintenance by the Member States may continue to apply that Convention since it contains more favourable rules on recognition and enforcement than those in this Regulation. As regards the conclusion of future bilateral agreements on maintenance obligations with third States, the procedures and conditions under which Member States would be authorised to negotiate and conclude such agreements on their own behalf should be determined in the course of discussions relating to a Commission proposal on the subject.
- (41) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits ⁽¹⁾ should apply.
- (42) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (43) In particular, the Commission should be empowered to adopt any amendments to the forms provided for in this Regulation in accordance with the advisory procedure provided for in Article 3 of Decision 1999/468/EC. For the establishment of the list of the administrative authorities falling within the scope of this Regulation, and the list of authorities competent to certify the right to legal aid, the Commission should be empowered to act in accordance with the management procedure provided for in Article 4 of that Decision.
- (44) This Regulation should amend Regulation (EC) No 44/2001 by replacing the provisions of that Regulation applicable to maintenance obligations. Subject to the transitional provisions of this Regulation, Member States should, in matters relating to maintenance obligations, apply the provisions of this Regulation on jurisdiction, recognition, enforceability and enforcement of decisions and on legal aid instead of those of Regulation (EC) No 44/2001 as from the date on which this Regulation becomes applicable.
- (45) Since the objectives of this Regulation, namely the introduction of a series of measures to ensure the effective recovery of maintenance claims in cross-border situations and thus to facilitate the free movement of persons within the European Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article this Regulation does not go beyond what is necessary to achieve those objectives.
- (46) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has given notice of its wish to take part in the adoption and application of this Regulation.

⁽¹⁾ OJ L 124, 8.6.1971, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

- (47) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. This is, however, without prejudice to the possibility for the United Kingdom of notifying its intention of accepting this Regulation after its adoption in accordance with Article 4 of the said Protocol.
- (48) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application, without prejudice to the possibility for Denmark of applying the amendments made here to Regulation (EC) No 44/2001 pursuant to Article 3 of the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope of application

1. This Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.
2. In this Regulation, the term 'Member State' shall mean Member States to which this Regulation applies.

Article 2

Definitions

1. For the purposes of this Regulation:

1. the term 'decision' shall mean a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses. For the purposes of Chapters VII and VIII, the term 'decision' shall also mean a decision in matters relating to maintenance obligations given in a third State;
2. the term 'court settlement' shall mean a settlement in matters relating to maintenance obligations which has been approved by a court or concluded before a court in the course of proceedings;

⁽¹⁾ OJ L 299, 16.11.2005, p. 62.

3. the term 'authentic instrument' shall mean:
 - (a) a document in matters relating to maintenance obligations which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:
 - (i) relates to the signature and the content of the instrument, and
 - (ii) has been established by a public authority or other authority empowered for that purpose; or,
 - (b) an arrangement relating to maintenance obligations concluded with administrative authorities of the Member State of origin or authenticated by them;
4. the term 'Member State of origin' shall mean the Member State in which, as the case may be, the decision has been given, the court settlement has been approved or concluded, or the authentic instrument has been established;
5. the term 'Member State of enforcement' shall mean the Member State in which the enforcement of the decision, the court settlement or the authentic instrument is sought;
6. the term 'requesting Member State' shall mean the Member State whose Central Authority transmits an application pursuant to Chapter VII;
7. the term 'requested Member State' shall mean the Member State whose Central Authority receives an application pursuant to Chapter VII;
8. the term '2007 Hague Convention Contracting State' shall mean a State which is a contracting party to the Hague Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter referred to as the 2007 Hague Convention) to the extent that the said Convention applies between the Community and that State;
9. the term 'court of origin' shall mean the court which has given the decision to be enforced;
10. the term 'creditor' shall mean any individual to whom maintenance is owed or is alleged to be owed;
11. the term 'debtor' shall mean any individual who owes or who is alleged to owe maintenance.
2. For the purposes of this Regulation, the term 'court' shall include administrative authorities of the Member States with competence in matters relating to maintenance obligations provided that such authorities offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State where they are established:
 - (i) may be made the subject of an appeal to or review by a judicial authority; and
 - (ii) have a similar force and effect as a decision of a judicial authority on the same matter.

These administrative authorities shall be listed in Annex X. That Annex shall be established and amended in accordance with the management procedure referred to in Article 73(2) at the request of the Member State in which the administrative authority concerned is established.

3. For the purposes of Articles 3, 4 and 6, the concept of 'domicile' shall replace that of 'nationality' in those Member States which use this concept as a connecting factor in family matters.

For the purposes of Article 6, parties which have their 'domicile' in different territorial units of the same Member State shall be deemed to have their common 'domicile' in that Member State.

CHAPTER II

JURISDICTION

Article 3

General provisions

In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

- (a) the court for the place where the defendant is habitually resident, or
- (b) the court for the place where the creditor is habitually resident, or
- (c) the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or
- (d) the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.

Article 4

Choice of court

1. The parties may agree that the following court or courts of a Member State shall have jurisdiction to settle any disputes in matters relating to a maintenance obligation which have arisen or may arise between them:

- (a) a court or the courts of a Member State in which one of the parties is habitually resident;

- (b) a court or the courts of a Member State of which one of the parties has the nationality;

- (c) in the case of maintenance obligations between spouses or former spouses:

- (i) the court which has jurisdiction to settle their dispute in matrimonial matters; or
- (ii) a court or the courts of the Member State which was the Member State of the spouses' last common habitual residence for a period of at least one year.

The conditions referred to in points (a), (b) or (c) have to be met at the time the choice of court agreement is concluded or at the time the court is seised.

The jurisdiction conferred by agreement shall be exclusive unless the parties have agreed otherwise.

2. A choice of court agreement shall be in writing. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

3. This Article shall not apply to a dispute relating to a maintenance obligation towards a child under the age of 18.

4. If the parties have agreed to attribute exclusive jurisdiction to a court or courts of a State party to the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽¹⁾, signed on 30 October 2007 in Lugano (hereinafter referred to as the Lugano Convention), where that State is not a Member State, the said Convention shall apply except in the case of the disputes referred to in paragraph 3.

Article 5

Jurisdiction based on the appearance of the defendant

Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction.

Article 6

Subsidiary jurisdiction

Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5 and no court of a State party to the Lugano Convention which is not a Member State has jurisdiction pursuant to the provisions of that Convention, the courts of the Member State of the common nationality of the parties shall have jurisdiction.

⁽¹⁾ OJ L 339, 21.12.2007, p. 3.

*Article 7***Forum necessitatis**

Where no court of a Member State has jurisdiction pursuant to Articles 3, 4, 5 and 6, the courts of a Member State may, on an exceptional basis, hear the case if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the dispute is closely connected.

The dispute must have a sufficient connection with the Member State of the court seised.

*Article 8***Limit on proceedings**

1. Where a decision is given in a Member State or a 2007 Hague Convention Contracting State where the creditor is habitually resident, proceedings to modify the decision or to have a new decision given cannot be brought by the debtor in any other Member State as long as the creditor remains habitually resident in the State in which the decision was given.

2. Paragraph 1 shall not apply:

- (a) where the parties have agreed in accordance with Article 4 to the jurisdiction of the courts of that other Member State;
- (b) where the creditor submits to the jurisdiction of the courts of that other Member State pursuant to Article 5;
- (c) where the competent authority in the 2007 Hague Convention Contracting State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or give a new decision; or
- (d) where the decision given in the 2007 Hague Convention Contracting State of origin cannot be recognised or declared enforceable in the Member State where proceedings to modify the decision or to have a new decision given are contemplated.

*Article 9***Seising of a court**

For the purposes of this Chapter, a court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or

- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

*Article 10***Examination as to jurisdiction**

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation it shall declare of its own motion that it has no jurisdiction.

*Article 11***Examination as to admissibility**

1. Where a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

2. Article 19 of Regulation (EC) No 1393/2007 shall apply instead of the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

3. Where the provisions of Regulation (EC) No 1393/2007 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

*Article 12***Lis pendens**

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

*Article 13***Related actions**

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 14

Provisional, including protective, measures

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III

APPLICABLE LAW

Article 15

Determination of the applicable law

The law applicable to maintenance obligations shall be determined in accordance with the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations (hereinafter referred to as the 2007 Hague Protocol) in the Member States bound by that instrument.

CHAPTER IV

RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF DECISIONS

Article 16

Scope of application of this Chapter

1. This Chapter shall govern the recognition, enforceability and enforcement of decisions falling within the scope of this Regulation.

2. Section 1 shall apply to decisions given in a Member State bound by the 2007 Hague Protocol.

3. Section 2 shall apply to decisions given in a Member State not bound by the 2007 Hague Protocol.

4. Section 3 shall apply to all decisions.

SECTION 1

Decisions given in a Member State bound by the 2007 Hague Protocol

Article 17

Abolition of exequatur

1. A decision given in a Member State bound by the 2007 Hague Protocol shall be recognised in another Member State without any special procedure being required and without any possibility of opposing its recognition.

2. A decision given in a Member State bound by the 2007 Hague Protocol which is enforceable in that State shall be enforceable in another Member State without the need for a declaration of enforceability.

Article 18

Protective measures

An enforceable decision shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State of enforcement.

Article 19

Right to apply for a review

1. A defendant who did not enter an appearance in the Member State of origin shall have the right to apply for a review of the decision before the competent court of that Member State where:

- (a) he 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; or
- (b) he was prevented from contesting the maintenance claim by reason of force majeure or due to extraordinary circumstances without any fault on his part;

unless he failed to challenge the decision when it was possible for him to do so.

2. The time limit for applying for a review shall run from the day the defendant was effectively acquainted with the contents of the decision and was able to react, at the latest from the date of the first enforcement measure having the effect of making his property non-disposable in whole or in part. The defendant shall react promptly, in any event within 45 days. No extension may be granted on account of distance.

3. If the court rejects the application for a review referred to in paragraph 1 on the basis that none of the grounds for a review set out in that paragraph apply, the decision shall remain in force.

If the court decides that a review is justified for one of the reasons laid down in paragraph 1, the decision shall be null and void. However, the creditor shall not lose the benefits of the interruption of prescription or limitation periods, or the right to claim retroactive maintenance acquired in the initial proceedings.

Article 20

Documents for the purposes of enforcement

1. For the purposes of enforcement of a decision in another Member State, the claimant shall provide the competent enforcement authorities with:

- (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
- (b) the extract from the decision issued by the court of origin using the form set out in Annex I;
- (c) where appropriate, a document showing the amount of any arrears and the date such amount was calculated;
- (d) where necessary, a transliteration or a translation of the content of the form referred to in point (b) into the official language of the Member State of enforcement or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where the application is made, in accordance with the law of that Member State, or into another language that the Member State concerned has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the completion of the form.

2. The competent authorities of the Member State of enforcement may not require the claimant to provide a translation of the decision. However, a translation may be required if the enforcement of the decision is challenged.

3. Any translation under this Article must be done by a person qualified to do translations in one of the Member States.

Article 21

Refusal or suspension of enforcement

1. The grounds of refusal or suspension of enforcement under the law of the Member State of enforcement shall apply in so far as they are not incompatible with the application of paragraphs 2 and 3.

2. The competent authority in the Member State of enforcement shall, on application by the debtor, refuse, either wholly or in part, the enforcement of the decision of the court of origin if the right to enforce the decision of the court of origin is extinguished by the effect of prescription or the limitation of action, either under the law of the Member State of origin or under the law of the Member State of enforcement, whichever provides for the longer limitation period.

Furthermore, the competent authority in the Member State of enforcement may, on application by the debtor, refuse, either wholly or in part, the enforcement of the decision of the court of origin if it is irreconcilable with a decision given in the Member State of enforcement or with a decision given in another Member State or in a third State which fulfils the conditions necessary for its recognition in the Member State of enforcement.

A decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of the second subparagraph.

3. The competent authority in the Member State of enforcement may, on application by the debtor, suspend, either wholly or in part, the enforcement of the decision of the court of origin if the competent court of the Member State of origin has been seised of an application for a review of the decision of the court of origin pursuant to Article 19.

Furthermore, the competent authority of the Member State of enforcement shall, on application by the debtor, suspend the enforcement of the decision of the court of origin where the enforceability of that decision is suspended in the Member State of origin.

Article 22

No effect on the existence of family relationships

The recognition and enforcement of a decision on maintenance under this Regulation shall not in any way imply the recognition of the family relationship, parentage, marriage or affinity underlying the maintenance obligation which gave rise to the decision.

SECTION 2

Decisions given in a Member State not bound by the 2007 Hague Protocol

Article 23

Recognition

1. A decision given in a Member State not bound by the 2007 Hague Protocol shall be recognised in the other Member States without any special procedure being required.

2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures provided for in this Section, apply for a decision that the decision be recognised.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 24

Grounds of refusal of recognition

A decision shall not be recognised:

- (a) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The test of public policy may not be applied to the rules relating to jurisdiction;
- (b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;
- (c) if it is irreconcilable with a decision given in a dispute between the same parties in the Member State in which recognition is sought;
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a third State in a dispute involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

A decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of points (c) or (d).

Article 25

Staying of recognition proceedings

A court of a Member State in which recognition is sought of a decision given in a Member State not bound by the 2007 Hague Protocol shall stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

Article 26

Enforceability

A decision given in a Member State not bound by the 2007 Hague Protocol and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, it has been declared enforceable there.

Article 27

Jurisdiction of local courts

1. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement notified by that Member State to the Commission in accordance with Article 71.

2. The local jurisdiction shall be determined by reference to the place of habitual residence of the party against whom enforcement is sought, or to the place of enforcement.

Article 28

Procedure

1. The application for a declaration of enforceability shall be accompanied by the following documents:

- (a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
- (b) an extract from the decision issued by the court of origin using the form set out in Annex II, without prejudice to Article 29;
- (c) where necessary, a transliteration or a translation of the content of the form referred to in point (b) into the official language of the Member State of enforcement or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where the application is made, in accordance with the law of that Member State, or into another language that the Member State concerned has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the completion of the form.

2. The court or competent authority seized of the application may not require the claimant to provide a translation of the decision. However, a translation may be required in connection with an appeal under Articles 32 or 33.

3. Any translation under this Article must be done by a person qualified to do translations in one of the Member States.

*Article 29***Non-production of the extract**

1. If the extract referred to in Article 28(1)(b) is not produced, the competent court or authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2. In the situation referred to in paragraph 1, if the competent court or authority so requires, a translation of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.

*Article 30***Declaration of enforceability**

The decision shall be declared enforceable without any review under Article 24 immediately on completion of the formalities in Article 28 and at the latest within 30 days of the completion of those formalities, except where exceptional circumstances make this impossible. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

*Article 31***Notice of the decision on the application for a declaration**

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.

2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.

*Article 32***Appeal against the decision on the application for a declaration**

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal shall be lodged with the court notified by the Member State concerned to the Commission in accordance with Article 71.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 11 shall apply even where the party against whom enforcement is sought is not habitually resident in any of the Member States.

5. An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought has his habitual residence in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 45 days and shall run from the date of service, either on him in person or at his residence. No extension may be granted on account of distance.

*Article 33***Proceedings to contest the decision given on appeal**

The decision given on appeal may be contested only by the procedure notified by the Member State concerned to the Commission in accordance with Article 71.

*Article 34***Refusal or revocation of a declaration of enforceability**

1. The court with which an appeal is lodged under Articles 32 or 33 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 24.

2. Subject to Article 32(4), the court seised of an appeal under Article 32 shall give its decision within 90 days from the date it was seised, except where exceptional circumstances make this impossible.

3. The court seised of an appeal under Article 33 shall give its decision without delay.

*Article 35***Staying of proceedings**

The court with which an appeal is lodged under Articles 32 or 33 shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

*Article 36***Provisional, including protective measures**

1. When a decision must be recognised in accordance with this Section, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 30 being required.

2. The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.

3. During the time specified for an appeal pursuant to Article 32(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 37

Partial enforceability

1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the competent court or authority shall give it for one or more of them.

2. An applicant may request a declaration of enforceability limited to parts of a decision.

Article 38

No charge, duty or fee

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

SECTION 3

Common provisions

Article 39

Provisional enforceability

The court of origin may declare the decision provisionally enforceable, notwithstanding any appeal, even if national law does not provide for enforceability by operation of law.

Article 40

Invoking a recognised decision

1. A party who wishes to invoke in another Member State a decision recognised within the meaning of Article 17(1) or recognised pursuant to Section 2 shall produce a copy of the decision which satisfies the conditions necessary to establish its authenticity.

2. If necessary, the court before which the recognised decision is invoked may ask the party invoking the recognised decision to produce an extract issued by the court of origin using the form set out in Annex I or in Annex II, as the case may be.

The court of origin shall also issue such an extract at the request of any interested party.

3. Where necessary, the party invoking the recognised decision shall provide a transliteration or a translation of the content of the form referred to in paragraph 2 into the official language of the

Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where the recognised decision is invoked, in accordance with the law of that Member State, or into another language that the Member State concerned has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the completion of the form.

4. Any translation under this Article must be done by a person qualified to do translations in one of the Member States.

Article 41

Proceedings and conditions for enforcement

1. Subject to the provisions of this Regulation, the procedure for the enforcement of decisions given in another Member State shall be governed by the law of the Member State of enforcement. A decision given in a Member State which is enforceable in the Member State of enforcement shall be enforced there under the same conditions as a decision given in that Member State of enforcement.

2. The party seeking the enforcement of a decision given in another Member State shall not be required to have a postal address or an authorised representative in the Member State of enforcement, without prejudice to persons with competence in matters relating to enforcement proceedings.

Article 42

No review as to substance

Under no circumstances may a decision given in a Member State be reviewed as to its substance in the Member State in which recognition, enforceability or enforcement is sought.

Article 43

No precedence for the recovery of costs

Recovery of any costs incurred in the application of this Regulation shall not take precedence over the recovery of maintenance.

CHAPTER V

ACCESS TO JUSTICE

Article 44

Right to legal aid

1. Parties who are involved in a dispute covered by this Regulation shall have effective access to justice in another Member State, including enforcement and appeal or review procedures, in accordance with the conditions laid down in this Chapter.

In cases covered by Chapter VII, effective access to justice shall be provided by the requested Member State to any applicant who is resident in the requesting Member State.

2. To ensure such effective access, Member States shall provide legal aid in accordance with this Chapter, unless paragraph 3 applies.

3. In cases covered by Chapter VII, a Member State shall not be obliged to provide legal aid if and to the extent that the procedures of that Member State enable the parties to make the case without the need for legal aid, and the Central Authority provides such services as are necessary free of charge.

4. Entitlements to legal aid shall not be less than those available in equivalent domestic cases.

5. No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings concerning maintenance obligations.

Article 45

Content of legal aid

Legal aid granted under this Chapter shall mean the assistance necessary to enable parties to know and assert their rights and to ensure that their applications, lodged through the Central Authorities or directly with the competent authorities, are fully and effectively dealt with. It shall cover as necessary the following:

- (a) pre-litigation advice with a view to reaching a settlement prior to bringing judicial proceedings;
- (b) legal assistance in bringing a case before an authority or a court and representation in court;
- (c) exemption from or assistance with the costs of proceedings and the fees to persons mandated to perform acts during the proceedings;
- (d) in Member States in which an unsuccessful party is liable for the costs of the opposing party, if the recipient of legal aid loses the case, the costs incurred by the opposing party, if such costs would have been covered had the recipient been habitually resident in the Member State of the court seised;
- (e) interpretation;
- (f) translation of the documents required by the court or by the competent authority and presented by the recipient of legal aid which are necessary for the resolution of the case;

- (g) travel costs to be borne by the recipient of legal aid where the physical presence of the persons concerned with the presentation of the recipient's case is required in court by the law or by the court of the Member State concerned and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means.

Article 46

Free legal aid for applications through Central Authorities concerning maintenance to children

1. The requested Member State shall provide free legal aid in respect of all applications by a creditor under Article 56 concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21.

2. Notwithstanding paragraph 1, the competent authority of the requested Member State may, in relation to applications other than those under Article 56(1)(a) and (b), refuse free legal aid if it considers that, on the merits, the application or any appeal or review is manifestly unfounded.

Article 47

Cases not covered by Article 46

1. Subject to Articles 44 and 45, in cases not covered by Article 46, legal aid may be granted in accordance with national law, particularly as regards the conditions for the means test or the merits test.

2. Notwithstanding paragraph 1, a party who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceedings for recognition, enforceability or enforcement, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

3. Notwithstanding paragraph 1, a party who, in the Member State of origin, has benefited from free proceedings before an administrative authority listed in Annex X, shall be entitled, in any proceedings for recognition, enforceability or enforcement, to benefit from legal aid in accordance with paragraph 2. To that end, he shall present a statement from the competent authority in the Member State of origin to the effect that he fulfils the financial requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Competent authorities for the purposes of this paragraph shall be listed in Annex XI. That Annex shall be established and amended in accordance with the management procedure referred to in Article 73(2).

CHAPTER VI

COURT SETTLEMENTS AND AUTHENTIC INSTRUMENTS

Article 48

Application of this Regulation to court settlements and authentic instruments

1. Court settlements and authentic instruments which are enforceable in the Member State of origin shall be recognised in another Member State and be enforceable there in the same way as decisions, in accordance with Chapter IV.
2. The provisions of this Regulation shall apply as necessary to court settlements and authentic instruments.
3. The competent authority of the Member State of origin shall issue, at the request of any interested party, an extract from the court settlement or the authentic instrument using the forms set out in Annexes I and II or in Annexes III and IV as the case may be.

CHAPTER VII

COOPERATION BETWEEN CENTRAL AUTHORITIES

Article 49

Designation of Central Authorities

1. Each Member State shall designate a Central Authority to discharge the duties which are imposed by this Regulation on such an authority.
2. Federal Member States, Member States with more than one system of law or Member States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a Member State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that Member State. If a communication is sent to a Central Authority which is not competent, the latter shall be responsible for forwarding it to the competent Central Authority and for informing the sender accordingly.
3. The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by each Member State to the Commission in accordance with Article 71.

Article 50

General functions of Central Authorities

1. Central Authorities shall:
 - (a) cooperate with each other, including by exchanging information, and promote cooperation amongst the competent authorities in their Member States to achieve the purposes of this Regulation;

- (b) seek as far as possible solutions to difficulties which arise in the application of this Regulation.

2. Central Authorities shall take measures to facilitate the application of this Regulation and to strengthen their cooperation. For this purpose the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC shall be used.

Article 51

Specific functions of Central Authorities

1. Central Authorities shall provide assistance in relation to applications under Article 56 and shall in particular:
 - (a) transmit and receive such applications;
 - (b) initiate or facilitate the institution of proceedings in respect of such applications.
2. In relation to such applications Central Authorities shall take all appropriate measures:
 - (a) where the circumstances require, to provide or facilitate the provision of legal aid;
 - (b) to help locate the debtor or the creditor, in particular pursuant to Articles 61, 62 and 63;
 - (c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets, in particular pursuant to Articles 61, 62 and 63;
 - (d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
 - (e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
 - (f) to facilitate the collection and expeditious transfer of maintenance payments;
 - (g) to facilitate the obtaining of documentary or other evidence, without prejudice to Regulation (EC) No 1206/2001;
 - (h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;
 - (i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;
 - (j) to facilitate the service of documents, without prejudice to Regulation (EC) No 1393/2007.

3. The functions of the Central Authority under this Article may, to the extent permitted under the law of the Member State concerned, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that Member State. The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by each Member State to the Commission in accordance with Article 71.

4. Nothing in this Article or in Article 53 shall impose an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested Member State.

Article 52

Power of attorney

The Central Authority of the requested Member State may require a power of attorney from the applicant only if it acts on his behalf in judicial proceedings or before other authorities, or in order to designate a representative so to act.

Article 53

Requests for specific measures

1. A Central Authority may make a request, supported by reasons, to another Central Authority to take appropriate specific measures under points (b), (c), (g), (h), (i) and (j) of Article 51(2) when no application under Article 56 is pending. The requested Central Authority shall take such measures as are appropriate if satisfied that they are necessary to assist a potential applicant in making an application under Article 56 or in determining whether such an application should be initiated.

2. Where a request for measures under Article 51(2)(b) and (c) is made, the requested Central Authority shall seek the information requested, if necessary pursuant to Article 61. However, the information referred to in points (b), (c) and (d) of Article 61(2) may be sought only when the creditor produces a copy of the decision, court settlement or authentic instrument to be enforced, accompanied by the extract provided for in Articles 20, 28 or 48, as appropriate.

The requested Central Authority shall communicate the information obtained to the requesting Central Authority. Where that information was obtained pursuant to Article 61, this communication shall specify only the address of the potential defendant in the requested Member State. In the case of a request with a view to recognition, declaration of enforceability or enforcement, the communication shall, in addition, specify merely whether the debtor has income or assets in that State.

If the requested Central Authority is not able to provide the information requested it shall inform the requesting Central Authority without delay and specify the grounds for this impossibility.

3. A Central Authority may also take specific measures at the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting Member State.

4. For requests under this Article, the Central Authorities shall use the form set out in Annex V.

Article 54

Central Authority costs

1. Each Central Authority shall bear its own costs in applying this Regulation.

2. Central Authorities may not impose any charge on an applicant for the provision of their services under this Regulation save for exceptional costs arising from a request for a specific measure under Article 53.

For the purposes of this paragraph, costs relating to locating the debtor shall not be regarded as exceptional.

3. The requested Central Authority may not recover the costs of the services referred to in paragraph 2 without the prior consent of the applicant to the provision of those services at such cost.

Article 55

Application through Central Authorities

An application under this Chapter shall be made through the Central Authority of the Member State in which the applicant resides to the Central Authority of the requested Member State.

Article 56

Available applications

1. A creditor seeking to recover maintenance under this Regulation may make applications for the following:

- (a) recognition or recognition and declaration of enforceability of a decision;
- (b) enforcement of a decision given or recognised in the requested Member State;
- (c) establishment of a decision in the requested Member State where there is no existing decision, including where necessary the establishment of parentage;
- (d) establishment of a decision in the requested Member State where the recognition and declaration of enforceability of a decision given in a State other than the requested Member State is not possible;
- (e) modification of a decision given in the requested Member State;

(f) modification of a decision given in a State other than the requested Member State.

2. A debtor against whom there is an existing maintenance decision may make applications for the following:

(a) recognition of a decision leading to the suspension, or limiting the enforcement, of a previous decision in the requested Member State;

(b) modification of a decision given in the requested Member State;

(c) modification of a decision given in a State other than the requested Member State.

3. For applications under this Article, the assistance and representation referred to in Article 45(b) shall be provided by the Central Authority of the requested Member State directly or through public authorities or other bodies or persons.

4. Save as otherwise provided in this Regulation, the applications referred to in paragraphs 1 and 2 shall be determined under the law of the requested Member State and shall be subject to the rules of jurisdiction applicable in that Member State.

Article 57

Application contents

1. An application under Article 56 shall be made using the form set out in Annex VI or in Annex VII.

2. An application under Article 56 shall as a minimum include:

(a) a statement of the nature of the application or applications;

(b) the name and contact details, including the address, and date of birth of the applicant;

(c) the name and, if known, address and date of birth of the defendant;

(d) the name and the date of birth of any person for whom maintenance is sought;

(e) the grounds upon which the application is based;

(f) in an application by a creditor, information concerning where the maintenance payment should be sent or electronically transmitted;

(g) the name and contact details of the person or unit from the Central Authority of the requesting Member State responsible for processing the application.

3. For the purposes of paragraph 2(b), the applicant's personal address may be replaced by another address in cases of family violence, if the national law of the requested Member State does not require the applicant to supply his or her personal address for the purposes of proceedings to be brought.

4. As appropriate, and to the extent known, the application shall in addition in particular include:

(a) the financial circumstances of the creditor;

(b) the financial circumstances of the debtor, including the name and address of the employer of the debtor and the nature and location of the assets of the debtor;

(c) any other information that may assist with the location of the defendant.

5. The application shall be accompanied by any necessary supporting information or documentation including, where appropriate, documentation concerning the entitlement of the applicant to legal aid. Applications under Article 56(1)(a) and (b) and under Article 56(2)(a) shall be accompanied, as appropriate, only by the documents listed in Articles 20, 28 and 48, or in Article 25 of the 2007 Hague Convention.

Article 58

Transmission, receipt and processing of applications and cases through Central Authorities

1. The Central Authority of the requesting Member State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application.

2. The Central Authority of the requesting Member State shall, when satisfied that the application complies with the requirements of this Regulation, transmit the application to the Central Authority of the requested Member State.

3. The requested Central Authority shall, within 30 days from the date of receipt of the application, acknowledge receipt using the form set out in Annex VIII, and inform the Central Authority of the requesting Member State what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information. Within the same 30-day period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application.

4. Within 60 days from the date of acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application.

5. Requesting and requested Central Authorities shall keep each other informed of:

(a) the person or unit responsible for a particular case;

(b) the progress of the case;

and shall provide timely responses to enquiries.

6. Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

7. Central Authorities shall employ the most rapid and efficient means of communication at their disposal.

8. A requested Central Authority may refuse to process an application only if it is manifest that the requirements of this Regulation are not fulfilled. In such a case, that Central Authority shall promptly inform the requesting Central Authority of its reasons for refusal using the form set out in Annex IX.

9. The requested Central Authority may not reject an application solely on the basis that additional documents or information are needed. However, the requested Central Authority may ask the requesting Central Authority to provide these additional documents or this information. If the requesting Central Authority does not do so within 90 days or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall promptly notify the requesting Central Authority using the form set out in Annex IX.

Article 59

Languages

1. The request or application form shall be completed in the official language of the requested Member State or, if there are several official languages in that Member State, in the official language or one of the official languages of the place of the Central Authority concerned, or in any other official language of the institutions of the European Union which that Member State has indicated it can accept, unless the Central Authority of that Member State dispenses with translation.

2. The documents accompanying the request or application form shall not be translated into the language determined in accordance with paragraph 1 unless a translation is necessary in order to provide the assistance requested, without prejudice to Articles 20, 28, 40 and 66.

3. Any other communication between Central Authorities shall be in the language determined in accordance with paragraph 1 unless the Central Authorities agree otherwise.

Article 60

Meetings

1. In order to facilitate the application of this Regulation, Central Authorities shall meet regularly.

2. These meetings shall be convened in compliance with Decision 2001/470/EC.

Article 61

Access to information for Central Authorities

1. Under the conditions laid down in this Chapter and by way of exception to Article 51(4), the requested Central Authority shall use all appropriate and reasonable means to obtain the information referred to in paragraph 2 necessary to facilitate, in a given case, the establishment, the modification, the recognition, the declaration of enforceability or the enforcement of a decision.

The public authorities or administrations which, in the course of their ordinary activities, hold, within the requested State, the information referred to in paragraph 2 and which control the processing thereof within the meaning of Directive 95/46/EC shall, subject to limitations justified on grounds of national security or public safety, provide the information to the requested Central Authority at its request in cases where the requested Central Authority does not have direct access to it.

Member States may designate the public authorities or administrations able to provide the requested Central Authority with the information referred to in paragraph 2. Where a Member State makes such a designation, it shall ensure that its choice of authorities and administrations permits its Central Authority to have access, in accordance with this Article, to the information requested.

Any other legal person which holds within the requested Member State the information referred to in paragraph 2 and controls the processing thereof within the meaning of Directive 95/46/EC shall provide the information to the requested Central Authority at the latter's request if it is authorised to do so by the law of the requested Member State.

The requested Central Authority shall, as necessary, transmit the information thus obtained to the requesting Central Authority.

2. The information referred to in this Article shall be the information already held by the authorities, administrations or persons referred to in paragraph 1. It shall be adequate, relevant and not excessive and shall relate to:

- (a) the address of the debtor or of the creditor;
- (b) the debtor's income;
- (c) the identification of the debtor's employer and/or of the debtor's bank account(s);
- (d) the debtor's assets.

For the purpose of obtaining or modifying a decision, only the information listed in point (a) may be requested by the requested Central Authority.

For the purpose of having a decision recognised, declared enforceable or enforced, all the information listed in the first subparagraph may be requested by the requested Central Authority. However, the information listed in point (d) may be requested only if the information listed in points (b) and (c) is insufficient to allow enforcement of the decision.

*Article 62***Transmission and use of information**

1. The Central Authorities shall, within their Member State, transmit the information referred to in Article 61(2) to the competent courts, the competent authorities responsible for service of documents and the competent authorities responsible for enforcement of a decision, as the case may be.

2. Any authority or court to which information has been transmitted pursuant to Article 61 may use this only to facilitate the recovery of maintenance claims.

Except for information merely indicating the existence of an address, income or assets in the requested Member State, the information referred to in Article 61(2) may not be disclosed to the person having applied to the requesting Central Authority, subject to the application of procedural rules before a court.

3. Any authority processing information transmitted to it pursuant to Article 61 may not store such information beyond the period necessary for the purposes for which it was transmitted.

4. Any authority processing information communicated to it pursuant to Article 61 shall ensure the confidentiality of such information, in accordance with its national law.

*Article 63***Notification of the data subject**

1. Notification of the data subject of the communication of all or part of the information collected on him shall take place in accordance with the national law of the requested Member State.

2. Where there is a risk that it may prejudice the effective recovery of the maintenance claim, such notification may be deferred for a period which shall not exceed 90 days from the date on which the information was provided to the requested Central Authority.

CHAPTER VIII

PUBLIC BODIES*Article 64***Public bodies as applicants**

1. For the purposes of an application for recognition and declaration of enforceability of decisions or for the purposes of enforcement of decisions, the term 'creditor' shall include a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in place of maintenance.

2. The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.

3. A public body may seek recognition and a declaration of enforceability or claim enforcement of:

(a) a decision given against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;

(b) a decision given between a creditor and a debtor to the extent of the benefits provided to the creditor in place of maintenance.

4. The public body seeking recognition and a declaration of enforceability or claiming enforcement of a decision shall upon request provide any document necessary to establish its right under paragraph 2 and to establish that benefits have been provided to the creditor.

CHAPTER IX

GENERAL AND FINAL PROVISIONS*Article 65***Legalisation or other similar formality**

No legalisation or other similar formality shall be required in the context of this Regulation.

*Article 66***Translation of supporting documents**

Without prejudice to Articles 20, 28 and 40, the court seised may require the parties to provide a translation of supporting documents which are not in the language of proceedings only if it deems a translation necessary in order to give a decision or to respect the rights of the defence.

*Article 67***Recovery of costs**

Without prejudice to Article 54, the competent authority of the requested Member State may recover costs from an unsuccessful party having received free legal aid pursuant to Article 46, on an exceptional basis and if his financial circumstances so allow.

Article 68

Relations with other Community instruments

1. Subject to Article 75(2), this Regulation shall modify Regulation (EC) No 44/2001 by replacing the provisions of that Regulation applicable to matters relating to maintenance obligations.

2. This Regulation shall replace, in matters relating to maintenance obligations, Regulation (EC) No 805/2004, except with regard to European Enforcement Orders on maintenance obligations issued in a Member State not bound by the 2007 Hague Protocol.

3. In matters relating to maintenance obligations, this Regulation shall be without prejudice to the application of Directive 2003/8/EC, subject to Chapter V.

4. This Regulation shall be without prejudice to the application of Directive 95/46/EC.

Article 69

Relations with existing international conventions and agreements

1. This Regulation shall not affect the application of bilateral or multilateral conventions and agreements to which one or more Member States are party at the time of adoption of this Regulation and which concern matters governed by this Regulation, without prejudice to the obligations of Member States under Article 307 of the Treaty.

2. Notwithstanding paragraph 1, and without prejudice to paragraph 3, this Regulation shall, in relations between Member States, take precedence over the conventions and agreements which concern matters governed by this Regulation and to which Member States are party.

3. This Regulation shall not preclude the application of the Convention of 23 March 1962 between Sweden, Denmark, Finland, Iceland and Norway on the recovery of maintenance by the Member States which are party thereto, since, with regard to the recognition, enforceability and enforcement of decisions, that Convention provides for:

- (a) simplified and more expeditious procedures for the enforcement of decisions relating to maintenance obligations, and
- (b) legal aid which is more favourable than that provided for in Chapter V of this Regulation.

However, the application of the said Convention may not have the effect of depriving the defendant of his protection under Articles 19 and 21 of this Regulation.

Article 70

Information made available to the public

The Member States shall provide within the framework of the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC the following information with a view to making it available to the public:

- (a) a description of the national laws and procedures concerning maintenance obligations;

- (b) a description of the measures taken to meet the obligations under Article 51;
- (c) a description of how effective access to justice is guaranteed, as required under Article 44, and
- (d) a description of national enforcement rules and procedures, including information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods.

Member States shall keep this information permanently updated.

Article 71

Information on contact details and languages (modelled on Article 25 of Regulation (EC) No 861/2007)

1. By 18 September 2010, the Member States shall communicate to the Commission:

- (a) the names and contact details of the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 27(1) and with appeals against decisions on such applications in accordance with Article 32(2);
- (b) the redress procedures referred to in Article 33;
- (c) the review procedure for the purposes of Article 19 and the names and contact details of the courts having jurisdiction;
- (d) the names and contact details of their Central Authorities and, where appropriate, the extent of their functions, in accordance with Article 49(3);
- (e) the names and contact details of the public bodies or other bodies and, where appropriate, the extent of their functions, in accordance with Article 51(3);
- (f) the names and contact details of the authorities with competence in matters of enforcement for the purposes of Article 21;
- (g) the languages accepted for translations of the documents referred to in Articles 20, 28 and 40;
- (h) the languages accepted by their Central Authorities for communication with other Central Authorities referred to in Article 59.

The Member States shall apprise the Commission of any subsequent changes to this information.

2. The Commission shall publish the information communicated in accordance with paragraph 1 in the *Official Journal of the European Union*, with the exception of the addresses and other contact details of the courts and authorities referred to in points (a), (c) and (f).

3. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC.

Article 72

Amendments to the forms

Any amendment to the forms provided for in this Regulation shall be adopted in accordance with the advisory procedure referred to in Article 73(3).

Article 73

Committee

1. The Commission shall be assisted by the committee established by Article 70 of Regulation (EC) No 2201/2003.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

Article 74

Review clause

By five years from the date of application determined in the third subparagraph of Article 76 at the latest, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation, including an evaluation of the practical experiences relating to the cooperation between Central Authorities, in particular regarding those Authorities' access to the information held by public authorities and administrations, and an evaluation of the functioning of the procedure for recognition, declaration of enforceability and enforcement applicable to decisions given in a Member State not bound by the 2007 Hague Protocol. If necessary the report shall be accompanied by proposals for adaptation.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 18 December 2008.

Article 75

Transitional provisions

1. This Regulation shall apply only to proceedings instituted, to court settlements approved or concluded, and to authentic instruments established after its date of application, subject to paragraphs 2 and 3.

2. Sections 2 and 3 of Chapter IV shall apply:

(a) to decisions given in the Member States before the date of application of this Regulation for which recognition and the declaration of enforceability are requested after that date;

(b) to decisions given after the date of application of this Regulation following proceedings begun before that date, in so far as those decisions fall within the scope of Regulation (EC) No 44/2001 for the purposes of recognition and enforcement.

Regulation (EC) No 44/2001 shall continue to apply to procedures for recognition and enforcement under way on the date of application of this Regulation.

The first and second subparagraphs shall apply *mutatis mutandis* to court settlements approved or concluded and to authentic instruments established in the Member States.

3. Chapter VII on cooperation between Central Authorities shall apply to requests and applications received by the Central Authority as from the date of application of this Regulation.

Article 76

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Articles 2(2), 47(3), 71, 72 and 73 shall apply from 18 September 2010.

Except for the provisions referred to in the second paragraph, this Regulation shall apply from 18 June 2011, subject to the 2007 Hague Protocol being applicable in the Community by that date. Failing that, this Regulation shall apply from the date of application of that Protocol in the Community.

For the Council
The President
M. BARNIER

ANNEX I

**EXTRACT FROM A DECISION/COURT SETTLEMENT IN MATTERS RELATING TO MAINTENANCE
OBLIGATIONS NOT SUBJECT TO PROCEEDINGS FOR RECOGNITION OR A DECLARATION
OF ENFORCEABILITY**

(Articles 20 and 48 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (*)

IMPORTANT

To be issued by the court of origin

To be issued only if the decision or court settlement is enforceable in the Member State of origin

Mention only information which is given in the decision or court settlement or of which the court of origin has been made aware

1. Nature of the document

☐ Decision ☐ Court settlement

Date and reference number:

The decision/court settlement is recognised and enforceable in another Member State without any possibility of opposing its recognition and without the need for a declaration of enforceability (Articles 17 and 48 of Regulation (EC) No 4/2009).

2. Court of origin

2.1. Name:

2.2. Address:

2.2.1. Street and number/PO box:

2.2.2. Place and postal code:

2.2.3. Member State

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden

2.3. Telephone/Fax/E-mail:

3. Claimant(s) (*) (")

3.1. Person A

3.1.1. Surname and given name(s):

3.1.2. Date (dd/mm/yyyy) and place of birth:

(*) OJ L 7, 10.1.2009, p. 1.

(*) If the parties are not the claimant or defendant in the decision/court settlement, indicate either of the parties as claimant or defendant.

(") If the decision/court settlement concerns more than three claimants or three defendants, attach an additional sheet.

- 3.1.3. Identity number or social security number:
- 3.1.4. Address:
- 3.1.4.1. Street and number/PO box:
- 3.1.4.2. Place and postal code:
- 3.1.4.3. Country:
- 3.1.5. Has benefited from
- 3.1.5.1. legal aid:
- ☐ Yes ☐ No
- 3.1.5.2. exemption from costs and expenses:
- ☐ Yes ☐ No
- 3.1.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:
- ☐ Yes ☐ No
- 3.2. *Person B*
- 3.2.1. Surname and given name(s):
- 3.2.2. Date (dd/mm/yyyy) and place of birth:
- 3.2.3. Identity number or social security number:
- 3.2.4. Address:
- 3.2.4.1. Street and number/PO box:
- 3.2.4.2. Place and postal code:
- 3.2.4.3. Country:
- 3.2.5. Has benefited from
- 3.2.5.1. legal aid:
- ☐ Yes ☐ No
- 3.2.5.2. exemption from costs and expenses:
- ☐ Yes ☐ No
- 3.2.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:
- ☐ Yes ☐ No

3.3. Person C

3.3.1. Surname and given name(s):

3.3.2. Date (dd/mm/yyyy) and place of birth:

3.3.3. Identity number or social security number:

3.3.4. Address:

3.3.4.1. Street and number/PO box:

3.3.4.2. Place and postal code:

3.3.4.3. Country:

3.3.5. Has benefited from

3.3.5.1. legal aid:

☐ Yes

☐ No

3.3.5.2. exemption from costs and expenses:

☐ Yes

☐ No

3.3.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:

☐ Yes

☐ No

4. Defendant(s) (*) (")

4.1. Person A

4.1.1. Surname and given name(s):

4.1.2. Date (dd/mm/yyyy) and place of birth:

4.1.3. Identity number or social security number:

4.1.4. Address:

4.1.4.1. Street and number/PO box:

4.1.4.2. Place and postal code:

4.1.4.3. Country:

(*) If the parties are not the claimant or defendant in the decision/court settlement, indicate either of the parties as claimant or defendant.
(") If the decision/court settlement concerns more than three claimants or three defendants, attach an additional sheet.

4.1.5. Has benefited from

4.1.5.1. legal aid:

☐ Yes ☐ No

4.1.5.2. exemption from costs and expenses:

☐ Yes ☐ No

4.1.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:

☐ Yes ☐ No

4.2. *Person B*

4.2.1. Surname and given name(s):

4.2.2. Date (dd/mm/yyyy) and place of birth:

4.2.3. Identity number or social security number:

4.2.4. Address:

4.2.4.1. Street and number/PO box:

4.2.4.2. Place and postal code:

4.2.4.3. Country:

4.2.5. Has benefited from

4.2.5.1. legal aid:

☐ Yes ☐ No

4.2.5.2. exemption from costs and expenses:

☐ Yes ☐ No

4.2.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:

☐ Yes ☐ No

4.3. *Person C*

4.3.1. Surname and given name(s):

4.3.2. Date (dd/mm/yyyy) and place of birth:

4.3.3. Identity number or social security number:

4.3.4. Address:

4.3.4.1. Street and number/PO box:

4.3.4.2. Place and postal code:

4.3.4.3. Country:

4.3.5. Has benefited from

4.3.5.1. legal aid:

☐ Yes

☐ No

4.3.5.2. exemption from costs and expenses:

☐ Yes

☐ No

4.3.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:

☐ Yes

☐ No

5. Terms of the decision/court settlement

5.1. Currency

☐ Euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Estonian kroon (EEK)

☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN)

☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify ISO code):

5.2. Maintenance claim (*)

5.2.1. **Maintenance claim A**

5.2.1.1. The maintenance is to be paid

by (surname and given name(s))

to (surname and given name(s) of the person to whom the sum must actually be paid)

Person for whom maintenance is owed:

..... (surname and given name(s))

5.2.1.2. ☐ Amount to be paid in one sum

Period covered, where applicable:

.....

(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)

Due date: (dd/mm/yyyy)

Amount:

(*) If the decision/court settlement concerns more than three maintenance claims, attach an additional sheet.

5.2.1.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.1.4. ☐ Sum to be paid regularly

- ☐ Once a week
- ☐ Once a month
- ☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:
.....

Indexation applicable as from (dd/mm/yyyy)

5.2.1.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:
.....
.....

5.2.1.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:

Interest due as from: (dd/mm/yyyy)

5.2.1.7. ☐ Payment in kind (please specify):

.....
.....
.....

5.2.1.8. ☐ Other form of payment (please specify):

.....
.....
.....

5.2.2. Maintenance claim B

5.2.2.1. The maintenance is to be paid

by (surname and given name(s))

to (surname and given name(s) of the person to whom the sum must actually be paid)

Person for whom maintenance is owed:

..... (surname and given name(s))

5.2.2.2. ☐ Amount to be paid in one sum

Period covered, where applicable:

.....

(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)

Due date: (dd/mm/yyyy)

Amount:

5.2.2.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.2.4. ☐ Sum to be paid regularly

☐ Once a week

☐ Once a month

☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:

Indexation applicable as from (dd/mm/yyyy)

5.2.2.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:

.....

.....

5.2.2.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:

Interest due as from: (dd/mm/yyyy)

5.2.2.7. ☐ Payment in kind (please specify):

.....

.....

5.2.2.8. ☐ Other form of payment (please specify):

.....

.....

.....

5.2.3. **Maintenance claim C**

5.2.3.1. The maintenance is to be paid

by (surname and given name(s))

to (surname and given name(s)) of the person to whom the sum must actually be paid

Person for whom maintenance is owed:

..... (surname and given name(s))

5.2.3.2. ☐ Amount to be paid in one sum

Period covered, where applicable:

.....

(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)

Due date: (dd/mm/yyyy)

Amount:

5.2.3.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.3.4. ☐ Sum to be paid regularly

☐ Once a week

☐ Once a month

☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):
.....

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:

Indexation applicable as from: (dd/mm/yyyy)

5.2.3.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:

.....
.....

5.2.3.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:

Interest due as from: (dd/mm/yyyy)

5.2.3.7. ☐ Payment in kind (please specify):

.....
.....
.....

5.2.3.8. ☐ Other form of payment (please specify):

.....
.....
.....

5.3. *Costs and expenses*

The decision/court settlement provides that

..... (surname and given name(s))

must pay the sum of

to (surname and given name(s)).

If additional pages have been attached, state the number of pages:
Done at: **on:** (dd/mm/yyyy)
Signature and/or stamp of the court of origin:
.....

ANNEX II

**EXTRACT FROM A DECISION/COURT SETTLEMENT IN MATTERS RELATING TO MAINTENANCE
OBLIGATIONS SUBJECT TO PROCEEDINGS FOR RECOGNITION AND A DECLARATION OF
ENFORCEABILITY**

(Article 28 and Article 75(2) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ⁽¹⁾)

IMPORTANT

To be issued by the court of origin

To be issued only if the decision or court settlement is enforceable in the Member State of origin

Mention only information which is given in the decision or court settlement or of which the court of origin has been made aware

1. Nature of the document

☐ Decision ☐ Court settlement

Date and reference number:

2. Court of origin

2.1. Name:

2.2. Address:

2.2.1. Street and number/PO box:

2.2.2. Place and postal code:

2.2.3. Member State

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden

2.3. Telephone/Fax/E-mail:

3. Claimant(s) ^(*) ^()**

3.1. Person A

3.1.1. Surname and given name(s):

3.1.2. Date (dd/mm/yyyy) and place of birth:

⁽¹⁾ OJ L 7, 10.1.2009, p. 1.

^(*) If the parties are not the claimant or defendant in the decision/court settlement, they should be identified as either the claimant or the defendant without distinction.

^(**) If the decision/court settlement concerns more than three claimants or three defendants, attach an additional sheet.

- 3.1.3. Identity number or social security number:
- 3.1.4. Address:
- 3.1.4.1. Street and number/PO box:
- 3.1.4.2. Place and postal code:
- 3.1.4.3. Country:
- 3.1.5. Has benefited from
- 3.1.5.1. legal aid:
- ☐ Yes ☐ No
- 3.1.5.2. exemption from costs and expenses:
- ☐ Yes ☐ No
- 3.1.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:
- ☐ Yes ☐ No
- 3.2. *Person B*
- 3.2.1. Surname and given name(s):
- 3.2.2. Date (dd/mm/yyyy) and place of birth:
- 3.2.3. Identity number or social security number:
- 3.2.4. Address:
- 3.2.4.1. Street and number/PO box:
- 3.2.4.2. Place and postal code:
- 3.2.4.3. Country:
- 3.2.5. Has benefited from
- 3.2.5.1. legal aid:
- ☐ Yes ☐ No
- 3.2.5.2. exemption from costs and expenses:
- ☐ Yes ☐ No
- 3.2.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:
- ☐ Yes ☐ No

3.3. *Person C*

3.3.1. Surname and given name(s):

3.3.2. Date (dd/mm/yyyy) and place of birth:

3.3.3. Identity number or social security number:

3.3.4. Address:

3.3.4.1. Street and number/PO box:

3.3.4.2. Place and postal code:

3.3.4.3. Country:

3.3.5. Has benefited from

3.3.5.1. legal aid:

☐ Yes ☐ No

3.3.5.2. exemption from costs and expenses:

☐ Yes ☐ No

3.3.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:

☐ Yes ☐ No

4. **Defendant(s)** (*) (")

4.1. *Person A*

4.1.1. Surname and given name(s):

4.1.2. Date (dd/mm/yyyy) and place of birth:

4.1.3. Identity number or social security number:

4.1.4. Address:

4.1.4.1. Street and number/PO box:

4.1.4.2. Place and postal code:

4.1.4.3. Country:

(*) If the parties are not the claimant or defendant in the decision/court settlement, they should be identified as either the claimant or the defendant without distinction.

(") If the decision/court settlement concerns more than three claimants or three defendants, attach an additional sheet.

4.1.5. Has benefited from

4.1.5.1. legal aid:

☐ Yes ☐ No

4.1.5.2. exemption from costs and expenses:

☐ Yes ☐ No

4.1.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:

☐ Yes ☐ No

4.2. Person B

4.2.1. Surname and given name(s):

4.2.2. Date (dd/mm/yyyy) and place of birth:

4.2.3. Identity number or social security number:

4.2.4. Address:

4.2.4.1. Street and number/PO box:

4.2.4.2. Place and postal code:

4.2.4.3. Country:

4.2.5. Has benefited from

4.2.5.1. legal aid:

☐ Yes ☐ No

4.2.5.2. exemption from costs and expenses:

☐ Yes ☐ No

4.2.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:

☐ Yes ☐ No

4.3. Person C

4.3.1. Surname and given name(s):

4.3.2. Date (dd/mm/yyyy) and place of birth:

4.3.3. Identity number or social security number:

4.3.4. Address:

4.3.4.1. Street and number/PO box:

4.3.4.2. Place and postal code:

4.3.4.3. Country:

4.3.5. Has benefited from

4.3.5.1. legal aid:

☐ Yes ☐ No

4.3.5.2. exemption from costs and expenses:

☐ Yes ☐ No

4.3.5.3. free proceedings before an administrative authority listed in Annex X of Regulation (EC) No 4/2009:

☐ Yes ☐ No

5. **Terms of the decision/court settlement**

5.1. *Currency*

☐ Euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Estonian kroon (EEK)
☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN)
☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify ISO code):

5.2. *Maintenance claim (*)*

5.2.1. **Maintenance claim A**

5.2.1.1. The maintenance is to be paid

by (surname and given name(s))

to (surname and given name(s) of the person to whom the sum must actually be paid)

Person for whom maintenance is owed:

..... (surname and given name(s))

5.2.1.2. ☐ Amount to be paid in one sum

Period covered, where applicable:

.....

(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)

Due date: (dd/mm/yyyy)

Amount:

(*) If the decision/court settlement concerns more than three maintenance claims, attach an additional sheet

5.2.1.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.1.4. ☐ Sum to be paid regularly

- ☐ Once a week
- ☐ Once a month
- ☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):
.....

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:
.....

Indexation applicable as from (dd/mm/yyyy)

5.2.1.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:
.....
.....

5.2.1.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:

Interest due as from: (dd/mm/yyyy)

5.2.1.7. ☐ Payment in kind (please specify):
.....
.....
.....

5.2.1.8. ☐ Other form of payment (please specify):
.....
.....
.....

5.2.2. **Maintenance claim B**

5.2.2.1. The maintenance is to be paid

by (surname and given name(s))

to (surname and given name(s) of the person to whom the sum must actually be paid)

Person for whom maintenance is owed:

..... (surname and given name(s))

5.2.2.2. ☐ Amount to be paid in one sum

Period covered, where applicable:

.....

(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)

Due date: (dd/mm/yyyy)

Amount:

5.2.2.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.2.4. ☐ Sum to be paid regularly

☐ Once a week

☐ Once a month

☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):

.....

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:

Indexation applicable as from (dd/mm/yyyy)

5.2.2.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:

.....

.....

- 5.2.2.6. ☐ Interest (if specified in the decision/court settlement)
If the maintenance claim is subject to interest, please indicate the rate:
Interest due as from: (dd/mm/yyyy)
- 5.2.2.7. ☐ Payment in kind (please specify):
.....
.....
- 5.2.2.8. ☐ Other form of payment (please specify):
.....
.....

5.2.3. **Maintenance claim C**

- 5.2.3.1. The maintenance is to be paid
by (surname and given name(s))
to (surname and given name(s) of the person to whom the sum must actually be paid)
Person for whom maintenance is owed:
..... (surname and given name(s))
- 5.2.3.2. ☐ Amount to be paid in one sum
Period covered, where applicable:
.....
(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)
Due date: (dd/mm/yyyy)
Amount:
- 5.2.3.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

- 5.2.3.4. ☐ Sum to be paid regularly
☐ Once a week
☐ Once a month
☐ Other (state frequency):
Amount:
From: (dd/mm/yyyy)
Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):

.....

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:

Indexation applicable as from (dd/mm/yyyy)

5.2.3.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:

.....

.....

5.2.3.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:

Interest due as from: (dd/mm/yyyy)

5.2.3.7. ☐ Payment in kind (please specify):

.....

.....

.....

5.2.3.8. ☐ Other form of payment (please specify):

.....

.....

.....

5.3. *Costs and expenses*

The decision/court settlement provides that

..... (surname and given name(s))

must pay the sum of

to: (surname and given name(s)).

If additional pages have been attached, state the number of pages:

Done at: on: (dd/mm/yyyy)

Signature and/or stamp of the court of origin:

.....

ANNEX III

**EXTRACT FROM AN AUTHENTIC INSTRUMENT IN MATTERS RELATING TO MAINTENANCE
OBLIGATIONS NOT SUBJECT TO PROCEEDINGS FOR RECOGNITION OR A DECLARATION OF
ENFORCEABILITY**

(Article 48 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ⁽¹⁾)

IMPORTANT

To be issued by the competent authority in the Member State of origin

To be issued only if the authentic instrument is enforceable in the Member State of origin

**Mention only information which is given in the authentic instrument or of which the competent authority
has been made aware**

1. **Date and reference number of the authentic instrument:**

The authentic instrument is recognised and enforceable in another Member State without any possibility of opposing its recognition and without the need for a declaration of enforceability (Article 48 of Regulation (EC) No 4/2009).

2. **Nature of the authentic instrument**

- 2.1. ☐ Instrument formally drawn up or registered on: (dd/mm/yyyy)

- ☐ Agreement concluded or authenticated on: (dd/mm/yyyy)

- 2.2. Competent authority:

- 2.2.1. Name:

- 2.2.2. Address:

- 2.2.2.1. Street and number/PO box:

- 2.2.2.2. Place and postal code:

- 2.2.2.3. Member State

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden

- 2.2.3. Telephone/Fax/E-mail:

3. **Creditor(s) ^(*)**

- 3.1. *Person A*

- 3.1.1. Surname and given name(s):

- 3.1.2. Date (dd/mm/yyyy) and place of birth:

⁽¹⁾ OJ L 7, 10.1.2009, p. 1.

^(*) If the authentic instrument concerns more than three creditors or three debtors, attach an additional sheet.

3.1.3. Identity number or social security number:

3.1.4. Address:

3.1.4.1. Street and number/PO box:

3.1.4.2. Place and postal code:

3.1.4.3. Country:

3.2. Person B

3.2.1. Surname and given name(s):

3.2.2. Date (dd/mm/yyyy) and place of birth:

3.2.3. Identity number or social security number:

3.2.4. Address:

3.2.4.1. Street and number/PO box:

3.2.4.2. Place and postal code:

3.2.4.3. Country:

3.3. Person C

3.3.1. Surname and given name(s):

3.3.2. Date (dd/mm/yyyy) and place of birth:

3.3.3. Identity number or social security number:

3.3.4. Address:

3.3.4.1. Street and number/PO box:

3.3.4.2. Place and postal code:

3.3.4.3. Country:

4. Debtor(s) (*)

4.1. Person A

4.1.1. Surname and given name(s):

4.1.2. Date (dd/mm/yyyy) and place of birth:

4.1.3. Identity number or social security number:

4.1.4. Address:

4.1.4.1. Street and number/PO box:

4.1.4.2. Place and postal code:

4.1.4.3. Country:

(*) If the authentic instrument concerns more than three creditors or three debtors, attach an additional sheet.

- 4.2. Person B
- 4.2.1. Surname and given name(s):
- 4.2.2. Date (dd/mm/yyyy) and place of birth:
- 4.2.3. Identity number or social security number:
- 4.2.4. Address:
- 4.2.4.1. Street and number/PO box:
- 4.2.4.2. Place and postal code:
- 4.2.4.3. Country:
- 4.3. Person C
- 4.3.1. Surname and given name(s):
- 4.3.2. Date (dd/mm/yyyy) and place of birth:
- 4.3.3. Identity number or social security number:
- 4.3.4. Address:
- 4.3.4.1. Street and number/PO box:
- 4.3.4.2. Place and postal code:
- 4.3.4.3. Country:

5. Contents of the authentic instrument

- 5.1. Currency
- ☐ Euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Estonian kroon (EEK)
☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN)
☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify ISO code):
- 5.2. Maintenance claim (*)
- 5.2.1. Maintenance claim A
- 5.2.1.1. The maintenance is to be paid
- by (surname and given name(s))
- to (surname and given name(s) of the person to whom the sum must actually be paid)
- Person for whom maintenance is owed:
- (surname and given name(s))
- 5.2.1.2. ☐ Amount to be paid in one sum
- Period covered, where applicable:
-
- (from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)
- Due date: (dd/mm/yyyy)
- Amount:

(*) If the authentic instrument concerns more than three maintenance claims, attach an additional sheet.

5.2.1.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.1.4. ☐ Sum to be paid regularly

- ☐ Once a week
- ☐ Once a month
- ☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):
.....

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:
.....

Indexation applicable as from (dd/mm/yyyy)

5.2.1.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:
.....
.....

5.2.1.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:

Interest due as from: (dd/mm/yyyy)

5.2.1.7. ☐ Payment in kind (please specify):
.....
.....
.....

5.2.1.8. ☐ Other form of payment (please specify):
.....
.....
.....

5.2.2. **Maintenance claim B**

5.2.2.1. The maintenance is to be paid

by (surname and given name(s))

to (surname and given name(s) of the person to whom the sum must actually be paid)

Person for whom maintenance is owed:

..... (surname and given name(s))

5.2.2.2. ☐ Amount to be paid in one sum

Period covered, where applicable:

.....

(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)

Due date: (dd/mm/yyyy)

Amount:

5.2.2.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.2.4. ☐ Sum to be paid regularly

☐ Once a week

☐ Once a month

☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):

.....

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:

.....

Indexation applicable as from (dd/mm/yyyy)

5.2.2.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:

.....

.....

5.2.2.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:

Interest due as from: (dd/mm/yyyy)

5.2.2.7. ☐ Payment in kind (please specify):

.....

.....

.....

5.2.2.8. ☐ Other form of payment (please specify):

.....

.....

.....

5.2.3. **Maintenance claim C**

5.2.3.1. The maintenance is to be paid

by (surname and given name(s))

to (surname and given name(s) of the person to whom the sum must actually be paid)

Person for whom maintenance is owed:

..... (surname and given name(s))

5.2.3.2. ☐ Amount to be paid in one sum

Period covered, where applicable:

.....

(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)

Due date: (dd/mm/yyyy)

Amount:

5.2.3.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.3.4. ☐ Sum to be paid regularly

☐ Once a week

☐ Once a month

☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):
.....

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:

Indexation applicable as from (dd/mm/yyyy)

5.2.3.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:

.....

.....

5.2.3.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:

Interest due as from: (dd/mm/yyyy)

5.2.3.7. ☐ Payment in kind (please specify):.....

.....

.....

.....

5.2.3.8. ☐ Other form of payment (please specify):

.....

.....

.....

5.3. Costs

The authentic instrument provides that

..... (surname and given name(s))

must pay the sum of

to (surname and given name(s)).

If additional pages have been attached, state the number of pages:
Done at: on: (dd/mm/yyyy)
Signature and/or stamp of the competent authority:
.....

ANNEX IV

**EXTRACT FROM AN AUTHENTIC INSTRUMENT IN MATTERS RELATING TO MAINTENANCE
OBLIGATIONS SUBJECT TO PROCEEDINGS FOR RECOGNITION AND A DECLARATION OF
ENFORCEABILITY**

(Article 48 and Article 75(2) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ⁽¹⁾)

IMPORTANT

To be issued by the competent authority in the Member State of origin

To be issued only if the authentic instrument is enforceable in the Member State of origin

**Mention only information which is given in the authentic instrument or of which the competent authority
has been made aware**

1. **Date and reference number of the authentic instrument:**

2. **Nature of the authentic instrument**

2.1. ☐ Instrument formally drawn up or registered on: (dd/mm/yyyy)

☐ Agreement concluded or authenticated on: (dd/mm/yyyy)

2.2. Competent authority:

2.2.1. Name:

2.2.2. Address:

2.2.2.1. Street and number/PO box:

2.2.2.2. Place and postal code:

2.2.2.3. Member State:

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden

2.2.3. Telephone/Fax/E-mail:

3. **Creditor(s)** ^(*)

3.1. *Person A*

3.1.1. Surname and given name(s):

3.1.2. Date (dd/mm/yyyy) and place of birth:

⁽¹⁾ OJ L 7, 10.1.2009, p. 1.

^(*) If the authentic instrument concerns more than three creditors or three debtors, attach an additional sheet.

- 3.1.3. Identity number or social security number:
- 3.1.4. Address:
 - 3.1.4.1. Street and number/PO box:
 - 3.1.4.2. Place and postal code:
 - 3.1.4.3. Country:
- 3.2. Person B
 - 3.2.1. Surname and given name(s):
 - 3.2.2. Date (dd/mm/yyyy) and place of birth:
 - 3.2.3. Identity number or social security number:
 - 3.2.4. Address:
 - 3.2.4.1. Street and number/PO box:
 - 3.2.4.2. Place and postal code:
 - 3.2.4.3. Country:
- 3.3. Person C
 - 3.3.1. Surname and given name(s):
 - 3.3.2. Date (dd/mm/yyyy) and place of birth:
 - 3.3.3. Identity number or social security number:
 - 3.3.4. Address:
 - 3.3.4.1. Street and number/PO box:
 - 3.3.4.2. Place and postal code:
 - 3.3.4.3. Country:
- 4. Debtor(s) (*)
 - 4.1. Person A
 - 4.1.1. Surname and given name(s):
 - 4.1.2. Date (dd/mm/yyyy) and place of birth:
 - 4.1.3. Identity number or social security number:
 - 4.1.4. Address:
 - 4.1.4.1. Street and number/PO box:
 - 4.1.4.2. Place and postal code:
 - 4.1.4.3. Country:

(*) If the authentic instrument concerns more than three creditors or three debtors, attach an additional sheet.

4.2. *Person B*

4.2.1. Surname and given name(s):

4.2.2. Date (dd/mm/yyyy) and place of birth:

4.2.3. Identity number or social security number:

4.2.4. Address:

4.2.4.1. Street and number/PO box:

4.2.4.2. Place and postal code:

4.2.4.3. Country:

4.3. *Person C*

4.3.1. Surname and given name(s):

4.3.2. Date (dd/mm/yyyy) and place of birth:

4.3.3. Identity number or social security number:

4.3.4. Address:

4.3.4.1. Street and number/PO box:

4.3.4.2. Place and postal code:

4.3.4.3. Country:

5. **Contents of the authentic instrument**5.1. *Currency*

☐ Euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Estonian kroon (EEK)
☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN)
☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify ISO code):

5.2. *Maintenance claim (*)*5.2.1. **Maintenance claim A**

5.2.1.1. The maintenance is to be paid

by (surname and given name(s))

to (surname and given name(s) of the person to whom the sum must actually be paid)

Person for whom maintenance is owed:

..... (surname and given name(s))

5.2.1.2. ☐ Amount to be paid in one sum

Period covered, where applicable:

.....

(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)

Due date: (dd/mm/yyyy)

Amount:

(*) If the decision/court settlement concerns more than three maintenance claims, attach an additional sheet.

5.2.1.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.1.4. ☐ Sum to be paid regularly

- ☐ Once a week
- ☐ Once a month
- ☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):
.....

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:
.....

Indexation applicable as from (dd/mm/yyyy)

5.2.1.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:
.....
.....

5.2.1.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:
.....

Interest due as from: (dd/mm/yyyy)

5.2.1.7. ☐ Payment in kind (please specify):
.....
.....
.....

5.2.1.8. ☐ Other form of payment (please specify):
.....
.....
.....

5.2.2. **Maintenance claim B**

5.2.2.1. The maintenance is to be paid

by (surname and given name(s))

to (surname and given name(s) of the person to whom the sum must actually be paid)

Person for whom maintenance is owed:

..... (surname and given name(s))

5.2.2.2. ☐ Amount to be paid in one sum

Period covered, where applicable:

.....

(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)

Due date: (dd/mm/yyyy)

Amount:

5.2.2.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.2.4. ☐ Sum to be paid regularly

☐ Once a week

☐ Once a month

☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):

.....

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:

Indexation applicable as from (dd/mm/yyyy)

5.2.2.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:

.....

.....

5.2.2.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:

Interest due as from: (dd/mm/yyyy)

5.2.2.7. ☐ Payment in kind (please specify):

.....

.....

.....

5.2.2.8. ☐ Other form of payment (please specify):

.....

.....

.....

5.2.3. **Maintenance claim C**

5.2.3.1. The maintenance is to be paid

by (surname and given name(s))

to (surname and given name(s) of the person to whom the sum must actually be paid)

Person for whom maintenance is owed:

..... (surname and given name(s))

5.2.3.2. ☐ Amount to be paid in one sum

Period covered, where applicable:

.....

(from date (dd/mm/yyyy) to date (dd/mm/yyyy) or event)

Due date: (dd/mm/yyyy)

Amount:

5.2.3.3. ☐ Amount to be paid in instalments

Due date (dd/mm/yyyy)	Amount

5.2.3.4. ☐ Sum to be paid regularly

☐ Once a week

☐ Once a month

☐ Other (state frequency):

Amount:

From: (dd/mm/yyyy)

Due day/date:

☐ If applicable, until (date (dd/mm/yyyy) or event):
.....

If the maintenance claim is subject to indexation, please indicate how that indexation is to be calculated:
.....

Indexation applicable as from (dd/mm/yyyy)

5.2.3.5. ☐ Amount due retroactively

Period covered: ((dd/mm/yyyy) to (dd/mm/yyyy))

Amount:

Form of payment:
.....
.....

5.2.3.6. ☐ Interest (if specified in the decision/court settlement)

If the maintenance claim is subject to interest, please indicate the rate:

Interest due as from: (dd/mm/yyyy)

5.2.3.7. ☐ Payment in kind (please specify):

.....
.....
.....

5.2.3.8. ☐ Other form of payment (please specify):

.....
.....
.....

5.3. Costs

The authentic instrument provides that
..... (surname and given name(s))
must pay the sum of
to (surname and given name(s)).

If additional pages have been attached, state the number of pages:
Done at: on: (dd/mm/yyyy)
Signature and/or stamp of the competent authority:
.....

ANNEX V

REQUEST FOR SPECIFIC MEASURES

(Article 53 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ⁽¹⁾)

PART A: To be completed by the requesting Central Authority

1. Requesting Central Authority

1.1. Name:

1.2. Address:

1.2.1. Street and number/PO box:

1.2.2. Place and postal code:

1.2.3. Member State

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden

1.3. Telephone:

1.4. Fax:

1.5. E-mail:

1.6. Reference number:

1.7. Person responsible for following up the request:

1.7.1. Surname and given name(s):

1.7.2. Telephone:

1.7.3. E-mail:

2. Requested Central Authority

2.1. Name:

2.2. Address:

2.2.1. Street and number/PO box:

2.2.2. Place and postal code:

2.2.3. Member State

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden

⁽¹⁾ OJ L 7, 10.1.2009, p. 1.

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3. **Request**

3.1. *The purpose of the specific measure requested is to:*

- 3.1.1. ☐ help locate the debtor or the creditor (see points 3.3. and 3.4.)
- 3.1.2. ☐ facilitate the search for information on the income or assets of the debtor or the creditor (see points 3.3. and 3.4.)
- 3.1.3. ☐ facilitate the obtaining of documentary or other evidence
- 3.1.4. ☐ obtain assistance in establishing parentage
- 3.1.5. ☐ initiate or facilitate the institution of proceedings to obtain a necessary provisional measure which is territorial in nature
- 3.1.6. ☐ facilitate service of a document

3.2. *Grounds for the request:*

.....

.....

.....

.....

.....

3.3. *The information requested relates to:*

3.3.1. ☐ ***the following debtor***

- 3.3.1.1. Surname and given name(s):
- 3.3.1.2. Date (dd/mm/yyyy) and place of birth (*):
- 3.3.1.3. Last known address:
- 3.3.1.4. Identity number or social security number (*):
- 3.3.1.5. Any other information which may be useful (*):
.....
.....

3.3.2. ☐ ***the following creditor***

- 3.3.2.1. Surname and given name(s):
- 3.3.2.2. Date (dd/mm/yyyy) and place of birth (*):
- 3.3.2.3. Last known address:
- 3.3.2.4. Identity number or social security number (*):
- 3.3.2.5. Any other information which may be useful (*):
.....
.....

(*) If this information is available.
(**) For example, the name of a previous employer, names and addresses of family members, details of a vehicle or property which the person in question might own.

- 3.4. Information requested
- 3.4.1. ☐ Current address of the debtor/creditor
- 3.4.2. ☐ Income of the debtor/creditor
- 3.4.3. ☐ Assets of the debtor/creditor, including the location of the assets of the debtor/creditor

The creditor has produced a copy of the decision, court settlement or authentic instrument to be enforced, if appropriate accompanied by the relevant form

☐ Yes ☐ No

☐ There is a risk that notifying the person concerned by the collection of this information may prejudice the effective recovery of the maintenance claim (Article 63(2) of Regulation (EC) No 4/2009).

Done at: on: (dd/mm/yyyy)

Name and signature of the authorised official of the requesting Central Authority:

.....

PART B: To be completed by the requested Central Authority

4. Reference number of the requested Central Authority:
5. Person responsible for following up the request:
- 5.1. Surname and given name(s):
- 5.2. Telephone:
- 5.3. Fax:
- 5.4. E-mail:
6. Measures taken and results obtained
-
-
-
-

7. **Information collected:**

7.1. *Without recourse to Articles 61, 62 and 63 of Regulation (EC) No 4/2009:*

7.1.1. Debtor's/creditor's address:

☐ No ☐ Yes (please specify):

.....

7.1.2. Debtor's/creditor's revenue:

☐ No ☐ Yes (please specify):

.....

7.1.3. Debtor's/creditor's assets:

☐ No ☐ Yes (please specify):

.....

7.2. *Pursuant to Articles 61, 62 and 63 of Regulation (EC) No 4/2009:*

7.2.1. Debtor's/creditor's address:

☐ No ☐ Yes (please specify):

.....

7.2.2. Existence of debtor's income:

☐ No ☐ Yes

7.2.3. Existence of debtor's assets:

☐ No ☐ Yes

IMPORTANT

(in the case of the application of Articles 61, 62 and 63 of Regulation (EC) No 4/2009)

Except for information merely indicating the existence of an address, income or assets in the requested Member State, the information referred to in Article 61(1) may not be disclosed to the person having applied to the requesting Central Authority, subject to the application of procedural rules before a court (Article 62(2), second subparagraph, of Regulation (EC) No 4/2009).

8. **Inability to communicate the requested information**

The requested Central Authority is not able to provide the information requested, for the following reasons:

.....
.....
.....

<p>Done at: on: (dd/mm/yyyy)</p> <p>Name and signature of the authorised official of the requested Central Authority:</p> <p>.....</p>
--

ANNEX VI

APPLICATION FORM WITH A VIEW TO THE RECOGNITION, DECLARATION OF ENFORCEABILITY OR ENFORCEMENT OF A DECISION IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS

(Articles 56 and 57 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ⁽¹⁾)

PART A: To be completed by the requesting Central Authority

1. Application

- ☐ Application for recognition or for recognition and declaration of enforceability of a decision (Article 56(1)(a))
- ☐ Application for recognition of a decision (Article 56(2)(a))
- ☐ Application for enforcement of a decision given or recognised in the requested Member State (Article 56(1)(b))

2. Requesting Central Authority

2.1. Name:

2.2. Address:

2.2.1. Street and number/PO box:

2.2.2. Place and postal code:

2.2.3. Member State

- ☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden

2.3. Telephone:

2.4. Fax:

2.5. E-mail:

2.6. Reference number of the application:

Application to be handled with the application(s) bearing the following reference number(s):

2.7. Person responsible for following up the application:

2.7.1. Surname and given name(s):

2.7.2. Telephone:

2.7.3. E-mail:

⁽¹⁾ OJ L 7, 10.1.2009, p. 1.

3.

Requested Central Authority

3.1.

Name:

3.2.

Address:

3.2.1.

Street and number/PO box:

3.2.2.

Place and postal code:

3.2.3.

Member State

☐ Belgium

☐ Bulgaria

☐ Czech Republic

☐ Germany

☐ Estonia

☐ Ireland

☐ Greece

☐ Spain

☐ France

☐ Italy

☐ Cyprus

☐ Latvia

☐ Lithuania

☐ Luxembourg

☐ Hungary

☐ Malta

☐ Netherlands

☐ Austria

☐ Poland

☐ Portugal

☐ Romania

☐ Slovenia

☐ Slovakia

☐ Finland

☐ Sweden

4.

Documents attached (*) to the application in the case of a decision made in a Member State

☐ A copy of the decision/court settlement/authentic instrument

☐ An extract from the decision/court settlement/authentic instrument using the form set out in Annex I, Annex II, Annex III or Annex IV

☐ A transliteration or translation of the contents of the form set out in Annex I, Annex II, Annex III or Annex IV

☐ Where appropriate, a copy of the decision on the declaration of enforceability

☐ A document showing the amount of any arrears and the date such amount was calculated

☐ A document indicating that the applicant has benefited from legal aid or from exemption from costs and expenses

☐ A document indicating that the applicant has benefited from free proceedings before an administrative authority in the Member State of origin, and confirming that the applicant fulfils the financial requirements to qualify for legal aid or exemption from costs and expenses

☐ A document establishing the right of the public body to apply for reimbursement of benefits paid to the creditor and justifying the payment of such benefits

☐ Other (please specify):
.....
.....
.....

5.

Documents attached (*) to the application in the case of a decision made in a third State

☐ The complete text of the decision

☐ A summary of or extract from the decision drawn up by the competent authority of the State of origin

☐ A document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) of the 2007 Hague Convention are met

(*) Please put a cross in the boxes which apply and number the documents in the order in which they are attached.

- ☐ If the defendant did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the defendant had proper notice of the proceedings and an opportunity to be heard, or that the defendant had proper notice of the decision and the opportunity to challenge it or appeal it on fact and law
- ☐ A document showing the amount of any arrears and the date such amount was calculated
- ☐ A document providing the information necessary to make appropriate calculations in the case of a decision providing for automatic adjustment by indexation
- ☐ A document showing the extent to which the applicant received free legal assistance in the State of origin
- ☐ Other (please specify):
-
-
-

Total number of documents attached to the application form:

Done at: on (dd/mm/yyyy)

Name and signature of the authorised official of the requesting Central Authority:

PART B: To be completed by the applicant or, as appropriate, by the person/authority authorised in the requesting Member State to complete the form on the applicant's behalf

6. Application

- 6.1. ☐ Application for recognition or for recognition and declaration of enforceability of a decision

The application is based on:

- 6.1.1. ☐ Chapter IV, Section 2, of Regulation (EC) No 4/2009

- ### 6.1.2. ☐ The 2007 Hague Convention

- 6.1.2.1. Indicate the basis for recognition and enforcement under Article 20 of the 2007 Hague Convention:

- 6.1.2.2. The defendant has appeared or been represented in the proceedings in the State of origin:

Yes ☐ No ☐

- 6.1.3. ☐ The national law of the requested Member State

- 6.1.4. ☐ Other (please specify):

- 6.2. ☐ Application for enforcement of a decision given or recognised in the requested Member State

7. **Decision**

7.1. Date and reference number:

7.2. Name of the court of origin:

8. **Applicant**8.1. *Natural person*

8.1.1. Surname and given name(s):

8.1.2. Date (dd/mm/yyyy) and place of birth:

8.1.3. Identity number or social security number (*):

8.1.4. Nationality:

8.1.5. Profession:

8.1.6. Marital status:

8.1.7. Address:

8.1.7.1. c/o (surname and given name(s)) (*)

8.1.7.2. Street and number/PO box:

8.1.7.3. Place and postal code:

8.1.7.4. Member State

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden

8.1.8. Telephone/E-mail:

8.1.9. Has benefited from:

8.1.9.1. legal aid:

☐ Yes ☐ No

8.1.9.2. exemption from costs and expenses:

☐ Yes ☐ No

8.1.9.3. free proceedings before an administrative authority listed in Annex IX to Regulation (EC) No 4/2009:

☐ Yes ☐ No

8.1.10. Where appropriate, surname, given name(s) and details of applicant's representative (lawyer, etc.):

.....

(*) If available.

(**) In cases of family violence (see Article 57(3) of Regulation (EC) No 4/2009).

8.2. *Public body*

8.2.1. Name:

8.2.2. Address:

8.2.2.1. Street and number/PO box:

8.2.2.2. Place and postal code:

8.2.2.3. Member State

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece

☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta

☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland

☐ Sweden

8.2.3. Telephone/Fax/E-mail:

8.2.4. Name of the person representing the body in the proceedings (*):

8.2.5. Person responsible for following up the application:

8.2.5.1. Surname and given name(s):

8.2.5.2. Telephone:

8.2.5.3. Fax:

8.2.5.4. E-mail:

9. **Defendant**

9.1. Surname and given name(s):

9.2. Date (dd/mm/yyyy) and place of birth (**):

9.3. Identity number or social security number (**):

9.4. Nationality (**):

9.5. Profession (**):

9.6. Marital status (**):

9.7. Address (**):

9.7.1. Street and number/PO box:

9.7.2. Place and postal code:

9.7.3. Member State

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece

☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta

☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland

☐ Sweden

10. **Any other information that may help locate the defendant:**

(*) If relevant.

(**) If this information is available.

11.

Person(s) for whom maintenance is sought or owed (*)

11.1.

☐ The person is the same as the applicant named in point 8

11.2.

☐ The person is the same as the defendant named in point 9

11.3.

☐ The applicant☐ The defendant

is the representative (**) defending the interests of the following person(s):

11.3.1.

Person A

11.3.1.1.

Surname and given name(s):

11.3.1.2.

Date (dd/mm/yyyy) and place of birth:

11.3.1.3.

Identity number or social security number (***):

11.3.1.4.

Nationality (***):

11.3.1.5.

Profession (***):

11.3.1.6.

Marital status (***):

11.3.2.

Person B

11.3.2.1.

Surname and given name(s):

11.3.2.2.

Date (dd/mm/yyyy) and place of birth:

11.3.2.3.

Identity number or social security number (***):

11.3.2.4.

Nationality (***):

11.3.2.5.

Profession (***):

11.3.2.6.

Marital status (***):

11.3.3.

Person C

11.3.3.1.

Surname and given name(s):

11.3.3.2.

Date (dd/mm/yyyy) and place of birth:

11.3.3.3.

Identity number or social security number (***):

11.3.3.4.

Nationality (***):

11.3.3.5.

Profession (***):

11.3.3.6.

Marital status (***):

12.

Debtor

12.1.

☐ The person is the same as the applicant named in point 8

12.2.

☐ The person is the same as the defendant named in point 9

12.3.

☐ The applicant☐ The defendant

is the representative (**) defending the interests of the following person:

12.3.1.

Surname and given name(s):

(*) If more than three persons, attach an additional sheet.

(**) For example the person with parental responsibility or the guardian of a protected adult.

(***) If this information is available and/or relevant.

- 12.3.2. Date (dd/mm/yyyy) and place of birth:
- 12.3.3. Identity number or social security number (*):
- 12.3.4. Nationality (*):
- 12.3.5. Profession (*):
- 12.3.6. Marital status (*):

13. **Information regarding payment, if the application is made by the creditor**

- 13.1. *Payment by electronic means*
 - 13.1.1. Name of the bank:
 - 13.1.2. BIC or other relevant bank code:
 - 13.1.3. Account holder:
 - 13.1.4. International Bank Account Number (IBAN):
- 13.2. *Payment by cheque*
 - 13.2.1. Cheque payable to:
 - 13.2.2. Cheque to be sent to
 - 13.2.2.1. Surname and given name(s):
 - 13.2.2.2. Address:
 - 13.2.2.2.1. Street and number/PO box:
 - 13.2.2.2.2. Place and postal code:
 - 13.2.2.2.3. Country:

- 14. **Additional information (where applicable):**
 -
 -
 -

Done at: on (dd/mm/yyyy)

Signature of applicant:

and/or, where appropriate:

Name and signature of the person/authority authorised in the requesting Member State to complete the form on the applicant's behalf:

.....

(*) If this information is available.

ANNEX VII

APPLICATION FORM TO OBTAIN OR HAVE MODIFIED A DECISION IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS

(Articles 56 and 57 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ⁽¹⁾)

PART A: To be completed by the requesting Central Authority**1. Application**

- ☐ Application to obtain a decision (Article 56(1)(c))
- ☐ Application to obtain a decision (Article 56(1)(d))
- ☐ Application for the modification of a decision (Article 56(1)(e))
- ☐ Application for the modification of a decision (Article 56(1)(f))
- ☐ Application for the modification of a decision (Article 56(2)(b))
- ☐ Application for the modification of a decision (Article 56(2)(c))

2. Requesting Central Authority

2.1. Name:

2.2. Address:

2.2.1. Street and number/PO box:

2.2.2. Place and postal code:

2.2.3. Member State

- ☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
- ☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
- ☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
- ☐ Sweden

2.3. Telephone:

2.4. Fax:

2.5. E-mail:

2.6. Reference number of the application:

Application to be handled with the application(s) bearing the following reference number(s):

2.7. Person responsible for following up the application:

2.7.1. Surname and given name(s):

2.7.2. Telephone:

2.7.3. E-mail:

(¹) OJ L 7, 10.1.2009, p. 1.

3. Requested Central Authority

3.1. Name:

3.2. Address:

3.2.1. Street and number/PO box:

3.2.2. Place and postal code:

3.2.3. Member State

- ☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden

4. Documents attached (*) to the application, as appropriate

- ☐ Decision of the requested Member State refusing recognition or a declaration of enforceability
- ☐ Copy of the decision to be modified
- ☐ Extract from the decision to be modified
- ☐ Document(s) proving a change in income or any other change in circumstances
- ☐ Birth certificate(s) or equivalent
- ☐ Debtor's acknowledgement of parentage
- ☐ Document(s) proving biological parentage
- ☐ Decision by a competent authority in relation to parentage
- ☐ Results of genetic tests
- ☐ Adoption certificate
- ☐ Certificate of marriage or similar relationship
- ☐ Document(s) proving the date of divorce/separation
- ☐ Document(s) proving that the parties live together
- ☐ Certificate(s) regarding schooling
- ☐ Document(s) relevant to the financial situation
- ☐ Other (please specify):
.....
.....
.....

<p>Total number of documents attached to the application form:</p> <p>Done at: on (dd/mm/yyyy)</p> <p>Name and signature of the authorised official of the requesting Central Authority:</p>
--

(*) Please put a cross in the boxes which apply and number the documents in the order in which they are attached.

PART B: To be completed by the applicant or, as appropriate, by the person/authority authorised in the requesting Member State to complete the form on the applicant's behalf

5. Application

- 5.1. ☐ *Application to obtain a decision*
- 5.1.1. ☐ Parentage has not been established
- 5.1.2. ☐ No decision exists
- 5.1.3. ☐ Recognition and a declaration of enforceability of an existing decision are not possible
- 5.1.4. ☐ Amount requested:
-
-
-
- 5.2. ☐ *Application for modification of a decision*
- 5.2.1. ☐ The decision was given in the requested Member State
- 5.2.2. ☐ The decision was given in a State other than the requested Member State
- 5.2.3. Date (dd/mm/yyyy) and reference number of the decision:
- 5.2.4. Name of the court of origin:
- 5.2.5. Changes in circumstances which have occurred:
- ☐ Change in income:
- ☐ of the person(s) for whom maintenance is sought or owed
- ☐ of the person primarily responsible for the person(s) for whom maintenance is sought or owed
- ☐ of the debtor
- ☐ Change in expenses and charges:
- ☐ of the person(s) for whom maintenance is sought or owed
- ☐ of the person primarily responsible for the person(s) for whom maintenance is sought or owed
- ☐ of the debtor
- ☐ Change in the situation of the child/children
- ☐ Change in marital status:
- ☐ of the person(s) for whom maintenance is sought or owed
- ☐ of the person primarily responsible for the person(s) for whom maintenance is sought or owed
- ☐ of the debtor
- ☐ Other (please specify):
-
-

- 5.2.6. Modification(s) requested:
- ☐ Increase in the amount of maintenance (please specify):
 - ☐ Reduction in the amount of maintenance (please specify):
 - ☐ Modification of the frequency of payments (please specify):
 - ☐ Modification of the arrangements for payment (please specify):
 - ☐ Modification of the nature of payments (please specify):
 - ☐ Termination of the maintenance obligation (please specify):
 - ☐ Other (please specify):
.....

6. **Applicant**

- 6.1. Surname and given name(s):
- 6.2. Address:
- 6.2.1. Care of: (Surname and given name(s)) (*)
- 6.2.2. Street and number/PO box:
- 6.2.3. Place and postal code:
- 6.2.4. Member State
- ☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden
- 6.3. Telephone/E-mail:
- 6.4. Date (dd/mm/yyyy) and place of birth:
- 6.5. Identity/social security number ("):
- 6.6. Nationality:
- 6.7. Profession:
- 6.8. Current marital status:
- 6.9. If applicable, surname, given name(s) and contact details of the applicant's representative (lawyer, etc. ...): ...
.....
.....

(*) In cases of domestic violence (see Article 57(3) of Regulation (EC) No 4/2009).
(") If this information is available.

7. **Defendant**

7.1. Surname and given name(s):

7.2. Address (*):

7.2.1. Street and number/PO box:

7.2.2. Place and postal code:

7.2.3. Member State

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Ireland ☐ Greece
☐ Spain ☐ France ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta
☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland
☐ Sweden

7.3. Date (dd/mm/yyyy) and place of birth (*):

7.4. Identity/social security number (*):

7.5. Nationality (*):

7.6. Profession (*):

7.7. Current marital status (*):

8. **Any other information that may help locate the defendant:**

.....

.....

.....

9. **Person(s) for whom maintenance is sought or owed (**)**9.1. ☐ The person is the same as the applicant named in point 69.2. ☐ The person is the same as the defendant named in point 79.3. ☐ The applicant ☐ The defendant

is the representative (***) defending the interests of the following person(s):

9.3.1. **Person A**

9.3.1.1. Surname and given name(s):

9.3.1.2. Date (dd/mm/yyyy) and place of birth:

9.3.1.3. Identity/social security number (****):

(*) If this information is available.

(**) If more than three persons, attach an additional sheet.

(***). For example, the person with parental responsibility or the guardian of a protected adult.

(****) If this information is available and/or relevant.

9.3.1.4.

Nationality (*):

9.3.1.5.

Profession (*):

9.3.1.6.

Current marital status (*):

9.3.1.7.

Maintenance is on the basis of the following relationship:

☐

Parentage (please specify relationship):

☐

Marriage

☐

Analogous relationship to marriage

☐

Alliance (please specify relationship):

☐

Other (please specify):

9.3.2.

Person B

9.3.2.1.

Surname and given name(s):

9.3.2.2.

Date (dd/mm/yyyy) and place of birth:

9.3.2.3.

Identity/social security number (*):

9.3.2.4.

Nationality (*):

9.3.2.5.

Profession (*):

9.3.2.6.

Current marital status (*):

9.3.2.7.

Maintenance is on the basis of the following relationship:

☐

Parentage (please specify relationship):

☐

Marriage

☐

Analogous relationship to marriage

☐

Alliance (please specify relationship):

☐

Other (please specify):

9.3.3.

Person C

9.3.3.1.

Surname and given name(s):

9.3.3.2.

Date (dd/mm/yyyy) and place of birth:

9.3.3.3.

Identity/social security number (*):

9.3.3.4.

Nationality (*):

9.3.3.5.

Profession (*):

9.3.3.6.

Current marital status (*):

(*) If this information is available and/or relevant.

9.3.3.7. Maintenance is on the basis of the following relationship:

- ☐ Parentage (please specify relationship):
- ☐ Marriage
- ☐ Analogous relationship to marriage
- ☐ Alliance (please specify relationship):
- ☐ Other (please specify):

10. Debtor

10.1. ☐ The person is the same as the applicant named in point 6

10.2. ☐ The person is the same as the defendant named in point 7

10.3. ☐ The applicant ☐ The defendant

is the representative (*) defending the interests of the following person:

10.3.1. Surname and given name(s):

10.3.2. Date (dd/mm/yyyy) and place of birth:

10.3.3. Identity/social security number (*):

10.3.4. Nationality (*):

10.3.5. Profession (*):

10.3.6. Current marital status (*):

10.3.7. Maintenance is on the basis of the following relationship:

- ☐ Parentage (please specify relationship):
- ☐ Marriage
- ☐ Analogous relationship to marriage
- ☐ Affinity (please specify relationship):
- ☐ Other (please specify):

11. Information on the financial situation of the persons concerned by the application (only give information which is relevant for the purpose of obtaining or modifying a decision)

11.1. Currency

- ☐ Euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Estonian kroon (EEK)
- ☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN)
- ☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify ISO code):

(*) For example, the person with parental responsibility or the guardian of a protected adult.

(**) If this information is available.

11.2. The person(s) for whom maintenance is sought or owed and the person primarily responsible for that person (those persons)

11.2.1. Gross income

<input type="checkbox"/> Monthly	Person primarily responsible for the person(s) for whom maintenance is sought or owed	Spouse or current partner of the person primarily responsible for the person(s) for whom maintenance is sought or owed	Person for whom maintenance is sought or owed (Person A)	Person for whom maintenance is sought or owed (Person B)	Person for whom maintenance is sought or owed (Person C)
<input type="checkbox"/> Annual					
Salary (including payments in kind), pensions, disability pensions, maintenance payments, allowances, annuities, unemployment benefits					
Income from non-salaried occupations					
Income from securities/floating capital/real property					
Other sources of income					
TOTAL					

11.2.2. Expenses and charges

<input type="checkbox"/> Monthly	Person primarily responsible for the person(s) for whom maintenance is sought or owed	Spouse or current partner of the person primarily responsible for the person(s) for whom maintenance is sought or owed	Person for whom maintenance is sought or owed (Person A)	Person for whom maintenance is sought or owed (Person B)	Person for whom maintenance is sought or owed (Person C)
<input type="checkbox"/> Annual					
Taxes					
Insurance premiums, mandatory social security and professional contributions					
Rent/cost of co-ownership, mortgage payments					
Food and clothing					
Medical expenses					
Maintenance paid to a third party by virtue of a legal obligation and/or expenditure for other dependent persons not covered by the application					
Education costs of children					
Loan repayments, other debts					
Other expenditure					
TOTAL					

11.2.3. **Other assets**

.....

.....

.....

11.3. **The debtor**

11.3.1. **Gross income**

<input type="checkbox"/> Monthly	Debtor	Current spouse or partner of the debtor
<input type="checkbox"/> Annual		
Salary (including payments in kind), pensions, disability pensions, alimonies, allowances, annuities, unemployment benefits		
Income from non-salaried occupations		
Income from securities/floating capital/real property		
Other sources of income		
TOTAL		

11.3.2. **Expenses and charges**

<input type="checkbox"/> Monthly	Debtor	Current spouse or partner of the debtor
<input type="checkbox"/> Annual		
Taxes		
Insurance premiums, mandatory social security and profes- sional contributions		
Rent/cost of co-ownership, mortgage payments		
Food and clothing		
Medical expenses		
Maintenance paid to a third party by virtue of a legal obli- gation and/or expenditure for other dependent persons not covered by the application		
Education costs of children		
Loan repayments, other debts		
Other expenditure		
TOTAL		

11.3.3. **Other assets**

.....

.....

.....

12. Information regarding payment, if the application is made by the creditor
- 12.1. Payment by electronic means
- 12.1.1. Name of the bank:
- 12.1.2. BIC or other relevant bank code:
- 12.1.3. Account holder:
- 12.1.4. International Bank Account Number (IBAN):
- 12.2. Payment by cheque
- 12.2.1. Cheque payable to:
- 12.2.2. Cheque to be sent to
- 12.2.2.1. Surname and given name(s):
- 12.2.2.2. Address:
- 12.2.2.2.1. Street and number/PO box:
- 12.2.2.2.2. Place and postal code:
- 12.2.2.2.3. Country:
13. Additional information (where applicable):
-
-
-

Done at on (dd/mm/yyyy)

Signature of applicant:

and/or, where applicable:

Name and signature of the person/authority authorised in the requesting Member State to complete the form on the applicant's behalf:

.....

ANNEX VIII

ACKNOWLEDGEMENT OF RECEIPT OF AN APPLICATION

(Article 58(3) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ⁽¹⁾)

This acknowledgement of receipt must be sent within 30 days from the date of receipt of the application.

1. Requesting Central Authority
- 1.1. Reference number of the requesting Central Authority:
- 1.2. Surname and given name(s) of the person responsible for following up the application:
.....
2. Requested Central Authority
- 2.1. Reference number of the requested Central Authority:
- 2.2. Person responsible for following up the application:
- 2.2.1. Surname and given name(s):
- 2.2.2. Telephone:
- 2.2.3. Fax:
- 2.2.4. E-mail:
3. Date received: (dd/mm/yyyy)
4. Initial steps which have been or will be taken to deal with the application
.....
.....
.....
.....
5. ☐ Further necessary documents or information (please specify)
.....
.....
.....

A status report will be sent within 60 days.

Done at: on: (dd/mm/yyyy)
Name and signature of the authorised official of the requested Central Authority:
.....

⁽¹⁾ OJ L 7, 10.1.2009, p. 1.

ANNEX IX

NOTIFICATION OF REFUSAL OR OF DECISION NO LONGER TO PROCESS AN APPLICATION

(Article 58(8) and (9) of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ⁽¹⁾)

1. **Requesting Central Authority**
- 1.1. Reference number of the requesting Central Authority:
- 1.2. Surname and given name(s) of the person responsible for following up the application:
.....
2. **Requested Central Authority**
- 2.1. Reference number of the requested Central Authority:
- 2.2. Person responsible for following up the application:
- 2.2.1. Surname and given name(s):
- 2.2.2. Telephone:
- 2.2.3. Fax:
- 2.2.4. E-mail:
3. ☐ **The requested Central Authority refuses to process the application because it is manifest that the required conditions have not been met**
- Reasons (please specify):
.....
.....
.....
.....
.....
.....
.....
4. ☐ **The requested Central Authority is no longer processing the application because the requesting Central Authority has not supplied the additional information sought by the requested Central Authority within 90 days or a longer period specified by the latter**

Done at: on: (dd/mm/yyyy)
Name and signature of the authorised official of the requested Central Authority:
.....

⁽¹⁾ OJ L 7, 10.1.2009, p. 1.

ANNEX X

The administrative authorities referred to in Article 2(2) of Regulation (EC) No 4/2009 are as follows:

ANNEX XI

The competent authorities referred to in Article 47(3) of Regulation (EC) No 4/2009 are as follows:

4c

Regulation (EU) No 650/2012
of the European Parliament and of the
Council of 4 July 2012 on jurisdiction,
applicable law, recognition and enforcement
of decisions and acceptance and enforcement
of authentic instruments in matters
of succession and on the creation
of a European Certificate of Succession



REGULATION (EU) No 650/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 4 July 2012****on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) In accordance with point (c) of Article 81(2) of the Treaty on the Functioning of the European Union, such measures may include measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.
- (4) A programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters ⁽³⁾, common to the Commission and

to the Council, was adopted on 30 November 2000. That programme identifies measures relating to the harmonisation of conflict-of-laws rules as measures facilitating the mutual recognition of decisions, and provides for the drawing-up of an instrument relating to wills and succession.

- (5) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme called 'The Hague Programme: strengthening freedom, security and justice in the European Union' ⁽⁴⁾. That programme underlines the need to adopt an instrument in matters of succession dealing, in particular, with the questions of conflict of laws, jurisdiction, mutual recognition and enforcement of decisions in the area of succession and a European Certificate of Succession.
- (6) At its meeting in Brussels on 10 and 11 December 2009 the European Council adopted a new multiannual programme called 'The Stockholm Programme – An open and secure Europe serving and protecting citizens' ⁽⁵⁾. In that programme the European Council considered that mutual recognition should be extended to fields that are not yet covered but are essential to everyday life, for example succession and wills, while taking into consideration Member States' legal systems, including public policy (*ordre public*), and national traditions in this area.
- (7) The proper functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed.
- (8) In order to achieve those objectives, this Regulation should bring together provisions on jurisdiction, on applicable law, on recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements and on the creation of a European Certificate of Succession.

⁽¹⁾ OJ C 44, 11.2.2011, p. 148.

⁽²⁾ Position of the European Parliament of 13 March 2012 (not yet published in the Official Journal) and decision of the Council of 7 June 2012.

⁽³⁾ OJ C 12, 15.1.2001, p. 1.

⁽⁴⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁵⁾ OJ C 115, 4.5.2010, p. 1.

- (9) The scope of this Regulation should include all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession.
- (10) This Regulation should not apply to revenue matters or to administrative matters of a public-law nature. It should therefore be for national law to determine, for instance, how taxes and other liabilities of a public-law nature are calculated and paid, whether these be taxes payable by the deceased at the time of death or any type of succession-related tax to be paid by the estate or the beneficiaries. It should also be for national law to determine whether the release of succession property to beneficiaries under this Regulation or the recording of succession property in a register may be made subject to the payment of taxes.
- (11) This Regulation should not apply to areas of civil law other than succession. For reasons of clarity, a number of questions which could be seen as having a link with matters of succession should be explicitly excluded from the scope of this Regulation.
- (12) Accordingly, this Regulation should not apply to questions relating to matrimonial property regimes, including marriage settlements as known in some legal systems to the extent that such settlements do not deal with succession matters, and property regimes of relationships deemed to have comparable effects to marriage. The authorities dealing with a given succession under this Regulation should nevertheless, depending on the situation, take into account the winding-up of the matrimonial property regime or similar property regime of the deceased when determining the estate of the deceased and the respective shares of the beneficiaries.
- (13) Questions relating to the creation, administration and dissolution of trusts should also be excluded from the scope of this Regulation. This should not be understood as a general exclusion of trusts. Where a trust is created under a will or under statute in connection with intestate succession the law applicable to the succession under this Regulation should apply with respect to the devolution of the assets and the determination of the beneficiaries.
- (14) Property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, should also be excluded from the scope of this Regulation. However, it should be the law specified by this Regulation as the law applicable to the succession which determines whether gifts or other forms of dispositions *inter vivos* giving rise to a right *in rem* prior to death should be restored or accounted for for the purposes of determining the shares of the beneficiaries in accordance with the law applicable to the succession.
- (15) This Regulation should allow for the creation or the transfer by succession of a right in immovable or movable property as provided for in the law applicable to the succession. It should, however, not affect the limited number (*numerus clausus*) of rights *in rem* known in the national law of some Member States. A Member State should not be required to recognise a right *in rem* relating to property located in that Member State if the right *in rem* in question is not known in its law.
- (16) However, in order to allow the beneficiaries to enjoy in another Member State the rights which have been created or transferred to them by succession, this Regulation should provide for the adaptation of an unknown right *in rem* to the closest equivalent right *in rem* under the law of that other Member State. In the context of such an adaptation, account should be taken of the aims and the interests pursued by the specific right *in rem* and the effects attached to it. For the purposes of determining the closest equivalent national right *in rem*, the authorities or competent persons of the State whose law applied to the succession may be contacted for further information on the nature and the effects of the right. To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law.
- (17) The adaptation of unknown rights *in rem* as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation.
- (18) The requirements for the recording in a register of a right in immovable or movable property should be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept (for immovable property, the *lex rei sitae*) which determines under what legal conditions and how the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information. In particular, the authorities may check that the right of the deceased to the succession property mentioned in the document presented for registration is a right which is recorded as such in the register or which is otherwise demonstrated in accordance with the law of the Member State in which the register is kept. In order to avoid duplication of documents, the registration authorities should accept such documents drawn up in another Member State by the competent authorities whose circulation is provided for by this Regulation. In particular, the European Certificate of Succession issued under this

Regulation should constitute a valid document for the recording of succession property in a register of a Member State. This should not preclude the authorities involved in the registration from asking the person applying for registration to provide such additional information, or to present such additional documents, as are required under the law of the Member State in which the register is kept, for instance information or documents relating to the payment of revenue. The competent authority may indicate to the person applying for registration how the missing information or documents can be provided.

- (19) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the *erga omnes* effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.
- (20) This Regulation should respect the different systems for dealing with matters of succession applied in the Member States. For the purposes of this Regulation, the term 'court' should therefore be given a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who or which, in certain matters of succession, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given succession by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term 'court' should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of succession, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.
- (21) This Regulation should allow all notaries who have competence in matters of succession in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term 'court' for the purposes of this Regulation.
- (22) Acts issued by notaries in matters of succession in the Member States should circulate under this Regulation. When notaries exercise judicial functions they are bound by the rules of jurisdiction, and the decisions they give should circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions they are not bound by the rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.
- (23) In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death. In order to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. The habitual residence thus determined should reveal a close and stable connection with the State concerned taking into account the specific aims of this Regulation.
- (24) In certain cases, determining the deceased's habitual residence may prove complex. Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin. In such a case, the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and his social life was located. Other complex cases may arise where the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them. If the deceased was a national of one of those States or had all his main assets in one of those States, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances.
- (25) With regard to the determination of the law applicable to the succession the authority dealing with the succession may in exceptional cases – where, for instance, the deceased had moved to the State of his habitual residence fairly recently before his death and all the circumstances of the case indicate that he was manifestly more closely connected with another State – arrive at the conclusion that the law applicable to the succession should not be the law of the State of the habitual residence of the deceased but rather the law of the State with which the deceased was manifestly more closely connected. That manifestly closest connection should, however, not be resorted to as a subsidiary connecting factor whenever the determination of the habitual residence of the deceased at the time of death proves complex.

- (26) Nothing in this Regulation should prevent a court from applying mechanisms designed to tackle the evasion of the law, such as *fraude à la loi* in the context of private international law.
- (27) The rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. This Regulation therefore provides for a series of mechanisms which would come into play where the deceased had chosen as the law to govern his succession the law of a Member State of which he was a national.
- (28) One such mechanism should be to allow the parties concerned to conclude a choice-of-court agreement in favour of the courts of the Member State of the chosen law. It would have to be determined on a case-by-case basis, depending in particular on the issue covered by the choice-of-court agreement, whether the agreement would have to be concluded between all parties concerned by the succession or whether some of them could agree to bring a specific issue before the chosen court in a situation where the decision by that court on that issue would not affect the rights of the other parties to the succession.
- (29) If succession proceedings are opened by a court of its own motion, as is the case in certain Member States, that court should close the proceedings if the parties agree to settle the succession amicably out of court in the Member State of the chosen law. Where succession proceedings are not opened by a court of its own motion, this Regulation should not prevent the parties from settling the succession amicably out of court, for instance before a notary, in a Member State of their choice where this is possible under the law of that Member State. This should be the case even if the law applicable to the succession is not the law of that Member State.
- (30) In order to ensure that the courts of all Member States may, on the same grounds, exercise jurisdiction in relation to the succession of persons not habitually resident in a Member State at the time of death, this Regulation should list exhaustively, in a hierarchical order, the grounds on which such subsidiary jurisdiction may be exercised.
- (31) In order to remedy, in particular, situations of denial of justice, this Regulation should provide a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to rule on a succession which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when a beneficiary cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on *forum necessitatis* should, however, be exercised only if the case has a sufficient connection with the Member State of the court seised.
- (32) In order to simplify the lives of heirs and legatees habitually resident in a Member State other than that in which the succession is being or will be dealt with, this Regulation should allow any person entitled under the law applicable to the succession to make declarations concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or concerning the limitation of his liability for the debts under the succession, to make such declarations in the form provided for by the law of the Member State of his habitual residence before the courts of that Member State. This should not preclude such declarations being made before other authorities in that Member State which are competent to receive declarations under national law. Persons choosing to avail themselves of the possibility to make declarations in the Member State of their habitual residence should themselves inform the court or authority which is or will be dealing with the succession of the existence of such declarations within any time limit set by the law applicable to the succession.
- (33) It should not be possible for a person who wishes to limit his liability for the debts under the succession to do so by a mere declaration to that effect before the courts or other competent authorities of the Member State of his habitual residence where the law applicable to the succession requires him to initiate specific legal proceedings, for instance inventory proceedings, before the competent court. A declaration made in such circumstances by a person in the Member State of his habitual residence in the form provided for by the law of that Member State should therefore not be formally valid for the purposes of this Regulation. Nor should the documents instituting the legal proceedings be regarded as declarations for the purposes of this Regulation.
- (34) In the interests of the harmonious functioning of justice, the giving of irreconcilable decisions in different Member States should be avoided. To that end, this Regulation should provide for general procedural rules similar to those of other Union instruments in the area of judicial cooperation in civil matters.
- (35) One such procedural rule is a *lis pendens* rule which will come into play if the same succession case is brought before different courts in different Member States. That rule will then determine which court should proceed to deal with the succession case.

- (36) Given that succession matters in some Member States may be dealt with by non-judicial authorities, such as notaries, who are not bound by the rules of jurisdiction under this Regulation, it cannot be excluded that an amicable out-of-court settlement and court proceedings relating to the same succession, or two amicable out-of-court settlements relating to the same succession, may be initiated in parallel in different Member States. In such a situation, it should be for the parties involved, once they become aware of the parallel proceedings, to agree among themselves how to proceed. If they cannot agree, the succession would have to be dealt with and decided upon by the courts having jurisdiction under this Regulation.
- (37) In order to allow citizens to avail themselves, with all legal certainty, of the benefits offered by the internal market, this Regulation should enable them to know in advance which law will apply to their succession. Harmonised conflict-of-laws rules should be introduced in order to avoid contradictory results. The main rule should ensure that the succession is governed by a predictable law with which it is closely connected. For reasons of legal certainty and in order to avoid the fragmentation of the succession, that law should govern the succession as a whole, that is to say, all of the property forming part of the estate, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State.
- (38) This Regulation should enable citizens to organise their succession in advance by choosing the law applicable to their succession. That choice should be limited to the law of a State of their nationality in order to ensure a connection between the deceased and the law chosen and to avoid a law being chosen with the intention of frustrating the legitimate expectations of persons entitled to a reserved share.
- (39) A choice of law should be made expressly in a declaration in the form of a disposition of property upon death or be demonstrated by the terms of such a disposition. A choice of law could be regarded as demonstrated by a disposition of property upon death where, for instance, the deceased had referred in his disposition to specific provisions of the law of the State of his nationality or where he had otherwise mentioned that law.
- (40) A choice of law under this Regulation should be valid even if the chosen law does not provide for a choice of law in matters of succession. It should however be for the chosen law to determine the substantive validity of the act of making the choice, that is to say, whether the person making the choice may be considered to have understood and consented to what he was doing. The same should apply to the act of modifying or revoking a choice of law.
- (41) For the purposes of the application of this Regulation, the determination of the nationality or the multiple nationalities of a person should be resolved as a preliminary question. The issue of considering a person as a national of a State falls outside the scope of this Regulation and is subject to national law, including, where applicable, international Conventions, in full observance of the general principles of the European Union.
- (42) The law determined as the law applicable to the succession should govern the succession from the opening of the succession to the transfer of ownership of the assets forming part of the estate to the beneficiaries as determined by that law. It should include questions relating to the administration of the estate and to liability for the debts under the succession. The payment of the debts under the succession may, depending, in particular, on the law applicable to the succession, include the taking into account of a specific ranking of the creditors.
- (43) The rules of jurisdiction laid down by this Regulation may, in certain cases, lead to a situation where the court having jurisdiction to rule on the succession will not be applying its own law. When that situation occurs in a Member State whose law provides for the mandatory appointment of an administrator of the estate, this Regulation should allow the courts of that Member State, when seised, to appoint one or more such administrators under their own law. This should be without prejudice to any choice made by the parties to settle the succession amicably out of court in another Member State where this is possible under the law of that Member State. In order to ensure a smooth coordination between the law applicable to the succession and the law of the Member State of the appointing court, the court should appoint the person(s) who would be entitled to administer the estate under the law applicable to the succession, such as for instance the executor of the will of the deceased or the heirs themselves or, if the law applicable to the succession so requires, a third-party administrator. The courts may, however, in specific cases where their law so requires, appoint a third party as administrator even if this is not provided for in the law applicable to the succession. If the deceased had appointed an executor of the will, that person may not be deprived of his powers unless the law applicable to the succession allows for the termination of his mandate.
- (44) The powers exercised by the administrators appointed in the Member State of the court seised should be the powers of administration which they may exercise under the law applicable to the succession. Thus, if, for instance, the heir is appointed as administrator he should have the powers to administer the estate which an heir

- would have under that law. Where the powers of administration which may be exercised under the law applicable to the succession are not sufficient to preserve the assets of the estate or to protect the rights of the creditors or of other persons having guaranteed the debts of the deceased, the administrator(s) appointed in the Member State of the court seised may, on a residual basis, exercise powers of administration to that end provided for by the law of that Member State. Such residual powers could include, for instance, establishing a list of the assets of the estate and the debts under the succession, informing creditors of the opening of the succession and inviting them to make their claims known, and taking any provisional, including protective, measures intended to preserve the assets of the estate. The acts performed by an administrator in exercise of the residual powers should respect the law applicable to the succession as regards the transfer of ownership of succession property, including any transaction entered into by the beneficiaries prior to the appointment of the administrator, liability for the debts under the succession and the rights of the beneficiaries, including, where applicable, the right to accept or to waive the succession. Such acts could, for instance, only entail the alienation of assets or the payment of debts where this would be allowed under the law applicable to the succession. Where under the law applicable to the succession the appointment of a third-party administrator changes the liability of the heirs, such a change of liability should be respected.
- (45) This Regulation should not preclude creditors, for instance through a representative, from taking such further steps as may be available under national law, where applicable, in accordance with the relevant Union instruments, in order to safeguard their rights.
- (46) This Regulation should allow for potential creditors in other Member States where assets are located to be informed of the opening of the succession. In the context of the application of this Regulation, consideration should therefore be given to the possibility of establishing a mechanism, if appropriate by way of the e-justice portal, to enable potential creditors in other Member States to access the relevant information so that they can make their claims known.
- (47) The law applicable to the succession should determine who the beneficiaries are in any given succession. Under most laws, the term 'beneficiaries' would cover heirs and legatees and persons entitled to a reserved share although, for instance, the legal position of legatees is not the same under all laws. Under some laws, the legatee may receive a direct share in the estate whereas under other laws the legatee may acquire only a claim against the heirs.
- (48) In order to ensure legal certainty for persons wishing to plan their succession in advance, this Regulation should lay down a specific conflict-of-laws rule concerning the admissibility and substantive validity of dispositions of property upon death. To ensure the uniform application of that rule, this Regulation should list which elements should be considered as elements pertaining to substantive validity. The examination of the substantive validity of a disposition of property upon death may lead to the conclusion that that disposition is without legal existence.
- (49) An agreement as to succession is a type of disposition of property upon death the admissibility and acceptance of which vary among the Member States. In order to make it easier for succession rights acquired as a result of an agreement as to succession to be accepted in the Member States, this Regulation should determine which law is to govern the admissibility of such agreements, their substantive validity and their binding effects between the parties, including the conditions for their dissolution.
- (50) The law which, under this Regulation, will govern the admissibility and substantive validity of a disposition of property upon death and, as regards agreements as to succession, the binding effects of such an agreement as between the parties, should be without prejudice to the rights of any person who, under the law applicable to the succession, has a right to a reserved share or another right of which he cannot be deprived by the person whose estate is involved.
- (51) Where reference is made in this Regulation to the law which would have been applicable to the succession of the person making a disposition of property upon death if he had died on the day on which the disposition was, as the case may be, made, modified or revoked, such reference should be understood as a reference to either the law of the State of the habitual residence of the person concerned on that day or, if he had made a choice of law under this Regulation, the law of the State of his nationality on that day.
- (52) This Regulation should regulate the validity as to form of all dispositions of property upon death made in writing by way of rules which are consistent with those of the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. When determining whether a given disposition of property upon death is formally valid under this Regulation, the competent authority should disregard the fraudulent creation of an international element to circumvent the rules on formal validity.

- (53) For the purposes of this Regulation, any provision of law limiting the permitted forms of dispositions of property upon death by reference to certain personal qualifications of the person making the disposition, such as, for instance, his age, should be deemed to pertain to matters of form. This should not be interpreted as meaning that the law applicable to the formal validity of a disposition of property upon death under this Regulation should determine whether or not a minor has the capacity to make a disposition of property upon death. That law should only determine whether a personal qualification such as, for instance, minority should bar a person from making a disposition of property upon death in a certain form.
- (54) For economic, family or social considerations, certain immovable property, certain enterprises and other special categories of assets are subject to special rules in the Member State in which they are located imposing restrictions concerning or affecting the succession in respect of those assets. This Regulation should ensure the application of such special rules. However, this exception to the application of the law applicable to the succession requires a strict interpretation in order to remain compatible with the general objective of this Regulation. Therefore, neither conflict-of-laws rules subjecting immovable property to a law different from that applicable to movable property nor provisions providing for a reserved share of the estate greater than that provided for in the law applicable to the succession under this Regulation may be regarded as constituting special rules imposing restrictions concerning or affecting the succession in respect of certain assets.
- (55) To ensure uniform handling of a situation in which it is uncertain in what order two or more persons whose succession would be governed by different laws died, this Regulation should lay down a rule providing that none of the deceased persons is to have any rights in the succession of the other or others.
- (56) In some situations an estate may be left without a claimant. Different laws provide differently for such situations. Under some laws, the State will be able to claim the vacant estate as an heir irrespective of where the assets are located. Under some other laws, the State will be able to appropriate only the assets located on its territory. This Regulation should therefore lay down a rule providing that the application of the law applicable to the succession should not preclude a Member State from appropriating under its own law the assets located on its territory. However, to ensure that this rule is not detrimental to the creditors of the estate, a proviso should be added enabling the creditors to seek satisfaction of their claims out of all the assets of the estate, irrespective of their location.
- (57) The conflict-of-laws rules laid down in this Regulation may lead to the application of the law of a third State. In such cases regard should be had to the private international law rules of that State. If those rules provide for *renvoi* either to the law of a Member State or to the law of a third State which would apply its own law to the succession, such *renvoi* should be accepted in order to ensure international consistency. *Renvoi* should, however, be excluded in situations where the deceased had made a choice of law in favour of the law of a third State.
- (58) Considerations of public interest should allow courts and other competent authorities dealing with matters of succession in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (*ordre public*) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public-policy exception in order to set aside the law of another State or to refuse to recognise or, as the case may be, accept or enforce a decision, an authentic instrument or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.
- (59) In the light of its general objective, which is the mutual recognition of decisions given in the Member States in matters of succession, irrespective of whether such decisions were given in contentious or non-contentious proceedings, this Regulation should lay down rules relating to the recognition, enforceability and enforcement of decisions similar to those of other Union instruments in the area of judicial cooperation in civil matters.
- (60) In order to take into account the different systems for dealing with matters of succession in the Member States, this Regulation should guarantee the acceptance and enforceability in all Member States of authentic instruments in matters of succession.
- (61) Authentic instruments should have the same evidentiary effects in another Member State as they have in the Member State of origin, or the most comparable effects. When determining the evidentiary effects of a given authentic instrument in another Member State or the most comparable effects, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. The evidentiary effects which a given authentic instrument should have in another Member State will therefore depend on the law of the Member State of origin.

- (62) The 'authenticity' of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated. A party wishing to challenge the authenticity of an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.
- (63) The term 'the legal acts or legal relationships recorded in an authentic instrument' should be interpreted as referring to the contents as to substance recorded in the authentic instrument. The legal acts recorded in an authentic instrument could be, for instance, the agreement between the parties on the sharing-out or the distribution of the estate, or a will or an agreement as to succession, or another declaration of intent. The legal relationships could be, for instance, the determination of the heirs and other beneficiaries as established under the law applicable to the succession, their respective shares and the existence of a reserved share, or any other element established under the law applicable to the succession. A party wishing to challenge the legal acts or legal relationships recorded in an authentic instrument should do so before the courts having jurisdiction under this Regulation, which should decide on the challenge in accordance with the law applicable to the succession.
- (64) If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as an incidental question in proceedings before a court of a Member State, that court should have jurisdiction over that question.
- (65) An authentic instrument which is being challenged should not produce any evidentiary effects in a Member State other than the Member State of origin as long as the challenge is pending. If the challenge concerns only a specific matter relating to the legal acts or legal relationships recorded in the authentic instrument, the authentic instrument in question should not produce any evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.
- (66) Should an authority, in the application of this Regulation, be presented with two incompatible authentic instruments, it should assess the question as to which authentic instrument, if any, should be given priority, taking into account the circumstances of the particular case. Where it is not clear from those circumstances which authentic instrument, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation, or, where the question is raised as an incidental question in the course of proceedings, by the court seized of those proceedings. In the event of incompatibility between an authentic instrument and a decision, regard should be had to the grounds of non-recognition of decisions under this Regulation.
- (67) In order for a succession with cross-border implications within the Union to be settled speedily, smoothly and efficiently, the heirs, legatees, executors of the will or administrators of the estate should be able to demonstrate easily their status and/or rights and powers in another Member State, for instance in a Member State in which succession property is located. To enable them to do so, this Regulation should provide for the creation of a uniform certificate, the European Certificate of Succession (hereinafter referred to as 'the Certificate'), to be issued for use in another Member State. In order to respect the principle of subsidiarity, the Certificate should not take the place of internal documents which may exist for similar purposes in the Member States.
- (68) The authority which issues the Certificate should have regard to the formalities required for the registration of immovable property in the Member State in which the register is kept. For that purpose, this Regulation should provide for an exchange of information on such formalities between the Member States.
- (69) The use of the Certificate should not be mandatory. This means that persons entitled to apply for a Certificate should be under no obligation to do so but should be free to use the other instruments available under this Regulation (decisions, authentic instruments and court settlements). However, no authority or person presented with a Certificate issued in another Member State should be entitled to request that a decision, authentic instrument or court settlement be presented instead of the Certificate.
- (70) The Certificate should be issued in the Member State whose courts have jurisdiction under this Regulation. It should be for each Member State to determine in its internal legislation which authorities are to have competence to issue the Certificate, whether they be courts as defined for the purposes of this Regulation or other authorities with competence in matters of succession, such as, for instance, notaries. It should also be for each Member State to determine in its internal legislation whether the issuing authority may involve other competent bodies in the issuing process, for instance bodies competent to receive statutory declarations in lieu of an oath. The Member States should

communicate to the Commission the relevant information concerning their issuing authorities in order for that information to be made publicly available.

- (71) The Certificate should produce the same effects in all Member States. It should not be an enforceable title in its own right but should have an evidentiary effect and should be presumed to demonstrate accurately elements which have been established under the law applicable to the succession or under any other law applicable to specific elements, such as the substantive validity of dispositions of property upon death. The evidentiary effect of the Certificate should not extend to elements which are not governed by this Regulation, such as questions of affiliation or the question whether or not a particular asset belonged to the deceased. Any person who makes payments or passes on succession property to a person indicated in the Certificate as being entitled to accept such payment or property as an heir or legatee should be afforded appropriate protection if he acted in good faith relying on the accuracy of the information certified in the Certificate. The same protection should be afforded to any person who, relying on the accuracy of the information certified in the Certificate, buys or receives succession property from a person indicated in the Certificate as being entitled to dispose of such property. The protection should be ensured if certified copies which are still valid are presented. Whether or not such an acquisition of property by a third person is effective should not be determined by this Regulation.
- (72) The competent authority should issue the Certificate upon request. The original of the Certificate should remain with the issuing authority, which should issue one or more certified copies of the Certificate to the applicant and to any other person demonstrating a legitimate interest. This should not preclude a Member State, in accordance with its national rules on public access to documents, from allowing copies of the Certificate to be disclosed to members of the public. This Regulation should provide for redress against decisions of the issuing authority, including decisions to refuse the issue of a Certificate. Where the Certificate is rectified, modified or withdrawn, the issuing authority should inform the persons to whom certified copies have been issued so as to avoid wrongful use of such copies.
- (73) Respect for international commitments entered into by the Member States means that this Regulation should not affect the application of international conventions to which one or more Member States are party at the time when this Regulation is adopted. In particular, the Member States which are Contracting Parties to the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions should be able to continue to apply the provisions of that Convention instead of the provisions of this Regulation with regard to the formal validity of wills and joint wills. Consistency with the general objectives of this Regulation requires, however, that this Regulation take precedence, as between Member States,
- over conventions concluded exclusively between two or more Member States in so far as such conventions concern matters governed by this Regulation.
- (74) This Regulation should not preclude Member States which are parties to the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising private international law provisions on succession, wills and estate administration from continuing to apply certain provisions of that Convention, as revised by the intergovernmental agreement between the States parties thereto.
- (75) In order to facilitate the application of this Regulation, provision should be made for an obligation requiring the Member States to communicate certain information regarding their legislation and procedures relating to succession within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC⁽¹⁾. In order to allow for the timely publication in the *Official Journal of the European Union* of all information of relevance for the practical application of this Regulation, the Member States should also communicate such information to the Commission before this Regulation starts to apply.
- (76) Equally, to facilitate the application of this Regulation and to allow for the use of modern communication technologies, standard forms should be prescribed for the attestations to be provided in connection with the application for a declaration of enforceability of a decision, authentic instrument or court settlement and for the application for a European Certificate of Succession, as well as for the Certificate itself.
- (77) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits⁽²⁾ should apply.
- (78) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the attestations and forms pertaining to the declaration of enforceability of decisions, court settlements and authentic instruments and to the European Certificate of Succession. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms
- ⁽¹⁾ OJ L 174, 27.6.2001, p. 25.
⁽²⁾ OJ L 124, 8.6.1971, p. 1.

for control by Member States of the Commission's exercise of implementing powers ⁽¹⁾.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Regulation shall apply to succession to the estates of deceased persons. It shall not apply to revenue, customs or administrative matters.

2. The following shall be excluded from the scope of this Regulation:

- (a) the status of natural persons, as well as family relationships and relationships deemed by the law applicable to such relationships to have comparable effects;
- (b) the legal capacity of natural persons, without prejudice to point (c) of Article 23(2) and to Article 26;
- (c) questions relating to the disappearance, absence or presumed death of a natural person;
- (d) questions relating to matrimonial property regimes and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage;
- (e) maintenance obligations other than those arising by reason of death;
- (f) the formal validity of dispositions of property upon death made orally;
- (g) property rights, interests and assets created or transferred otherwise than by succession, for instance by way of gifts, joint ownership with a right of survivorship, pension plans, insurance contracts and arrangements of a similar nature, without prejudice to point (i) of Article 23(2);
- (h) questions governed by the law of companies and other bodies, corporate or unincorporated, such as clauses in the memoranda of association and articles of association of companies and other bodies, corporate or unincorporated, which determine what will happen to the shares upon the death of the members;

(79) The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the attestations and forms provided for in this Regulation in accordance with the procedure laid down in Article 4 of Regulation (EU) No 182/2011.

(80) Since the objectives of this Regulation, namely the free movement of persons, the organisation in advance by citizens of their succession in a Union context and the protection of the rights of heirs and legatees and of persons close to the deceased, as well as of the creditors of the succession, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(81) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. This Regulation must be applied by the courts and other competent authorities of the Member States in observance of those rights and principles.

(82) In accordance with Articles 1 and 2 of Protocol No 21 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, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application. This is, however, without prejudice to the possibility for the United Kingdom and Ireland of notifying their intention of accepting this Regulation after its adoption in accordance with Article 4 of the said Protocol.

(83) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

- (i) the dissolution, extinction and merger of companies and other bodies, corporate or unincorporated;
- (j) the creation, administration and dissolution of trusts;
- (k) the nature of rights *in rem*; and
- (l) any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.
- (f) 'Member State of enforcement' means the Member State in which the declaration of enforceability or the enforcement of the decision, court settlement or authentic instrument is sought;
- (g) 'decision' means any decision in a matter of succession given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court;
- (h) 'court settlement' means a settlement in a matter of succession which has been approved by a court or concluded before a court in the course of proceedings;

Article 2

Competence in matters of succession within the Member States

This Regulation shall not affect the competence of the authorities of the Member States to deal with matters of succession.

Article 3

Definitions

1. For the purposes of this Regulation:

- (a) 'succession' means succession to the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession;
- (b) 'agreement as to succession' means an agreement, including an agreement resulting from mutual wills, which, with or without consideration, creates, modifies or terminates rights to the future estate or estates of one or more persons party to the agreement;
- (c) 'joint will' means a will drawn up in one instrument by two or more persons;
- (d) 'disposition of property upon death' means a will, a joint will or an agreement as to succession;
- (e) 'Member State of origin' means the Member State in which the decision has been given, the court settlement approved or concluded, the authentic instrument established or the European Certificate of Succession issued;

- (i) 'authentic instrument' means a document in a matter of succession which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:

- (i) relates to the signature and the content of the authentic instrument; and

- (ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin.

2. For the purposes of this Regulation, the term 'court' means any judicial authority and all other authorities and legal professionals with competence in matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:

- (a) may be made the subject of an appeal to or review by a judicial authority; and
- (b) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify the Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 79.

CHAPTER II

JURISDICTION*Article 4***General jurisdiction**

The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.

*Article 5***Choice-of-court agreement**

1. Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.

2. Such a choice-of-court agreement shall be expressed in writing, dated and signed by the parties concerned. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

*Article 6***Declining of jurisdiction in the event of a choice of law**

Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the court seised pursuant to Article 4 or Article 10:

- (a) may, at the request of one of the parties to the proceedings, decline jurisdiction if it considers that the courts of the Member State of the chosen law are better placed to rule on the succession, taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets; or
- (b) shall decline jurisdiction if the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of the Member State of the chosen law.

*Article 7***Jurisdiction in the event of a choice of law**

The courts of a Member State whose law had been chosen by the deceased pursuant to Article 22 shall have jurisdiction to rule on the succession if:

- (a) a court previously seised has declined jurisdiction in the same case pursuant to Article 6;
- (b) the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of that Member State; or
- (c) the parties to the proceedings have expressly accepted the jurisdiction of the court seised.

*Article 8***Closing of own-motion proceedings in the event of a choice of law**

A court which has opened succession proceedings of its own motion under Article 4 or Article 10 shall close the proceedings if the parties to the proceedings have agreed to settle the succession amicably out of court in the Member State whose law had been chosen by the deceased pursuant to Article 22.

*Article 9***Jurisdiction based on appearance**

1. Where, in the course of proceedings before a court of a Member State exercising jurisdiction pursuant to Article 7, it appears that not all the parties to those proceedings were party to the choice-of-court agreement, the court shall continue to exercise jurisdiction if the parties to the proceedings who were not party to the agreement enter an appearance without contesting the jurisdiction of the court.

2. If the jurisdiction of the court referred to in paragraph 1 is contested by parties to the proceedings who were not party to the agreement, the court shall decline jurisdiction.

In that event, jurisdiction to rule on the succession shall lie with the courts having jurisdiction pursuant to Article 4 or Article 10.

*Article 10***Subsidiary jurisdiction**

1. Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as:

- (a) the deceased had the nationality of that Member State at the time of death; or, failing that,

- (b) the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.

2. Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on those assets.

Article 11

Forum necessitatis

Where no court of a Member State has jurisdiction pursuant to other provisions of this Regulation, the courts of a Member State may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected.

The case must have a sufficient connection with the Member State of the court seised.

Article 12

Limitation of proceedings

1. Where the estate of the deceased comprises assets located in a third State, the court seised to rule on the succession may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State.

2. Paragraph 1 shall not affect the right of the parties to limit the scope of the proceedings under the law of the Member State of the court seised.

Article 13

Acceptance or waiver of the succession, of a legacy or of a reserved share

In addition to the court having jurisdiction to rule on the succession pursuant to this Regulation, the courts of the Member State of the habitual residence of any person who, under the law applicable to the succession, may make, before a court, a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession, shall have jurisdiction to receive such declarations where, under the law of that Member State, such declarations may be made before a court.

Article 14

Seising of a court

For the purposes of this Chapter, a court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the defendant;
- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court; or
- (c) if the proceedings are opened of the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

Article 15

Examination as to jurisdiction

Where a court of a Member State is seised of a succession matter over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 16

Examination as to admissibility

1. Where a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court having jurisdiction shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to arrange for his defence, or that all necessary steps have been taken to that end.

2. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)⁽¹⁾ shall apply instead of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

⁽¹⁾ OJ L 324, 10.12.2007, p. 79.

3. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 17

Lis pendens

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 18

Related actions

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where those actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable decisions resulting from separate proceedings.

Article 19

Provisional, including protective, measures

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III

APPLICABLE LAW

Article 20

Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

Article 21

General rule

1. Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

2. Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.

Article 22

Choice of law

1. A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death.

2. The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition.

3. The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.

4. Any modification or revocation of the choice of law shall meet the requirements as to form for the modification or revocation of a disposition of property upon death.

Article 23

The scope of the applicable law

1. The law determined pursuant to Article 21 or Article 22 shall govern the succession as a whole.

2. That law shall govern in particular:

(a) the causes, time and place of the opening of the succession;

(b) the determination of the beneficiaries, of their respective shares and of the obligations which may be imposed on them by the deceased, and the determination of other succession rights, including the succession rights of the surviving spouse or partner;

(c) the capacity to inherit;

(d) disinheritance and disqualification by conduct;

(e) the transfer to the heirs and, as the case may be, to the legatees of the assets, rights and obligations forming part of the estate, including the conditions and effects of the acceptance or waiver of the succession or of a legacy;

(f) the powers of the heirs, the executors of the wills and other administrators of the estate, in particular as regards the sale of property and the payment of creditors, without prejudice to the powers referred to in Article 29(2) and (3);

(g) liability for the debts under the succession;

(h) the disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death as well as claims which persons close to the deceased may have against the estate or the heirs;

(i) any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries; and

(j) the sharing-out of the estate.

Article 24

Dispositions of property upon death other than agreements as to succession

1. A disposition of property upon death other than an agreement as to succession shall be governed, as regards its admissibility and substantive validity, by the law which, under this Regulation, would have been applicable to the succession of the person who made the disposition if he had died on the day on which the disposition was made.

2. Notwithstanding paragraph 1, a person may choose as the law to govern his disposition of property upon death, as regards its admissibility and substantive validity, the law which that

person could have chosen in accordance with Article 22 on the conditions set out therein.

3. Paragraph 1 shall apply, as appropriate, to the modification or revocation of a disposition of property upon death other than an agreement as to succession. In the event of a choice of law in accordance with paragraph 2, the modification or revocation shall be governed by the chosen law.

Article 25

Agreements as to succession

1. An agreement as to succession regarding the succession of one person shall be governed, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law which, under this Regulation, would have been applicable to the succession of that person if he had died on the day on which the agreement was concluded.

2. An agreement as to succession regarding the succession of several persons shall be admissible only if it is admissible under all the laws which, under this Regulation, would have governed the succession of all the persons involved if they had died on the day on which the agreement was concluded.

An agreement as to succession which is admissible pursuant to the first subparagraph shall be governed, as regards its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law, from among those referred to in the first subparagraph, with which it has the closest connection.

3. Notwithstanding paragraphs 1 and 2, the parties may choose as the law to govern their agreement as to succession, as regards its admissibility, its substantive validity and its binding effects between the parties, including the conditions for its dissolution, the law which the person or one of the persons whose estate is involved could have chosen in accordance with Article 22 on the conditions set out therein.

Article 26

Substantive validity of dispositions of property upon death

1. For the purposes of Articles 24 and 25 the following elements shall pertain to substantive validity:

(a) the capacity of the person making the disposition of property upon death to make such a disposition;

- (b) the particular causes which bar the person making the disposition from disposing in favour of certain persons or which bar a person from receiving succession property from the person making the disposition;
- (c) the admissibility of representation for the purposes of making a disposition of property upon death;
- (d) the interpretation of the disposition;
- (e) fraud, duress, mistake and any other questions relating to the consent or intention of the person making the disposition.

2. Where a person has the capacity to make a disposition of property upon death under the law applicable pursuant to Article 24 or Article 25, a subsequent change of the law applicable shall not affect his capacity to modify or revoke such a disposition.

Article 27

Formal validity of dispositions of property upon death made in writing

1. A disposition of property upon death made in writing shall be valid as regards form if its form complies with the law:

- (a) of the State in which the disposition was made or the agreement as to succession concluded;
- (b) of a State whose nationality the testator or at least one of the persons whose succession is concerned by an agreement as to succession possessed, either at the time when the disposition was made or the agreement concluded, or at the time of death;
- (c) of a State in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had his domicile, either at the time when the disposition was made or the agreement concluded, or at the time of death;
- (d) of the State in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had his habitual residence, either at the time when the disposition was made or the agreement concluded, or at the time of death; or
- (e) in so far as immovable property is concerned, of the State in which that property is located.

The determination of the question whether or not the testator or any person whose succession is concerned by the agreement

as to succession had his domicile in a particular State shall be governed by the law of that State.

2. Paragraph 1 shall also apply to dispositions of property upon death modifying or revoking an earlier disposition. The modification or revocation shall also be valid as regards form if it complies with any one of the laws according to the terms of which, under paragraph 1, the disposition of property upon death which has been modified or revoked was valid.

3. For the purposes of this Article, any provision of law which limits the permitted forms of dispositions of property upon death by reference to the age, nationality or other personal conditions of the testator or of the persons whose succession is concerned by an agreement as to succession shall be deemed to pertain to matters of form. The same rule shall apply to the qualifications to be possessed by any witnesses required for the validity of a disposition of property upon death.

Article 28

Validity as to form of a declaration concerning acceptance or waiver

A declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person making the declaration, shall be valid as to form where it meets the requirements of:

- (a) the law applicable to the succession pursuant to Article 21 or Article 22; or
- (b) the law of the State in which the person making the declaration has his habitual residence.

Article 29

Special rules on the appointment and powers of an administrator of the estate in certain situations

1. Where the appointment of an administrator is mandatory or mandatory upon request under the law of the Member State whose courts have jurisdiction to rule on the succession pursuant to this Regulation and the law applicable to the succession is a foreign law, the courts of that Member State may, when seised, appoint one or more administrators of the estate under their own law, subject to the conditions laid down in this Article.

The administrator(s) appointed pursuant to this paragraph shall be the person(s) entitled to execute the will of the deceased and/or to administer the estate under the law applicable to the succession. Where that law does not provide for the administration of the estate by a person who is not a beneficiary, the courts of the Member State in which the administrator is to be appointed may appoint a third-party administrator under their own law if that law so requires and there is a serious conflict of interests between the beneficiaries or between the beneficiaries and the creditors or other persons having guaranteed the debts of the deceased, a disagreement amongst the beneficiaries on the administration of the estate or a complex estate to administer due to the nature of the assets.

The administrator(s) appointed pursuant to this paragraph shall be the only person(s) entitled to exercise the powers referred to in paragraph 2 or 3.

2. The person(s) appointed as administrator(s) pursuant to paragraph 1 shall exercise the powers to administer the estate which he or they may exercise under the law applicable to the succession. The appointing court may, in its decision, lay down specific conditions for the exercise of such powers in accordance with the law applicable to the succession.

Where the law applicable to the succession does not provide for sufficient powers to preserve the assets of the estate or to protect the rights of the creditors or of other persons having guaranteed the debts of the deceased, the appointing court may decide to allow the administrator(s) to exercise, on a residual basis, the powers provided for to that end by its own law and may, in its decision, lay down specific conditions for the exercise of such powers in accordance with that law.

When exercising such residual powers, however, the administrator(s) shall respect the law applicable to the succession as regards the transfer of ownership of succession property, liability for the debts under the succession, the rights of the beneficiaries, including, where applicable, the right to accept or to waive the succession, and, where applicable, the powers of the executor of the will of the deceased.

3. Notwithstanding paragraph 2, the court appointing one or more administrators pursuant to paragraph 1 may, by way of exception, where the law applicable to the succession is the law of a third State, decide to vest in those administrators all the powers of administration provided for by the law of the Member State in which they are appointed.

When exercising such powers, however, the administrators shall respect, in particular, the determination of the beneficiaries and

their succession rights, including their rights to a reserved share or claim against the estate or the heirs under the law applicable to the succession.

Article 30

Special rules imposing restrictions concerning or affecting the succession in respect of certain assets

Where the law of the State in which certain immovable property, certain enterprises or other special categories of assets are located contains special rules which, for economic, family or social considerations, impose restrictions concerning or affecting the succession in respect of those assets, those special rules shall apply to the succession in so far as, under the law of that State, they are applicable irrespective of the law applicable to the succession.

Article 31

Adaptation of rights in rem

Where a person invokes a right *in rem* to which he is entitled under the law applicable to the succession and the law of the Member State in which the right is invoked does not know the right *in rem* in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right *in rem* under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* and the effects attached to it.

Article 32

Commorientes

Where two or more persons whose successions are governed by different laws die in circumstances in which it is uncertain in what order their deaths occurred, and where those laws provide differently for that situation or make no provision for it at all, none of the deceased persons shall have any rights to the succession of the other or others.

Article 33

Estate without a claimant

To the extent that, under the law applicable to the succession pursuant to this Regulation, there is no heir or legatee for any assets under a disposition of property upon death and no natural person is an heir by operation of law, the application of the law so determined shall not preclude the right of a Member State or of an entity appointed for that purpose by that Member State to appropriate under its own law the assets of the estate located on its territory, provided that the creditors are entitled to seek satisfaction of their claims out of the assets of the estate as a whole.

Article 34

Renvoi

1. The application of the law of any third State specified by this Regulation shall mean the application of the rules of law in force in that State, including its rules of private international law in so far as those rules make a *renvoi*:

- (a) to the law of a Member State; or
- (b) to the law of another third State which would apply its own law.

2. No *renvoi* shall apply with respect to the laws referred to in Article 21(2), Article 22, Article 27, point (b) of Article 28 and Article 30.

Article 35

Public policy (*ordre public*)

The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 36

States with more than one legal system – territorial conflicts of laws

1. Where the law specified by this Regulation is that of a State which comprises several territorial units each of which has its own rules of law in respect of succession, the internal conflict-of-laws rules of that State shall determine the relevant territorial unit whose rules of law are to apply.

2. In the absence of such internal conflict-of-laws rules:

- (a) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the habitual residence of the deceased, be construed as referring to the law of the territorial unit in which the deceased had his habitual residence at the time of death;
- (b) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the law applicable pursuant to provisions referring to the nationality of the deceased, be construed as referring to the law of the territorial unit with which the deceased had the closest connection;
- (c) any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the

law applicable pursuant to any other provisions referring to other elements as connecting factors, be construed as referring to the law of the territorial unit in which the relevant element is located.

3. Notwithstanding paragraph 2, any reference to the law of the State referred to in paragraph 1 shall, for the purposes of determining the relevant law pursuant to Article 27, in the absence of internal conflict-of-laws rules in that State, be construed as referring to the law of the territorial unit with which the testator or the persons whose succession is concerned by the agreement as to succession had the closest connection.

Article 37

States with more than one legal system – inter-personal conflicts of laws

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of succession, any reference to the law of that State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the deceased had the closest connection shall apply.

Article 38

Non-application of this Regulation to internal conflicts of laws

A Member State which comprises several territorial units each of which has its own rules of law in respect of succession shall not be required to apply this Regulation to conflicts of laws arising between such units only.

CHAPTER IV

RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF DECISIONS

Article 39

Recognition

1. A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedure provided for in Articles 45 to 58, apply for that decision to be recognised.

3. If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 40

Grounds of non-recognition

A decision shall not be recognised:

- (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought;
- (b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;
- (c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought;
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a third State in proceedings involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Article 41

No review as to the substance

Under no circumstances may a decision given in a Member State be reviewed as to its substance.

Article 42

Staying of recognition proceedings

A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged in the Member State of origin.

Article 43

Enforceability

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 45 to 58.

Article 44

Determination of domicile

To determine whether, for the purposes of the procedure provided for in Articles 45 to 58, a party is domiciled in the Member State of enforcement, the court seised shall apply the internal law of that Member State.

Article 45

Jurisdiction of local courts

1. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement communicated by that Member State to the Commission in accordance with Article 78.

2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

Article 46

Procedure

1. The application procedure shall be governed by the law of the Member State of enforcement.

2. The applicant shall not be required to have a postal address or an authorised representative in the Member State of enforcement.

3. The application shall be accompanied by the following documents:

(a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;

(b) the attestation issued by the court or competent authority of the Member State of origin using the form established in accordance with the advisory procedure referred to in Article 81(2), without prejudice to Article 47.

*Article 47***Non-production of the attestation**

1. If the attestation referred to in point (b) of Article 46(3) is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2. If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.

*Article 48***Declaration of enforceability**

The decision shall be declared enforceable immediately on completion of the formalities in Article 46 without any review under Article 40. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

*Article 49***Notice of the decision on the application for a declaration of enforceability**

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.

2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.

*Article 50***Appeal against the decision on the application for a declaration of enforceability**

1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal shall be lodged with the court communicated by the Member State concerned to the Commission in accordance with Article 78.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an

appeal brought by the applicant, Article 16 shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.

5. An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 60 days and shall run from the date of service, either on him in person or at his residence. No extension may be granted on account of distance.

*Article 51***Procedure to contest the decision given on appeal**

The decision given on the appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 78.

*Article 52***Refusal or revocation of a declaration of enforceability**

The court with which an appeal is lodged under Article 50 or Article 51 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 40. It shall give its decision without delay.

*Article 53***Staying of proceedings**

The court with which an appeal is lodged under Article 50 or Article 51 shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

*Article 54***Provisional, including protective, measures**

1. When a decision must be recognised in accordance with this Chapter, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 48 being required.

2. The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.

3. During the time specified for an appeal pursuant to Article 50(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 55

Partial enforceability

1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.

2. An applicant may request a declaration of enforceability limited to parts of a decision.

Article 56

Legal aid

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in any proceedings for a declaration of enforceability, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

Article 57

No security, bond or deposit

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition, enforceability or enforcement of a decision given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

Article 58

No charge, duty or fee

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

CHAPTER V

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 59

Acceptance of authentic instruments

1. An authentic instrument established in a Member State shall have the same evidentiary effects in another Member

State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned.

A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 81(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.

2. Any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State. The authentic instrument challenged shall not produce any evidentiary effect in another Member State as long as the challenge is pending before the competent court.

3. Any challenge relating to the legal acts or legal relationships recorded in an authentic instrument shall be made before the courts having jurisdiction under this Regulation and shall be decided upon under the law applicable pursuant to Chapter III. The authentic instrument challenged shall not produce any evidentiary effect in a Member State other than the Member State of origin as regards the matter being challenged as long as the challenge is pending before the competent court.

4. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question relating to the legal acts or legal relationships recorded in an authentic instrument in matters of succession, that court shall have jurisdiction over that question.

Article 60

Enforceability of authentic instruments

1. An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 45 to 58.

2. For the purposes of point (b) of Article 46(3), the authority which established the authentic instrument shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 81(2).

3. The court with which an appeal is lodged under Article 50 or Article 51 shall refuse or revoke a declaration of enforceability only if enforcement of the authentic instrument is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

Article 61**Enforceability of court settlements**

1. Court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 45 to 58.

2. For the purposes of point (b) of Article 46(3), the court which approved the settlement or before which it was concluded shall, on the application of any interested party, issue an attestation using the form established in accordance with the advisory procedure referred to in Article 81(2).

3. The court with which an appeal is lodged under Article 50 or Article 51 shall refuse or revoke a declaration of enforceability only if enforcement of the court settlement is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement.

CHAPTER VI**EUROPEAN CERTIFICATE OF SUCCESSION****Article 62****Creation of a European Certificate of Succession**

1. This Regulation creates a European Certificate of Succession (hereinafter referred to as 'the Certificate') which shall be issued for use in another Member State and shall produce the effects listed in Article 69.

2. The use of the Certificate shall not be mandatory.

3. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with this Chapter.

Article 63**Purpose of the Certificate**

1. The Certificate is for use by heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate.

2. The Certificate may be used, in particular, to demonstrate one or more of the following:

(a) the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;

(b) the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;

(c) the powers of the person mentioned in the Certificate to execute the will or administer the estate.

Article 64**Competence to issue the Certificate**

The Certificate shall be issued in the Member State whose courts have jurisdiction under Article 4, Article 7, Article 10 or Article 11. The issuing authority shall be:

(a) a court as defined in Article 3(2); or

(b) another authority which, under national law, has competence to deal with matters of succession.

Article 65**Application for a Certificate**

1. The Certificate shall be issued upon application by any person referred to in Article 63(1) (hereinafter referred to as 'the applicant').

2. For the purposes of submitting an application, the applicant may use the form established in accordance with the advisory procedure referred to in Article 81(2).

3. The application shall contain the information listed below, to the extent that such information is within the applicant's knowledge and is necessary in order to enable the issuing authority to certify the elements which the applicant wants certified, and shall be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity, without prejudice to Article 66(2):

(a) details concerning the deceased: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;

(b) details concerning the applicant: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;

- (c) details concerning the representative of the applicant, if any: surname (if applicable, surname at birth), given name(s), address and representative capacity;
- (d) details of the spouse or partner of the deceased and, if applicable, ex-spouse(s) or ex-partner(s): surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable) and address;
- (e) details of other possible beneficiaries under a disposition of property upon death and/or by operation of law: surname and given name(s) or organisation name, identification number (if applicable) and address;
- (f) the intended purpose of the Certificate in accordance with Article 63;
- (g) the contact details of the court or other competent authority which is dealing with or has dealt with the succession as such, if applicable;
- (h) the elements on which the applicant founds, as appropriate, his claimed right to succession property as a beneficiary and/or his right to execute the will of the deceased and/or to administer the estate of the deceased;
- (i) an indication of whether the deceased had made a disposition of property upon death; if neither the original nor a copy is appended, an indication regarding the location of the original;
- (j) an indication of whether the deceased had entered into a marriage contract or into a contract regarding a relationship which may have comparable effects to marriage; if neither the original nor a copy of the contract is appended, an indication regarding the location of the original;
- (k) an indication of whether any of the beneficiaries has made a declaration concerning acceptance or waiver of the succession;
- (l) a declaration stating that, to the applicant's best knowledge, no dispute is pending relating to the elements to be certified;
- (m) any other information which the applicant deems useful for the purposes of the issue of the Certificate.

Article 66

Examination of the application

1. Upon receipt of the application the issuing authority shall verify the information and declarations and the documents and other evidence provided by the applicant. It shall carry out the enquiries necessary for that verification of its own motion where this is provided for or authorised by its own law, or shall invite the applicant to provide any further evidence which it deems necessary.

2. Where the applicant has been unable to produce copies of the relevant documents which satisfy the conditions necessary to establish their authenticity, the issuing authority may decide to accept other forms of evidence.

3. Where this is provided for by its own law and subject to the conditions laid down therein, the issuing authority may require that declarations be made on oath or by a statutory declaration in lieu of an oath.

4. The issuing authority shall take all necessary steps to inform the beneficiaries of the application for a Certificate. It shall, if necessary for the establishment of the elements to be certified, hear any person involved and any executor or administrator and make public announcements aimed at giving other possible beneficiaries the opportunity to invoke their rights.

5. For the purposes of this Article, the competent authority of a Member State shall, upon request, provide the issuing authority of another Member State with information held, in particular, in the land registers, the civil status registers and registers recording documents and facts of relevance for the succession or for the matrimonial property regime or an equivalent property regime of the deceased, where that competent authority would be authorised, under national law, to provide another national authority with such information.

Article 67

Issue of the Certificate

1. The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements. It shall use the form established in accordance with the advisory procedure referred to in Article 81(2).

The issuing authority shall not issue the Certificate in particular if:

- (a) the elements to be certified are being challenged; or
 - (b) the Certificate would not be in conformity with a decision covering the same elements.
2. The issuing authority shall take all necessary steps to inform the beneficiaries of the issue of the Certificate.

Article 68

Contents of the Certificate

The Certificate shall contain the following information, to the extent required for the purpose for which it is issued:

- (a) the name and address of the issuing authority;
- (b) the reference number of the file;
- (c) the elements on the basis of which the issuing authority considers itself competent to issue the Certificate;
- (d) the date of issue;
- (e) details concerning the applicant: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;
- (f) details concerning the deceased: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;
- (g) details concerning the beneficiaries: surname (if applicable, surname at birth), given name(s) and identification number (if applicable);
- (h) information concerning a marriage contract entered into by the deceased or, if applicable, a contract entered into by the deceased in the context of a relationship deemed by the law applicable to such a relationship to have comparable effects to marriage, and information concerning the matrimonial property regime or equivalent property regime;
- (i) the law applicable to the succession and the elements on the basis of which that law has been determined;

(j) information as to whether the succession is testate or intestate, including information concerning the elements giving rise to the rights and/or powers of the heirs, legatees, executors of wills or administrators of the estate;

(k) if applicable, information in respect of each beneficiary concerning the nature of the acceptance or waiver of the succession;

(l) the share for each heir and, if applicable, the list of rights and/or assets for any given heir;

(m) the list of rights and/or assets for any given legatee;

(n) the restrictions on the rights of the heir(s) and, as appropriate, legatee(s) under the law applicable to the succession and/or under the disposition of property upon death;

(o) the powers of the executor of the will and/or the administrator of the estate and the restrictions on those powers under the law applicable to the succession and/or under the disposition of property upon death.

Article 69

Effects of the Certificate

1. The Certificate shall produce its effects in all Member States, without any special procedure being required.

2. The Certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate.

3. Any person who, acting on the basis of the information certified in a Certificate, makes payments or passes on property to a person mentioned in the Certificate as authorised to accept payment or property shall be considered to have transacted with a person with authority to accept payment or property, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

4. Where a person mentioned in the Certificate as authorised to dispose of succession property disposes of such property in favour of another person, that other person shall, if acting on the basis of the information certified in the Certificate, be considered to have transacted with a person with authority to dispose of the property concerned, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

5. The Certificate shall constitute a valid document for the recording of succession property in the relevant register of a Member State, without prejudice to points (k) and (l) of Article 1(2).

Article 70

Certified copies of the Certificate

1. The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies to the applicant and to any person demonstrating a legitimate interest.

2. The issuing authority shall, for the purposes of Articles 71(3) and 73(2), keep a list of persons to whom certified copies have been issued pursuant to paragraph 1.

3. The certified copies issued shall be valid for a limited period of six months, to be indicated in the certified copy by way of an expiry date. In exceptional, duly justified cases, the issuing authority may, by way of derogation, decide that the period of validity is to be longer. Once this period has elapsed, any person in possession of a certified copy must, in order to be able to use the Certificate for the purposes indicated in Article 63, apply for an extension of the period of validity of the certified copy or request a new certified copy from the issuing authority.

Article 71

Rectification, modification or withdrawal of the Certificate

1. The issuing authority shall, at the request of any person demonstrating a legitimate interest or of its own motion, rectify the Certificate in the event of a clerical error.

2. The issuing authority shall, at the request of any person demonstrating a legitimate interest or, where this is possible under national law, of its own motion, modify or withdraw the Certificate where it has been established that the Certificate or individual elements thereof are not accurate.

3. The issuing authority shall without delay inform all persons to whom certified copies of the Certificate have been

issued pursuant to Article 70(1) of any rectification, modification or withdrawal thereof.

Article 72

Redress procedures

1. Decisions taken by the issuing authority pursuant to Article 67 may be challenged by any person entitled to apply for a Certificate.

Decisions taken by the issuing authority pursuant to Article 71 and point (a) of Article 73(1) may be challenged by any person demonstrating a legitimate interest.

The challenge shall be lodged before a judicial authority in the Member State of the issuing authority in accordance with the law of that State.

2. If, as a result of a challenge as referred to in paragraph 1, it is established that the Certificate issued is not accurate, the competent judicial authority shall rectify, modify or withdraw the Certificate or ensure that it is rectified, modified or withdrawn by the issuing authority.

If, as a result of a challenge as referred to in paragraph 1, it is established that the refusal to issue the Certificate was unjustified, the competent judicial authority shall issue the Certificate or ensure that the issuing authority re-assesses the case and makes a fresh decision.

Article 73

Suspension of the effects of the Certificate

1. The effects of the Certificate may be suspended by:

(a) the issuing authority, at the request of any person demonstrating a legitimate interest, pending a modification or withdrawal of the Certificate pursuant to Article 71; or

(b) the judicial authority, at the request of any person entitled to challenge a decision taken by the issuing authority pursuant to Article 72, pending such a challenge.

2. The issuing authority or, as the case may be, the judicial authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 70(1) of any suspension of the effects of the Certificate.

During the suspension of the effects of the Certificate no further certified copies of the Certificate may be issued.

CHAPTER VII

GENERAL AND FINAL PROVISIONS

Article 74

Legalisation and other similar formalities

No legalisation or other similar formality shall be required in respect of documents issued in a Member State in the context of this Regulation.

Article 75

Relationship with existing international conventions

1. This Regulation shall not affect the application of international conventions to which one or more Member States are party at the time of adoption of this Regulation and which concern matters covered by this Regulation.

In particular, Member States which are Contracting Parties to the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions shall continue to apply the provisions of that Convention instead of Article 27 of this Regulation with regard to the formal validity of wills and joint wills.

2. Notwithstanding paragraph 1, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

3. This Regulation shall not preclude the application of the Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden comprising private international law provisions on succession, wills and estate administration, as revised by the intergovernmental agreement between those States of 1 June 2012, by the Member States which are parties thereto, in so far as it provides for:

- (a) rules on the procedural aspects of estate administration as defined by the Convention and assistance in that regard by the authorities of the States Contracting Parties to the Convention; and
- (b) simplified and more expeditious procedures for the recognition and enforcement of decisions in matters of succession.

Article 76

Relationship with Council Regulation (EC) No 1346/2000

This Regulation shall not affect the application of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings ⁽¹⁾.

Article 77

Information made available to the public

The Member States shall, with a view to making the information available to the public within the framework of the European Judicial Network in civil and commercial matters, provide the Commission with a short summary of their national legislation and procedures relating to succession, including information on the type of authority which has competence in matters of succession and information on the type of authority competent to receive declarations of acceptance or waiver of the succession, of a legacy or of a reserved share.

The Member States shall also provide fact sheets listing all the documents and/or information usually required for the purposes of registration of immovable property located on their territory.

The Member States shall keep the information permanently updated.

Article 78

Information on contact details and procedures

1. By 16 January 2014, the Member States shall communicate to the Commission:

- (a) the names and contact details of the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 45(1) and with appeals against decisions on such applications in accordance with Article 50(2);
- (b) the procedures to contest the decision given on appeal referred to in Article 51;
- (c) the relevant information regarding the authorities competent to issue the Certificate pursuant to Article 64; and
- (d) the redress procedures referred to in Article 72.

The Member States shall apprise the Commission of any subsequent changes to that information.

⁽¹⁾ OJ L 160, 30.6.2000, p. 1.

2. The Commission shall publish the information communicated in accordance with paragraph 1 in the *Official Journal of the European Union*, with the exception of the addresses and other contact details of the courts and authorities referred to in point (a) of paragraph 1.

3. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Article 79

Establishment and subsequent amendment of the list containing the information referred to in Article 3(2)

1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 3(2).

2. The Member States shall notify the Commission of any subsequent changes to the information contained in that list. The Commission shall amend the list accordingly.

3. The Commission shall publish the list and any subsequent amendments in the *Official Journal of the European Union*.

4. The Commission shall make all information notified in accordance with paragraphs 1 and 2 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Article 80

Establishment and subsequent amendment of the attestations and forms referred to in Articles 46, 59, 60, 61, 65 and 67

The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in Articles 46, 59, 60, 61, 65 and 67. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 81(2).

Article 81

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 82

Review

By 18 August 2025 the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation, including an evaluation of any practical problems encountered in relation to parallel out-of-court settlements of succession cases in different Member States or an out-of-court settlement in one Member State effected in parallel with a settlement before a court in another Member State. The report shall be accompanied, where appropriate, by proposals for amendments.

Article 83

Transitional provisions

1. This Regulation shall apply to the succession of persons who die on or after 17 August 2015.

2. Where the deceased had chosen the law applicable to his succession prior to 17 August 2015, that choice shall be valid if it meets the conditions laid down in Chapter III or if it is valid in application of the rules of private international law which were in force, at the time the choice was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed.

3. A disposition of property upon death made prior to 17 August 2015 shall be admissible and valid in substantive terms and as regards form if it meets the conditions laid down in Chapter III or if it is admissible and valid in substantive terms and as regards form in application of the rules of private international law which were in force, at the time the disposition was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed or in the Member State of the authority dealing with the succession.

4. If a disposition of property upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with this Regulation, that law shall be deemed to have been chosen as the law applicable to the succession.

*Article 84***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 17 August 2015, except for Articles 77 and 78, which shall apply from 16 January 2014, and Articles 79, 80 and 81, which shall apply from 5 July 2012.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 4 July 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. D. MAVROYIANNIS

Service of documents

5a

Regulation (EC) No 1393/2007
of the European Parliament and of the Council
of 13 November 2007 on the service in
the Member States of judicial and extrajudicial
documents in civil or commercial matters
(service of documents), and repealing
Council Regulation (EC) No 1348/2000



REGULATION (EC) No 1393/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 November 2007

on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(5), second indent, thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured. To establish such an area, the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.
- (2) The proper functioning of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.
- (3) The Council, by an Act dated 26 May 1997 ⁽³⁾, drew up a Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters and recommended it for adoption by the Member States in accordance with their respective constitutional rules. That Convention has not entered into force. Continuity in the results of the negotiations for conclusion of the Convention should be ensured.

(4) On 29 May 2000 the Council adopted Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ⁽⁴⁾. The main content of that Regulation is based on the Convention.

(5) On 1 October 2004 the Commission adopted a report on the application of Regulation (EC) No 1348/2000. The report concludes that the application of Regulation (EC) No 1348/2000 has generally improved and expedited the transmission and the service of documents between Member States since its entry into force in 2001, but that nevertheless the application of certain provisions is not fully satisfactory.

(6) Efficiency and speed in judicial procedures in civil matters require that judicial and extrajudicial documents be transmitted directly and by rapid means between local bodies designated by the Member States. Member States may indicate their intention to designate only one transmitting or receiving agency or one agency to perform both functions, for a period of five years. This designation may, however, be renewed every five years.

(7) Speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed. Security in transmission requires that the document to be transmitted be accompanied by a standard form, to be completed in the official language or one of the official languages of the place where service is to be effected, or in another language accepted by the Member State in question.

(8) This Regulation should not apply to service of a document on the party's authorised representative in the Member State where the proceedings are taking place regardless of the place of residence of that party.

(9) The service of a document should be effected as soon as possible, and in any event within one month of receipt by the receiving agency.

(10) To secure the effectiveness of this Regulation, the possibility of refusing service of documents should be confined to exceptional situations.

(11) In order to facilitate the transmission and service of documents between Member States, the standard forms set out in the Annexes to this Regulation should be used.

⁽¹⁾ OJ C 88, 11.4.2006, p. 7.

⁽²⁾ Opinion of the European Parliament of 4 July 2006 (OJ C 303 E, 13.12.2006, p. 69), Council Common Position of 28 June 2007 (OJ C 193 E, 21.8.2007, p. 13) and Position of the European Parliament of 24 October 2007.

⁽³⁾ OJ C 261, 27.8.1997, p. 1. On the same day as the Convention was drawn up the Council took note of the explanatory report on the Convention which is set out on page 26 of the aforementioned Official Journal.

⁽⁴⁾ OJ L 160, 30.6.2000, p. 37.

- (12) The receiving agency should inform the addressee in writing using the standard form that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not either in a language which he understands or in the official language or one of the official languages of the place of service. This rule should also apply to the subsequent service once the addressee has exercised his right of refusal. These rules on refusal should also apply to service by diplomatic or consular agents, service by postal services and direct service. It should be established that the service of the refused document can be remedied through the service on the addressee of a translation of the document.
- (13) Speed in transmission warrants documents being served within days of receipt of the document. However, if service has not been effected after one month has elapsed, the receiving agency should inform the transmitting agency. The expiry of this period should not imply that the request be returned to the transmitting agency where it is clear that service is feasible within a reasonable period.
- (14) The receiving agency should continue to take all necessary steps to effect the service of the document also in cases where it has not been possible to effect service within the month, for example, because the defendant has been away from his home on holiday or away from his office on business. However, in order to avoid an open-ended obligation for the receiving agency to take steps to effect the service of a document, the transmitting agency should be able to specify a time limit in the standard form after which service is no longer required.
- (15) Given the differences between the Member States as regards their rules of procedure, the material date for the purposes of service varies from one Member State to another. Having regard to such situations and the possible difficulties that may arise, this Regulation should provide for a system where it is the law of the Member State addressed which determines the date of service. However, where according to the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant should be that determined by the law of that Member State. This double date system exists only in a limited number of Member States. Those Member States which apply this system should communicate this to the Commission, which should publish the information in the *Official Journal of the European Union* and make it available through the European Judicial Network in Civil and Commercial Matters established by Council Decision 2001/470/EC ⁽¹⁾.
- (16) In order to facilitate access to justice, costs occasioned by recourse to a judicial officer or a person competent under the law of the Member State addressed should correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination. The requirement of a single fixed fee should not preclude the possibility for Member States to set different fees for different types of service as long as they respect these principles.
- (17) Each Member State should be free to effect service of documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.
- (18) It should be possible for any person interested in a judicial proceeding to effect service of documents directly through the judicial officers, officials or other competent persons of the Member State addressed, where such direct service is permitted under the law of that Member State.
- (19) The Commission should draw up a manual containing information relevant for the proper application of this Regulation, which should be made available through the European Judicial Network in Civil and Commercial Matters. The Commission and the Member States should do their utmost to ensure that this information is up to date and complete especially as regards contact details of receiving and transmitting agencies.
- (20) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits ⁽²⁾ should apply.
- (21) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾.
- (22) In particular, power should be conferred on the Commission to update or make technical amendments to the standard forms set out in the Annexes. Since those measures are of general scope and are designed to amend/delete non-essential elements of this Regulation, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

⁽²⁾ OJ L 124, 8.6.1971, p. 1.

⁽³⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽¹⁾ OJ L 174, 27.6.2001, p. 25.

(23) This Regulation prevails over the provisions contained in bilateral or multilateral agreements or arrangements having the same scope, concluded by the Member States, and in particular the Protocol annexed to the Brussels Convention of 27 September 1968 ⁽¹⁾ and the Hague Convention of 15 November 1965 ⁽²⁾ in relations between the Member States party thereto. This Regulation does not preclude Member States from maintaining or concluding agreements or arrangements to expedite or simplify the transmission of documents, provided that they are compatible with this Regulation.

(24) The information transmitted pursuant to this Regulation should enjoy suitable protection. This matter falls within the scope of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽³⁾, and of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ⁽⁴⁾.

(25) No later than 1 June 2011 and every five years thereafter, the Commission should review the application of this Regulation and propose such amendments as may appear necessary.

(26) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(27) In order to make the provisions more easily accessible and readable, Regulation (EC) No 1348/2000 should be repealed and replaced by this Regulation.

(28) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Regulation.

⁽¹⁾ Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ L 299, 31.12.1972, p. 32; consolidated version, OJ C 27, 26.1.1998, p. 1).

⁽²⁾ Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

⁽³⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽⁴⁾ OJ L 201, 31.7.2002, p. 37. Directive as amended by Directive 2006/24/EC (OJ L 105, 13.4.2006, p. 54).

(29) 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 establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there. It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).

2. This Regulation shall not apply where the address of the person to be served with the document is not known.

3. In this Regulation, the term 'Member State' shall mean the Member States with the exception of Denmark.

Article 2

Transmitting and receiving agencies

1. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as 'transmitting agencies', competent for the transmission of judicial or extrajudicial documents to be served in another Member State.

2. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as 'receiving agencies', competent for the receipt of judicial or extrajudicial documents from another Member State.

3. A Member State may designate one transmitting agency and one receiving agency, or one agency to perform both functions. A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one such agency. The designation shall have effect for a period of five years and may be renewed at five-year intervals.

4. Each Member State shall provide the Commission with the following information:

(a) the names and addresses of the receiving agencies referred to in paragraphs 2 and 3;

- (b) the geographical areas in which they have jurisdiction;
- (c) the means of receipt of documents available to them; and
- (d) the languages that may be used for the completion of the standard form set out in Annex I.

Member States shall notify the Commission of any subsequent modification of such information.

Article 3

Central body

Each Member State shall designate a central body responsible for:

- (a) supplying information to the transmitting agencies;
- (b) seeking solutions to any difficulties which may arise during transmission of documents for service;
- (c) forwarding, in exceptional cases, at the request of a transmitting agency, a request for service to the competent receiving agency.

A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one central body.

CHAPTER II

JUDICIAL DOCUMENTS

Section 1

Transmission and service of judicial documents

Article 4

Transmission of documents

1. Judicial documents shall be transmitted directly and as soon as possible between the agencies designated pursuant to Article 2.
2. The transmission of documents, requests, confirmations, receipts, certificates and any other papers between transmitting agencies and receiving agencies may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it is easily legible.
3. The document to be transmitted shall be accompanied by a request drawn up using the standard form set out in Annex I. The form shall be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept.

Each Member State shall indicate the official language or languages of the institutions of the European Union other than its own which is or are acceptable to it for completion of the form.

4. The documents and all papers that are transmitted shall be exempted from legalisation or any equivalent formality.

5. When the transmitting agency wishes a copy of the document to be returned together with the certificate referred to in Article 10, it shall send the document in duplicate.

Article 5

Translation of documents

1. The applicant shall be advised by the transmitting agency to which he forwards the document for transmission that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8.
2. The applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.

Article 6

Receipt of documents by receiving agency

1. On receipt of a document, a receiving agency shall, as soon as possible and in any event within seven days of receipt, send a receipt to the transmitting agency by the swiftest possible means of transmission using the standard form set out in Annex I.
2. Where the request for service cannot be fulfilled on the basis of the information or documents transmitted, the receiving agency shall contact the transmitting agency by the swiftest possible means in order to secure the missing information or documents.
3. If the request for service is manifestly outside the scope of this Regulation or if non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned, on receipt, to the transmitting agency, together with the notice of return using the standard form set out in Annex I.
4. A receiving agency receiving a document for service but not having territorial jurisdiction to serve it shall forward it, as well as the request, to the receiving agency having territorial jurisdiction in the same Member State if the request complies with the conditions laid down in Article 4(3) and shall inform the transmitting agency accordingly using the standard form set out in Annex I. That receiving agency shall inform the transmitting agency when it receives the document, in the manner provided for in paragraph 1.

*Article 7***Service of documents**

1. The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State.

2. The receiving agency shall take all necessary steps to effect the service of the document as soon as possible, and in any event within one month of receipt. If it has not been possible to effect service within one month of receipt, the receiving agency shall:

- (a) immediately inform the transmitting agency by means of the certificate in the standard form set out in Annex I, which shall be drawn up under the conditions referred to in Article 10(2); and
- (b) continue to take all necessary steps to effect the service of the document, unless indicated otherwise by the transmitting agency, where service seems to be possible within a reasonable period of time.

*Article 8***Refusal to accept a document**

1. The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not written in, or accompanied by a translation into, either of the following languages:

- (a) a language which the addressee understands;

or

- (b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

2. Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

3. If the addressee has refused to accept the document pursuant to paragraph 1, the service of the document can be remedied through the service on the addressee in accordance with the provisions of this Regulation of the document accompanied by a translation into a language provided for in paragraph 1. In that case, the date of service of the document shall be the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed. However, where according to the law of a Member State, a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document determined pursuant to Article 9(2).

4. Paragraphs 1, 2 and 3 shall also apply to the means of transmission and service of judicial documents provided for in Section 2.

5. For the purposes of paragraph 1, the diplomatic or consular agents, where service is effected in accordance with Article 13, or the authority or person, where service is effected in accordance with Article 14, shall inform the addressee that he may refuse to accept the document and that any document refused must be sent to those agents or to that authority or person respectively.

*Article 9***Date of service**

1. Without prejudice to Article 8, the date of service of a document pursuant to Article 7 shall be the date on which it is served in accordance with the law of the Member State addressed.

2. However, where according to the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be that determined by the law of that Member State.

3. Paragraphs 1 and 2 shall also apply to the means of transmission and service of judicial documents provided for in Section 2.

*Article 10***Certificate of service and copy of the document served**

1. When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form set out in Annex I and addressed to the transmitting agency, together with, where Article 4(5) applies, a copy of the document served.

2. The certificate shall be completed in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated that it can accept. Each Member State shall indicate the official language or languages of the institutions of the European Union other than its own which is or are acceptable to it for completion of the form.

*Article 11***Costs of service**

1. The service of judicial documents coming from a Member State shall not give rise to any payment or reimbursement of taxes or costs for services rendered by the Member State addressed.

2. However, the applicant shall pay or reimburse the costs occasioned by:

- (a) recourse to a judicial officer or to a person competent under the law of the Member State addressed;
- (b) the use of a particular method of service.

Costs occasioned by recourse to a judicial officer or to a person competent under the law of the Member State addressed shall correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination. Member States shall communicate such fixed fees to the Commission.

Section 2

Other means of transmission and service of judicial documents

Article 12

Transmission by consular or diplomatic channels

Each Member State shall be free, in exceptional circumstances, to use consular or diplomatic channels to forward judicial documents, for the purpose of service, to those agencies of another Member State which are designated pursuant to Articles 2 or 3.

Article 13

Service by diplomatic or consular agents

1. Each Member State shall be free to effect service of judicial documents on persons residing in another Member State, without application of any compulsion, directly through its diplomatic or consular agents.

2. Any Member State may make it known, in accordance with Article 23(1), that it is opposed to such service within its territory, unless the documents are to be served on nationals of the Member State in which the documents originate.

Article 14

Service by postal services

Each Member State shall be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.

Article 15

Direct service

Any person interested in a judicial proceeding may effect service of judicial documents directly through the judicial officers, officials or other competent persons of the Member State addressed, where such direct service is permitted under the law of that Member State.

CHAPTER III

EXTRAJUDICIAL DOCUMENTS

Article 16

Transmission

Extrajudicial documents may be transmitted for service in another Member State in accordance with the provisions of this Regulation.

CHAPTER IV

FINAL PROVISIONS

Article 17

Implementing rules

Measures designed to amend non-essential elements of this Regulation relating to the updating or to the making of technical amendments to the standard forms set out in Annexes I and II shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(2).

Article 18

Committee

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 19

Defendant not entering an appearance

1. Where a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and the defendant has not appeared, judgment shall not be given until it is established that:
 - (a) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or
 - (b) the document was actually delivered to the defendant or to his residence by another method provided for by this Regulation;

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

2. Each Member State may make it known, in accordance with Article 23(1), that the judge, notwithstanding the provisions of paragraph 1, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

- (a) the document was transmitted by one of the methods provided for in this Regulation;
- (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;
- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities or bodies of the Member State addressed.

3. Notwithstanding paragraphs 1 and 2, the judge may order, in case of urgency, any provisional or protective measures.

4. When a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiry of the time for appeal from the judgment if the following conditions are fulfilled:

- (a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and
- (b) the defendant has disclosed a *prima facie* defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Member State may make it known, in accordance with Article 23(1), that such application will not be entertained if it is filed after the expiry of a time to be stated by it in that communication, but which shall in no case be less than one year following the date of the judgment.

5. Paragraph 4 shall not apply to judgments concerning the status or capacity of persons.

Article 20

Relationship with agreements or arrangements to which Member States are party

1. This Regulation shall, in relation to matters to which it applies, prevail over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States, and in particular Article IV of the Protocol to the Brussels Convention of 1968 and the Hague Convention of 15 November 1965.

2. This Regulation shall not preclude individual Member States from maintaining or concluding agreements or arrangements to expedite further or simplify the transmission of documents, provided that they are compatible with this Regulation.

3. Member States shall send to the Commission:

- (a) a copy of the agreements or arrangements referred to in paragraph 2 concluded between the Member States as well as drafts of such agreements or arrangements which they intend to adopt; and
- (b) any denunciation of, or amendments to, these agreements or arrangements.

Article 21

Legal aid

This Regulation shall not affect the application of Article 23 of the Convention on civil procedure of 17 July 1905, Article 24 of the Convention on civil procedure of 1 March 1954 or Article 13 of the Convention on international access to justice of 25 October 1980 between the Member States party to those Conventions.

Article 22

Protection of information transmitted

1. Information, including in particular personal data, transmitted under this Regulation shall be used by the receiving agency only for the purpose for which it was transmitted.

2. Receiving agencies shall ensure the confidentiality of such information, in accordance with their national law.

3. Paragraphs 1 and 2 shall not affect national laws enabling data subjects to be informed of the use made of information transmitted under this Regulation.

4. This Regulation shall be without prejudice to Directives 95/46/EC and 2002/58/EC.

Article 23

Communication and publication

1. Member States shall communicate to the Commission the information referred to in Articles 2, 3, 4, 10, 11, 13, 15 and 19. Member States shall communicate to the Commission if, according to their law, a document has to be served within a particular period as referred to in Articles 8(3) and 9(2).

2. The Commission shall publish the information communicated in accordance with paragraph 1 in the *Official Journal of the European Union* with the exception of the addresses and other contact details of the agencies and of the central bodies and the geographical areas in which they have jurisdiction.

3. The Commission shall draw up and update regularly a manual containing the information referred to in paragraph 1, which shall be available electronically, in particular through the European Judicial Network in Civil and Commercial Matters.

Article 24

Review

No later than 1 June 2011, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation, paying special attention to the effectiveness of the agencies designated pursuant to Article 2 and to the practical application of Article 3(c) and Article 9. The report shall be accompanied if need be by proposals for adaptations of this Regulation in line with the evolution of notification systems.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 13 November 2007.

For the European Parliament
The President
H.-G. PÖTTERING

Article 25

Repeal

1. Regulation (EC) No 1348/2000 shall be repealed as from the date of application of this Regulation.
2. References made to the repealed Regulation shall be construed as being made to this Regulation and should be read in accordance with the correlation table in Annex III.

Article 26

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 13 November 2008 with the exception of Article 23 which shall apply from 13 August 2008.

For the Council
The President
M. LOBO ANTUNES

ANNEX I

REQUEST FOR SERVICE OF DOCUMENTS

(Article 4(3) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (*)

Reference No:

1. TRANSMITTING AGENCY

1.1. identity

1.2. address

1.2.1. street and number/PO box

1.2.2. place and post code

1.2.3. country

1.3. tel.

1.4. fax (*)

1.5. e-mail (*)

2. RECEIVING AGENCY

2.1. identity

2.2. address

2.2.1. street and number/PO box

2.2.2. place and post code

2.2.3. country

2.3. tel.

2.4. fax (*)

2.5. e-mail (*)

3. APPLICANT

3.1. identity

3.2. address

3.2.1. street and number/PO box

3.2.2. place and post code

3.2.3. country

3.3. tel. (*)

3.4. fax (*)

3.5. e-mail (*)

(*) OJ L 324, 10.12.2007, p. 79.

(*) This item is optional.

4. ADDRESSEE

- 4.1. identity
- 4.2. address
 - 4.2.1. street and number/PO box
 - 4.2.2. place and post code
 - 4.2.3. country
- 4.3. tel. (*)
- 4.4. fax (*)
- 4.5. e-mail (*)
- 4.6. identification number/social security number/organisation number/or equivalent (*)

5. METHOD OF SERVICE

- 5.1. in accordance with the law of the Member State addressed
- 5.2. by the following particular method
 - 5.2.1. if this method is incompatible with the law of the Member State addressed, the document(s) should be served in accordance with the law of that Member State.
 - 5.2.1.1. yes
 - 5.2.1.2. no

6. DOCUMENT TO BE SERVED

- 6.1. nature of the document
 - 6.1.1. judicial
 - 6.1.1.1. writ of summons
 - 6.1.1.2. judgment
 - 6.1.1.3. appeal
 - 6.1.1.4. other
 - 6.1.2. extrajudicial
- 6.2. date or time limit after which service is no longer required (*)
... (day) ... (month) ... (year)
- 6.3. language of document
 - 6.3.1. original (BG, ES, CS, DE, ET, EL, EN, FR, GA, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV, other):
 - 6.3.2. translation (*) (BG, ES, CS, DE, ET, EL, EN, FR, GA, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV, other):
- 6.4. number of enclosures

7. A COPY OF DOCUMENT TO BE RETURNED WITH THE CERTIFICATE OF SERVICE (Article 4(5) of Regulation (EC) No 1393/2007)

- 7.1. yes (in this case send two copies of the document to be served)
- 7.2. no

(*) This item is optional.

1.

You are required by Article 7(2) of Regulation (EC) No 1393/2007 to take all necessary steps to effect the service of the document as soon as possible, and in any event within one month of receipt. If it has not been possible for you to effect service within one month of receipt, you must inform this agency by indicating this in point 13 of the certificate of service or non-service of documents.
2.

If you cannot fulfil this request for service on the basis of the information or documents transmitted, you are required by Article 6(2) of Regulation (EC) No 1393/2007 to contact this agency by the swiftest possible means in order to secure the missing information or document.

Done at

Date

Signature and/or stamp

Reference No of the transmitting agency

Reference No of the receiving agency

ACKNOWLEDGEMENT OF RECEIPT

(Article 6(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters)

This acknowledgement must be sent by the swiftest possible means of transmission as soon as possible after receipt of the document and in any event within seven days of receipt.

8. DATE OF RECEIPT

Done at

Date

Signature and/or stamp

Reference No of the transmitting agency

Reference No of the receiving agency

NOTICE OF RETURN OF REQUEST AND DOCUMENT

(Article 6(3) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (''))

The request and document must be returned on receipt.

9. REASON FOR RETURN

9.1. the request is manifestly outside the scope of the Regulation

9.1.1. the document is not civil or commercial

9.1.2. the service is not from one Member State to another Member State

9.2. non-compliance with the formal conditions required makes service impossible

9.2.1. the document is not easily legible

9.2.2. the language used to complete the form is incorrect

9.2.3. the document received is not a true and faithful copy

9.2.4. other (please give details)

9.3. the method of service is incompatible with the law of the Member State addressed (Article 7(1) of Regulation (EC) No 1393/2007)

Done at

Date

Signature and/or stamp

(¹) OJ L 324, 10.12.2007, p. 79.

Reference No of the transmitting agency:

Reference No of the receiving agency:

NOTICE OF RETRANSMISSION OF REQUEST AND DOCUMENT TO THE APPROPRIATE RECEIVING AGENCY

(Article 6(4) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ⁽¹⁾)

The request and document were forwarded to the following receiving agency, which has territorial jurisdiction to serve it:

- 10. APPROPRIATE RECEIVING AGENCY
- 10.1. identity
- 10.2. address
 - 10.2.1. street and number/PO box
 - 10.2.2. place and post code
 - 10.2.3. country
- 10.3. tel.
- 10.4. fax (*)
- 10.5. e-mail (*)

Done at

Date

Signature and/or stamp

⁽¹⁾ OJ L 324, 10.12.2007, p. 79.
^(*) This item is optional.

Reference No of the transmitting agency:

Reference No of the appropriate receiving agency:

**NOTICE OF RECEIPT BY THE APPROPRIATE RECEIVING AGENCY HAVING TERRITORIAL JURISDICTION TO THE
TRANSMITTING AGENCY**

**(Article 6(4) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the
service in the Member States of judicial and extrajudicial documents in civil or commercial matters ⁽¹⁾)**

This notice must be sent by the swiftest possible means of transmission as soon as possible after receipt of the document and in
any event within seven days of receipt.

11. DATE OF RECEIPT

Done at

Date

Signature and/or stamp

⁽¹⁾ OJ L 324, 10.12.2007, p. 79.

Reference No of the transmitting agency

Reference No of the receiving agency

CERTIFICATE OF SERVICE OR NON-SERVICE OF DOCUMENTS

(Article 10 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (''))

The service shall be effected as soon as possible. If it has not been possible to effect service within one month of receipt, the receiving agency shall inform the transmitting agency (Article 7(2) of Regulation (EC) No 1393/2007)

12. COMPLETION OF SERVICE

12.1. date and address of service

12.2. the document was

12.2.1. served in accordance with the law of the Member State addressed, namely

12.2.1.1. handed to

12.2.1.1.1. the addressee in person

12.2.1.1.2. another person

12.2.1.1.2.1. name

12.2.1.1.2.2. address

12.2.1.1.2.2.1. street and number/PO box

12.2.1.1.2.2.2. place and post code

12.2.1.1.2.2.3. country

12.2.1.1.2.3. relation to the addressee

family ... employee ... other ...

12.2.1.1.3. the addressee's address

12.2.1.2. served by postal services

12.2.1.2.1. without acknowledgement of receipt

12.2.1.2.2. with the enclosed acknowledgement of receipt

12.2.1.2.2.1. from the addressee

12.2.1.2.2.2. from another person

12.2.1.2.2.2.1. name

12.2.1.2.2.2.2. address

12.2.1.2.2.2.2.1. street and number/PO box

12.2.1.2.2.2.2.2. place and post code

12.2.1.2.2.2.2.3. country

12.2.1.2.2.2.3. relation to the addressee

family ... employee ... other ...

(') OJ L 324, 10.12.2007, p. 79.

12.2.1.3. served by another method (please state how)

12.2.2. served by the following particular method (please state how)

12.3. The addressee of the document was informed in writing that he may refuse to accept the document if it is not written in or accompanied by a translation into either a language which he understands or the official language or one of the official languages of the place of service.

13. INFORMATION IN ACCORDANCE WITH ARTICLE 7(2) of Regulation (EC) No 1393/2007

It was not possible to effect service within one month of receipt.

14. REFUSAL OF DOCUMENT

The addressee refused to accept the document on account of the language used. The document is annexed to this certificate.

15. REASON FOR NON-SERVICE OF DOCUMENT

15.1. address unknown

15.2. addressee cannot be located

15.3. document could not be served before the date or time limit stated in point 6.2.

15.4. other (please specify)

The document is annexed to this certificate.

Done at

Date

Signature and/or stamp

—

ANNEX II

INFORMATION TO THE ADDRESSEE ABOUT THE RIGHT TO REFUSE TO ACCEPT A DOCUMENT
(Article 8(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of
13 November 2007 on the service in the Member States of judicial and extrajudicial documents
in civil or commercial matters (*)

BG:

Приложеният документ се връчва съгласно Регламент (ЕО) № 1393/2007 на Европейския парламент и на Съвета относно връчване в държавите-членки на съдебни и извънсъдебни документи по граждански или търговски дела.

Можете да откажете да приемете документа, ако не е написан или придружен от превод на някой от езиците, които разбирате, на официалния език или на един от официалните езици на мястото на връчването.

Ако желаете да упражните това си право, трябва да откажете да приемете документа по време на самото връчване направо на връчващото документа лице или да го върнете в еднosedмичен срок на посочения по-долу адрес, като заявите, че отказвате да го приемете.

АДРЕС:

1. Наименование:
2. Адрес:
 - 2.1. Улица и номер/п.к.:
 - 2.2. Населено място и пощенски код:
 - 2.3. Държава:
3. Телефон.:
4. Факс (*):
5. Адрес за електронна поща (*):

ДЕКЛАРАЦИЯ НА АДРЕСАТА:

Отказвам да приема приложения документ, защото не е написан или придружен от превод на някой от езиците, които разбирам, на официалния език или на един от официалните езици на мястото на връчването.

Разбирам следния(те) език(ци):

- | | | | |
|-----------|--------------------------|------------------|--------------------------|
| английски | <input type="checkbox"/> | нидерландски | <input type="checkbox"/> |
| български | <input type="checkbox"/> | полски | <input type="checkbox"/> |
| гръцки | <input type="checkbox"/> | португалски | <input type="checkbox"/> |
| естонски | <input type="checkbox"/> | румънски | <input type="checkbox"/> |
| ирландски | <input type="checkbox"/> | словашки | <input type="checkbox"/> |
| латвийски | <input type="checkbox"/> | фински | <input type="checkbox"/> |
| литовски | <input type="checkbox"/> | френски | <input type="checkbox"/> |
| малтийски | <input type="checkbox"/> | чешки | <input type="checkbox"/> |
| немски | <input type="checkbox"/> | шведски | <input type="checkbox"/> |
| друг | <input type="checkbox"/> | (моля пояснете): | |

Съставено във:

Дата:

Подпис и/или печат:

(*) ОJ L 324, 10.12.2007, p. 79.

(**) Тази информация не е задължителна.

CS:

Příložená písemnost je doručována v souladu s nařízením Evropského parlamentu a Rady (ES) č. 1393/2007 o doručování soudních a mimosoudních písemností ve věcech občanských a obchodních v členských státech.

Můžete odmítnout přijetí písemnosti, není-li vyhotovena v jazyce, kterému rozumíte, nebo v úředním jazyce nebo v jednom z úředních jazyků místa doručení nebo k ní není přiložen překlad do jednoho z těchto jazyků.

Přejete-li si využít tohoto práva, musíte odmítnout přijetí písemnosti v okamžiku doručení přímo osobě, která písemnost doručuje, nebo písemnost zaslat zpět na níže uvedenou adresu ve lhůtě jednoho týdne s prohlášením, že tuto písemnost odmítáte převzít.

ADRESA:

1. Jméno:
2. Adresa:
 - 2.1 Ulice a číslo/poštovní příhrádka:
 - 2.2 Místo a poštovní směrovací číslo:
 - 2.3 Země:
3. Telefon:
4. Fax (*):
5. E-mail (*):

PROHLÁŠENÍ ADRESÁTA:

Odmítám přijetí připojené písemnosti, neboť není vyhotovena v jazyce, kterému rozumím, nebo v úředním jazyce nebo v jednom z úředních jazyků místa doručení, ani k ní není přiložen překlad do jednoho z těchto jazyků.

Rozumím tomuto jazyku (těmto jazykům):

- | | | | |
|---------------|--------------------------|-------------------------|--------------------------|
| bulharština | <input type="checkbox"/> | litevština | <input type="checkbox"/> |
| španělština | <input type="checkbox"/> | maďarština | <input type="checkbox"/> |
| čeština | <input type="checkbox"/> | maltština | <input type="checkbox"/> |
| němčina | <input type="checkbox"/> | nizozemština | <input type="checkbox"/> |
| estonština | <input type="checkbox"/> | polština | <input type="checkbox"/> |
| řečtina | <input type="checkbox"/> | portugalština | <input type="checkbox"/> |
| angličtina | <input type="checkbox"/> | rumunština | <input type="checkbox"/> |
| francouzština | <input type="checkbox"/> | slovenština | <input type="checkbox"/> |
| irština | <input type="checkbox"/> | slovinština | <input type="checkbox"/> |
| italština | <input type="checkbox"/> | finština | <input type="checkbox"/> |
| lotyština | <input type="checkbox"/> | švédština | <input type="checkbox"/> |
| ostatní | <input type="checkbox"/> | prosím upřesněte: | |

Vyhotoveno v:

Dne:

Podpis nebo razítko:

(*) Tato položka je volitelná.

DE:

Die Zustellung des beigefügten Schriftstücks erfolgt im Einklang mit der Verordnung (EG) Nr. 1393/2007 des Europäischen Parlaments und des Rates über die Zustellung gerichtlicher und außergerichtlicher Schriftstücke in Zivil- oder Handelssachen in den Mitgliedstaaten.

Sie können die Annahme dieses Schriftstücks verweigern, wenn es weder in einer Sprache, die Sie verstehen, noch in einer Amtssprache oder einer der Amtssprachen des Zustellungsortes abgefasst ist, oder wenn ihm keine Übersetzung in einer dieser Sprachen beigefügt ist.

Wenn Sie von Ihrem Annahmeverweigerungsrecht Gebrauch machen wollen, müssen Sie dies entweder sofort bei der Zustellung gegenüber der das Schriftstück zustellenden Person erklären oder das Schriftstück binnen einer Woche nach der Zustellung an die nachstehende Anschrift mit der Angabe zurücksenden, dass Sie die Annahme verweigern.

ANSCHRIFT:

1. Name/Bezeichnung:
2. Anschrift:
 - 2.1. Straße und Hausnummer/Postfach:
 - 2.2. PLZ und Ort:
 - 2.3. Staat:
3. Tel.
4. Fax (*)
5. E-Mail (*):

ERKLÄRUNG DES EMPFÄNGERS

Ich verweigere die Annahme des beigefügten Schriftstücks, da es entweder nicht in einer Sprache, die ich verstehe, oder nicht in einer Amtssprache oder einer der Amtssprachen des Zustellungsortes abgefasst ist oder da dem Schriftstück keine Übersetzung in einer dieser Sprachen beigefügt ist.

Ich verstehe die folgende(n) Sprache(n):

- | | | | |
|-------------|--------------------------|----------------------|--------------------------|
| Bulgarisch | <input type="checkbox"/> | Litauisch | <input type="checkbox"/> |
| Spanisch | <input type="checkbox"/> | Ungarisch | <input type="checkbox"/> |
| Tschechisch | <input type="checkbox"/> | Maltesisch | <input type="checkbox"/> |
| Deutsch | <input type="checkbox"/> | Niederländisch | <input type="checkbox"/> |
| Estrnisch | <input type="checkbox"/> | Polnisch | <input type="checkbox"/> |
| Griechisch | <input type="checkbox"/> | Portugiesisch | <input type="checkbox"/> |
| Englisch | <input type="checkbox"/> | Rumänisch | <input type="checkbox"/> |
| Französisch | <input type="checkbox"/> | Slowakisch | <input type="checkbox"/> |
| Irish | <input type="checkbox"/> | Slowenisch | <input type="checkbox"/> |
| Italienisch | <input type="checkbox"/> | Finnisch | <input type="checkbox"/> |
| Lettisch | <input type="checkbox"/> | Schwedisch | <input type="checkbox"/> |
| Sonstige | <input type="checkbox"/> | bitte angeben: | |

Geschehen zu:

am:

Unterschrift und/oder Stempel:

(*) Angabe freigestellt.

EL:

Το συνημμένο έγγραφο σας επιδίδεται ή κοινοποιείται σύμφωνα με τον κανονισμό (ΕΚ) αριθ. 1393/2007 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου περί επιδόσεως και κοινοποιήσεως στα κράτη μέλη δικαστικών και εξωδικων πράξεων σε αστικές ή εμπορικές υποθέσεις.

Έχετε δικαίωμα να αρνηθείτε την παραλαβή της πράξης εφόσον δεν είναι συνταγμένη ή δεν συνοδεύεται από μετάφραση σε γλώσσα την οποία κατανοείτε ή στην επίσημη γλώσσα ή σε μία από τις επίσημες γλώσσες του τόπου επίδοσης ή κοινοποίησης.

Εάν επιθυμείτε να ασκήσετε αυτό το δικαίωμα, πρέπει είτε να δηλώσετε την άρνηση παραλαβής κατά τη χρονική στιγμή της επίδοσης ή κοινοποίησης απευθείας στο πρόσωπο που επιδίδει ή κοινοποιεί την πράξη, είτε να την επιστρέψετε εντός μιας εβδομάδας στη διεύθυνση που αναφέρεται κατωτέρω, δηλώνοντας ότι αρνείστε την παραλαβή της.

ΔΙΕΥΘΥΝΣΗ:

1. Όνομα:
2. Διεύθυνση:
- 2.1. Οδός και αριθμός/ταχυδρομική θυρίδα:
- 2.2. Τόπος και ταχυδρομικός τομέας:
- 2.3. Χώρα:
3. Τηλέφωνο:
4. Φαξ (*):
5. Ηλεκτρονικό ταχυδρομείο (*):

ΔΗΛΩΣΗ ΤΟΥ ΠΑΡΑΛΗΠΤΗ:

Αρνούμαι να παραλάβω την πράξη διότι δεν είναι συνταγμένη ή δεν συνοδεύεται από μετάφραση σε γλώσσα την οποία κατανοώ ή στην επίσημη γλώσσα ή σε μια από τις επίσημες γλώσσες του τόπου επίδοσης ή κοινοποίησης.

Κατανοώ την ακόλουθη/ες γλώσσα/ες:

Βουλγαρικά	<input type="checkbox"/>	Λεττονικά	<input type="checkbox"/>
Ισπανικά	<input type="checkbox"/>	Λιθουανικά	<input type="checkbox"/>
Τσεχικά	<input type="checkbox"/>	Ουγγρικά	<input type="checkbox"/>
Δανικά	<input type="checkbox"/>	Μαλτέζικα	<input type="checkbox"/>
Γερμανικά	<input type="checkbox"/>	Ολλανδικά	<input type="checkbox"/>
Εσθονικά	<input type="checkbox"/>	Πολωνικά	<input type="checkbox"/>
Ελληνικά	<input type="checkbox"/>	Πορτογαλικά	<input type="checkbox"/>
Αγγλικά	<input type="checkbox"/>	Ρουμανικά	<input type="checkbox"/>
Γαλλικά	<input type="checkbox"/>	Σλοβακικά	<input type="checkbox"/>
Ιρλανδικά	<input type="checkbox"/>	Σλοβενικά	<input type="checkbox"/>
Ιταλικά	<input type="checkbox"/>	Σουηδικά	<input type="checkbox"/>
Φινλανδικά	<input type="checkbox"/>	(Παρακαλώ προσδιορίστε):	
Άλλες	<input type="checkbox"/>		

Τόπος:

Ημερομηνία:

Υπογραφή ή/και σφραγίδα:

(*) Προαιρετικό.

EN:

The enclosed document is served in accordance with Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

You may refuse to accept the document if it is not written in or accompanied by a translation into either a language which you understand or the official language or one of the official languages of the place of service.

If you wish to exercise this right, you must refuse to accept the document at the time of service directly with the person serving the document or return it to the address indicated below within one week stating that you refuse to accept it.

ADDRESS

1. identity
2. address
 - 2.1. street and number/PO box
 - 2.2. place and post code
 - 2.3. country
3. tel.
4. fax (*)
5. e-mail (*)

DECLARATION OF THE ADDRESSEE:

I refuse to accept the document attached hereto because it is not written in or accompanied by a translation into either a language which I understand or the official language or one of the official languages of the place of service.

I understand the following language(s)

- | | | | |
|-----------|--------------------------|-------------------------|--------------------------|
| Bulgarian | <input type="checkbox"/> | Lithuanian | <input type="checkbox"/> |
| Spanish | <input type="checkbox"/> | Hungarian | <input type="checkbox"/> |
| Czech | <input type="checkbox"/> | Maltese | <input type="checkbox"/> |
| German | <input type="checkbox"/> | Dutch | <input type="checkbox"/> |
| Estonian | <input type="checkbox"/> | Polish | <input type="checkbox"/> |
| Greek | <input type="checkbox"/> | Portuguese | <input type="checkbox"/> |
| English | <input type="checkbox"/> | Romanian | <input type="checkbox"/> |
| French | <input type="checkbox"/> | Slovak | <input type="checkbox"/> |
| Irish | <input type="checkbox"/> | Slovene | <input type="checkbox"/> |
| Italian | <input type="checkbox"/> | Finnish | <input type="checkbox"/> |
| Latvian | <input type="checkbox"/> | Swedish | <input type="checkbox"/> |
| Other | <input type="checkbox"/> | (please specify): | |

Done at:

Date:

Signature and/or stamp:

(*) This item is optional.

ES:

El documento adjunto se notifica o traslada de conformidad con el Reglamento (CE) n° 1393/2007 del Parlamento Europeo y del Consejo, relativo a la notificación y al traslado en los Estados miembros de documentos judiciales y extrajudiciales en materia civil o mercantil.

Puede usted negarse a aceptar el documento si no está redactado en una lengua que usted entienda o en una lengua oficial o una de las lenguas oficiales del lugar de notificación o traslado, o si no va acompañado de una traducción a alguna de esas lenguas.

Si desea usted ejercitar este derecho, debe negarse a aceptar el documento en el momento de la notificación o traslado directamente ante la persona que notifique o traslade el documento o devolverlo a la dirección que se indica a continuación dentro del plazo de una semana, declarando que se niega a aceptarlo.

DIRECCIÓN

1. Nombre:
2. Dirección:
 - 2.1. Calle y número/apartado de correos:
 - 2.2. Lugar y código postal:
 - 2.3. País:
3. Tel.:
4. Fax (*):
5. Dirección electrónica (*):

DECLARACIÓN DEL DESTINATARIO:

Me niego a aceptar el documento adjunto porque no está redactado en una lengua que yo entienda o en la lengua oficial o una de las lenguas oficiales del lugar de notificación o traslado, o por no ir acompañado de una traducción a alguna de esas lenguas.

Las lenguas que entiendo son las siguientes:

- | | | | |
|----------|--------------------------|----------------------|--------------------------|
| búlgaro | <input type="checkbox"/> | lituano | <input type="checkbox"/> |
| español | <input type="checkbox"/> | húngaro | <input type="checkbox"/> |
| checo | <input type="checkbox"/> | maltés | <input type="checkbox"/> |
| alemán | <input type="checkbox"/> | neerlandés | <input type="checkbox"/> |
| estonio | <input type="checkbox"/> | polaco | <input type="checkbox"/> |
| griego | <input type="checkbox"/> | portugués | <input type="checkbox"/> |
| inglés | <input type="checkbox"/> | rumano | <input type="checkbox"/> |
| francés | <input type="checkbox"/> | eslovaco | <input type="checkbox"/> |
| irlandés | <input type="checkbox"/> | esloveno | <input type="checkbox"/> |
| italiano | <input type="checkbox"/> | finés | <input type="checkbox"/> |
| letón | <input type="checkbox"/> | sueco | <input type="checkbox"/> |
| Otra | <input type="checkbox"/> | (se ruega precisar): | |

Hecho en:

Fecha:

Firma y/o sello:

(*) Punto facultativo.

ET:

Lisatud dokument toimetatakse kätte vastavalt Euroopa Parlamendi ja nõukogu määrusele (EÜ) nr 1393/2007 kohtu- ja kohtuväliste dokumentide Euroopa Liidu liikmesriikides kättetoimetamise kohta tsiviil- ja kaubandusajades.

Te võite keelduda dokumenti vastu võtmast, kui see ei ole koostatud Teile arusaadavas keeles või kättetoimetamiskoha ametlikus keeles või ühes ametlikest keeltest või kui dokumendile ei ole lisatud tõlget ühte nimetatud keeltest.

Kui Te soovite nimetatud õigust kasutada, peate keelduma dokumendi vastuvõtmisest vahetult selle kättetoimetamise ajal, tagastades dokumendi seda kättetoimetavale isikule, või tagastama dokumendi allpool esitatud aadressile ühe nädala jooksul, märkides, et Te keeldute selle vastuvõtmisest.

ADDRESS:

1. Nimi:
2. Aadress:
 - 2.1. Tänav ja maja number/postkast:
 - 2.2. Linn/vald ja sihtnumber:
 - 2.3. Riik:
3. Tel:
4. Faks(*):
5. E-post(*):

ADRESSAADI AVALDUS

Keeldun lisatud dokumendi vastuvõtmisest, kuna see ei ole kirjutatud ei mulle arusaadavas keeles ega kättetoimetamiskoha ametlikus keeles või ühes ametlikest keeltest ning dokumendile ei ole lisatud tõlget ühte nimetatud keeltest.

Saan aru järgmis(t)est keel(t)est:

bulgaaria	<input type="checkbox"/>	leedu	<input type="checkbox"/>
hispaania	<input type="checkbox"/>	ungari	<input type="checkbox"/>
tšehhi	<input type="checkbox"/>	malta	<input type="checkbox"/>
saksa	<input type="checkbox"/>	hollandi	<input type="checkbox"/>
eesti	<input type="checkbox"/>	poola	<input type="checkbox"/>
kreeka	<input type="checkbox"/>	portugali	<input type="checkbox"/>
inglise	<input type="checkbox"/>	rumeenia	<input type="checkbox"/>
prantsuse	<input type="checkbox"/>	slovaki	<input type="checkbox"/>
iiri	<input type="checkbox"/>	sloveeni	<input type="checkbox"/>
itaalia	<input type="checkbox"/>	soome	<input type="checkbox"/>
läti	<input type="checkbox"/>	rootsi	<input type="checkbox"/>
muu	<input type="checkbox"/>	(palun täpsustada):	

Koht:

Kuupäev:

Allkiri ja/või pitser:

(*) Ei ole kohustuslik.

FI:

Oheinen asiakirja annetaan tiedoksi oikeudenkäynti- ja muiden asiakirjojen tiedoksiannosta jäsenvaltioissa siviili- tai kauppaoikeudellisissa asioissa annetun Euroopan parlamentin ja neuvoston asetuksen (EY) N:o 1393/2007 mukaisesti.

Voitte kieltäytyä vastaanottamasta asiakirjaa, jollei se ole kirjoitettu jollakin kielellä, jota ymmärrätte, tai tiedoksiantopaikan virallisella kielellä tai yhdellä niistä, tai jollei mukana ole käännöstä jollekin näistä kielistä.

Jos haluatte käyttää tätä oikeuttanne, teidän on kieltäydyttävä vastaanottamasta asiakirjaa tiedoksiannon yhteydessä ilmoittamalla tästä suoraan asiakirjan toimittavalle henkilölle tai palautettava asiakirja viikon kuluessa jäljempänä olevaan osoitteeseen todeten, että kieltäydytte vastaanottamisesta.

OSOITE:

1. Nimi:
2. Osoite:
- 2.1. Lähiosoite:
- 2.2. Postinumero ja postitoimipaikka:
- 2.3. Maa:
3. Puhelin:
4. Faksi (*):
5. Sähköpostiosoite (*):

VASTAANOTTAJAN ILMOITUS:

Kieltäydyin vastaanottamasta oheista asiakirjaa, koska sitä ei ole kirjoitettu ymmärtämälläni kielellä eikä tiedoksiantopaikan virallisella kielellä tai yhdellä niistä eikä mukana ole käännöstä jollekin näistä kielistä.

Ymmärrän seuraavaa kieltä / seuraavia kieliä:

bulgaria	<input type="checkbox"/>	liettua	<input type="checkbox"/>
espanja	<input type="checkbox"/>	unkari	<input type="checkbox"/>
tšekki	<input type="checkbox"/>	malta	<input type="checkbox"/>
saksa	<input type="checkbox"/>	hollanti	<input type="checkbox"/>
viro	<input type="checkbox"/>	puola	<input type="checkbox"/>
kreikka	<input type="checkbox"/>	portugali	<input type="checkbox"/>
englanti	<input type="checkbox"/>	romania	<input type="checkbox"/>
ranska	<input type="checkbox"/>	slovakki	<input type="checkbox"/>
iiri	<input type="checkbox"/>	sloveeni	<input type="checkbox"/>
italia	<input type="checkbox"/>	suomi	<input type="checkbox"/>
latvia	<input type="checkbox"/>	ruotsi	<input type="checkbox"/>
muu	<input type="checkbox"/>	(tarkennetaan):	

Paikka:

Päivämäärä:

Allekirjoitus ja/tai leima:

(*) Vapaaehtoinen.

FR:

L'acte ci-joint est signifié ou notifié conformément au règlement (CE) n° 1393/2007 du Parlement européen et du Conseil du 13 novembre 2007 relatif à la signification et à la notification dans les États membres des actes judiciaires et extrajudiciaires en matière civile ou commerciale.

Vous pouvez refuser de recevoir l'acte s'il n'est pas rédigé ou accompagné d'une traduction dans une langue que vous comprenez ou dans la langue officielle ou l'une des langues officielles du lieu de signification ou de notification.

Si vous souhaitez exercer ce droit de refus, vous devez soit faire part de votre refus de recevoir l'acte au moment de la signification ou de la notification directement à la personne signifiant ou notifiant l'acte, soit le renvoyer à l'adresse indiquée ci-dessous dans un délai d'une semaine en indiquant que vous refusez de le recevoir.

ADRESSE:

1. Nom:
2. Adresse:
3. Téléphone:
 - 2.1. Numéro/boîte postale et rue:
 - 2.2. Localité et code postal
 - 2.3. Pays:
4. Télécopieur (*):
5. Adresse électronique (*):

DÉCLARATION DU DESTINATAIRE

Je, soussigné, refuse de recevoir l'acte ci-joint parce qu'il n'est pas rédigé ou accompagné d'une traduction dans une langue que je comprends ou dans la langue officielle ou l'une des langues officielles du lieu de signification ou de notification.

Je comprends la ou les langues suivantes:

- | | | | |
|-----------|--------------------------|-------------------|--------------------------|
| Bulgare | <input type="checkbox"/> | Lituanien | <input type="checkbox"/> |
| Espagnol | <input type="checkbox"/> | Hongrois | <input type="checkbox"/> |
| Tchèque | <input type="checkbox"/> | Maltais | <input type="checkbox"/> |
| Allemand | <input type="checkbox"/> | Néerlandais | <input type="checkbox"/> |
| Estonien | <input type="checkbox"/> | Polonais | <input type="checkbox"/> |
| Grec | <input type="checkbox"/> | Portugais | <input type="checkbox"/> |
| Anglais | <input type="checkbox"/> | Roumain | <input type="checkbox"/> |
| Français | <input type="checkbox"/> | Slovaque | <input type="checkbox"/> |
| Irlandais | <input type="checkbox"/> | Slovène | <input type="checkbox"/> |
| Italien | <input type="checkbox"/> | Finnois | <input type="checkbox"/> |
| Letton | <input type="checkbox"/> | Suédois | <input type="checkbox"/> |
| Autre | <input type="checkbox"/> | (préciser): | |

Fait à:

Date:

Signature et/ou cachet:

(*) Facultatif.

GA:

Tá an doiciméad atá faoi iarmh á sheirbheáil i gcomhréir le Rialachán (CE) Uimh. 1393/2007 ó Pharlaimint na hEorpa agus ón gComhairle maidir le doiciméid bhreithiúnacha agus sheachbhreithiúnacha a sheirbheáil sna Ballstáit in ábhair shibhialta nó in ábhair tráchtála.

Féadfaidh tú diúltú glacadh leis an doiciméad mura mbeidh sé scríofa i dteanga a thuigeann tú nó i dteanga oifigiúil nó i gceann de theangacha oifigiúla áit na seirbheála nó mura mbeidh aistriúchán go teanga a thuigeann tú nó go teanga oifigiúil áit na seirbheála nó go ceann de theangacha oifigiúla áit na seirbheála ag gabháil leis.

Más mian leat an ceart seo a fheidhmiú, ní mór duit diúltú glacadh leis an doiciméad as láimh tráth na seirbheála ón duine a sheirbheálann é, nó é a chur ar ais laistigh de sheachtain chuig an seoladh a shonraítear thíos, mar aon le ráiteas go bhfuil tú ag diúltú glacadh leis.

SEOLADH:

1. Ainm:
2. Seoladh:
- 2.1. Sráid agus uimhir/bosca poist:
- 2.2. Áit agus cód poist:
- 2.3. Tír:
3. Teil:
4. Facs (*):
5. Seoladh r-phoist (*):

DEARBHÚ ÓN SEOLAÍ:

Diúltaim glacadh leis an doiciméad atá faoi cheangal leis seo de bharr nach bhfuil sé scríofa i dteanga a thuigim nó i dteanga oifigiúil nó i gceann de theangacha oifigiúla áit na seirbheála agus nach bhfuil aistriúchán go teanga a thuigim nó go teanga oifigiúil áit na seirbheála nó go ceann de theangacha oifigiúla áit na seirbheála ag gabháil leis.

Tuigim an teanga/na teangacha a leanas:

Bulgáiris	<input type="checkbox"/>	Liotuáinis	<input type="checkbox"/>
Spáinnis	<input type="checkbox"/>	Ungáiris	<input type="checkbox"/>
Seicis	<input type="checkbox"/>	Máltais	<input type="checkbox"/>
Gearmáinis	<input type="checkbox"/>	Ollainnis	<input type="checkbox"/>
Eastóinis	<input type="checkbox"/>	Polainnis	<input type="checkbox"/>
Gréigis	<input type="checkbox"/>	Portaingéilis	<input type="checkbox"/>
Béarla	<input type="checkbox"/>	Rómáinis	<input type="checkbox"/>
Fraincis	<input type="checkbox"/>	Slóvaicis	<input type="checkbox"/>
Gaeilge	<input type="checkbox"/>	Slóivéinis	<input type="checkbox"/>
Iodáilis	<input type="checkbox"/>	Fionlainnis	<input type="checkbox"/>
Laitvis	<input type="checkbox"/>	Sualainnis	<input type="checkbox"/>
Teanga eile	<input type="checkbox"/>	(sonraigh an teanga, le do thoil):	

Arna dhéanamh i/sa:

Dáta:

Síniú agus/nó stampa:

(*) Tá an sonra seo roghnach.

HU:

A mellékelt iratot a tagállamokban a polgári és kereskedelmi ügyekben a bírósági és bíróságon kívüli iratok kézbesítéséről szóló 1393/2007/EK európai parlamenti és tanácsi rendelet szerint kézbesítik.

Önnnek joga van megtagadni az irat átvételét, amennyiben az nem az Ön számára érthető nyelven vagy a kézbesítés helyének hivatalos nyelvén vagy hivatalos nyelvei egyikén készült, és nem mellékeltek hozzá ilyen nyelvű fordítást.

Amennyiben élni kíván ezzel a jogával, az irat átvételét a kézbesítéskor kell megtagadnia közvetlenül az iratot kézbesítő személynél, vagy egy héten belül vissza kell küldenie azt az alább megjelölt címre, jelezve, hogy megtagadja annak átvételét.

CÍM:

1. Név:
2. Cím:
 - 2.1. Utca és házszám/postafiók:
 - 2.2. Helység és irányítószám:
 - 2.3. Ország:
3. Telefon:
4. Fax (*):
5. E-mail (*):

A CÍMZETT NYILATKOZATA:

Megtagadom a mellékelt dokumentum átvételét, mivel nem az általam értett nyelven vagy a kézbesítés helyének hivatalos nyelvén vagy hivatalos nyelvei egyikén készült, és nem mellékeltek hozzá ilyen nyelvű fordítást.

A következő nyelve(ke)t értem:

bolgár	<input type="checkbox"/>	litván	<input type="checkbox"/>
spanyol	<input type="checkbox"/>	magyar	<input type="checkbox"/>
cseh	<input type="checkbox"/>	máltai	<input type="checkbox"/>
német	<input type="checkbox"/>	holland	<input type="checkbox"/>
észt	<input type="checkbox"/>	lengyel	<input type="checkbox"/>
görög	<input type="checkbox"/>	portugál	<input type="checkbox"/>
angol	<input type="checkbox"/>	román	<input type="checkbox"/>
francia	<input type="checkbox"/>	szlovák	<input type="checkbox"/>
ír	<input type="checkbox"/>	szlovén	<input type="checkbox"/>
olasz	<input type="checkbox"/>	finn	<input type="checkbox"/>
lett	<input type="checkbox"/>	svéd	<input type="checkbox"/>
egyéb	<input type="checkbox"/>	(kérjük, nevezze meg):	

Kelt:

Dátum:

Aláírás és/vagy bélyegző:

(*) Ezt a mezőt nem kötelező kitölteni.

IT:

L'atto accluso è notificato o comunicato in conformità del regolamento (CE) n. 1393/2007 del Parlamento europeo e del Consiglio relativo alla notificazione e alla comunicazione negli Stati membri degli atti giudiziari ed extragiudiziali in materia civile e commerciale.

È prevista la facoltà di rifiutare di ricevere l'atto se non è redatto o accompagnato da una traduzione in una lingua compresa dal destinatario oppure nella lingua ufficiale o in una delle lingue ufficiali del luogo di notificazione o di comunicazione.

Chi vuole avvalersi di tale diritto può dichiarare il proprio rifiuto al momento della notificazione o della comunicazione direttamente alla persona che la effettua, oppure può rispedire l'atto entro una settimana all'indirizzo sottoindicato, dichiarando il proprio rifiuto di riceverlo.

INDIRIZZO:

1. Nome:
2. Indirizzo:
- 2.1. Via e numero/C.P.:
- 2.2. Luogo e codice postale:
- 2.3. Paese:
3. Tel.
4. Fax (*)
5. E-mail (*):

DICHIARAZIONE DEL DESTINATARIO

Rifiuto di ricevere l'atto allegato in quanto non è redatto o accompagnato da una traduzione in una lingua da me compresa oppure nella lingua ufficiale o in una delle lingue ufficiali del luogo di notificazione o di comunicazione.

Comprendo le seguenti lingue:

Bulgaro	<input type="checkbox"/>	Lituano	<input type="checkbox"/>
Spagnolo	<input type="checkbox"/>	Ungherese	<input type="checkbox"/>
Ceco	<input type="checkbox"/>	Maltese	<input type="checkbox"/>
Tedesco	<input type="checkbox"/>	Olandese	<input type="checkbox"/>
Estone	<input type="checkbox"/>	Polacco	<input type="checkbox"/>
Greco	<input type="checkbox"/>	Portoghese	<input type="checkbox"/>
Inglese	<input type="checkbox"/>	Rumeno	<input type="checkbox"/>
Francese	<input type="checkbox"/>	Slovacco	<input type="checkbox"/>
Irlandese	<input type="checkbox"/>	Sloveno	<input type="checkbox"/>
Italiano	<input type="checkbox"/>	Finlandese	<input type="checkbox"/>
Lettone	<input type="checkbox"/>	Svedese	<input type="checkbox"/>
Altra	<input type="checkbox"/>	(precisare):	

Fatto a:

Data:

Firma e/o timbro:

(*) Voce facoltativa.

LT:

Pridedamas dokumentas įteikiamas pagal Europos Parlamento ir Tarybos reglamentą (EB) Nr. 1393/2007 dėl teisminių ir neteisminių dokumentų civilinėse arba komercinėse bylose įteikimo valstybėse narėse.

Galite atsisakyti priimti šį dokumentą, jeigu jis nėra parengtas kalba, kurią suprantate, ar įteikimo vietos oficialia kalba arba viena iš oficialių kalbų, arba nėra pridėta vertimo į kalbą, kurią suprantate, ar į įteikimo vietos oficialią kalbą arba vieną iš oficialių kalbų.

Jei norite pasinaudoti šia teise, privalote atsisakyti priimti dokumentą jo įteikimo metu tiesiogiai pranešdami apie tai dokumentą įteikiančiam asmeniui arba per vieną savaitę grąžinti jį toliau nurodytu adresu, pareikšdami, kad atsisakote jį priimti.

ADRESAS:

1. Vardas ir pavardė:
2. Adresas:
 - 2.1. Gatvė ir numeris/pašto dėžutė:
 - 2.2. Vieta ir pašto indeksas:
 - 2.3. Valstybė:
3. Telefonas:
4. Faksas (*):
5. El. paštas (*):

ADRESATO PAREIŠKIMAS:

Atsisakau priimti prie šio pareiškimo pridėdamą dokumentą, kadangi jis nėra parengtas kalba, kurią suprantu, ar įteikimo vietos oficialia kalba arba viena iš oficialių kalbų, arba nėra pridėta vertimo į kalbą, kurią suprantu, ar į įteikimo vietos oficialią kalbą arba vieną iš oficialių kalbų.

Suprantu šią (-ias) kalbą (-as):

Bulgarų	<input type="checkbox"/>	Lietuvių	<input type="checkbox"/>
Ispanų	<input type="checkbox"/>	Vengrų	<input type="checkbox"/>
Čekų	<input type="checkbox"/>	Maltiečių	<input type="checkbox"/>
Vokiečių	<input type="checkbox"/>	Olandų	<input type="checkbox"/>
Estų	<input type="checkbox"/>	Lenkų	<input type="checkbox"/>
Graikų	<input type="checkbox"/>	Portugalų	<input type="checkbox"/>
Anglų	<input type="checkbox"/>	Rumunų	<input type="checkbox"/>
Prancūzų	<input type="checkbox"/>	Slovakų	<input type="checkbox"/>
Airių	<input type="checkbox"/>	Slovėnų	<input type="checkbox"/>
Italių	<input type="checkbox"/>	Suomių	<input type="checkbox"/>
Latvių	<input type="checkbox"/>	Švedų	<input type="checkbox"/>
Kitas	<input type="checkbox"/>	(prašom nurodyti)	

Parengta:

Data:

Parašas ir (arba) antspaudas:

(*) Šis įrašas neprivalomas.

LV:

Pievienoto dokumentu izsniedz saskaņā ar Eiropas Parlamenta un Padomes Regulu (EK) Nr. 1393/2007 par tiesas un ārpus tiesas civilietu vai komercietu dokumentu izsniegšanu dalībvalstīs.

Jums ir tiesības atteikties pieņemt dokumentu, ja tas nav iesniegts rakstiski vai tam nav pievienots tulkojums valodā, ko jūs saprotat, vai dokumenta izsniegšanas vietas oficiālajā valodā, vai vienā no oficiālajām valodām.

Ja vēlaties īstenot šīs tiesības, Jums tieši dokumenta izsniedzējam izsniegšanas laikā ir jāatsakās pieņemt dokumentu vai tas jānosūta atpakaļ uz norādīto adresi vienas nedēļas laikā kopā ar paziņojumu, ka esat atteicies to pieņemt.

ADRESE:

1. Vārds, uzvārds vai nosaukums:
2. Adrese:
- 2.1. Ielas nosaukums un numurs/p.k. Nr.:
- 2.2. Vieta un pasta kods:
- 2.3. Valsts:
3. Tālr.:
4. Fakss (*):
5. E-pasta adrese (*):

ADRESĀTA PAZIŅOJUMS:

Es atsakos pieņemt pievienoto dokumentu, jo tas nav uzrakstīts vai tam nav pievienots tulkojums valodā, ko es saprotu, vai dokumenta izsniegšanas oficiālajā valodā, vai vienā no oficiālajām valodām.

Es saprotu šādu(-as) valodu(-as):

bulgāru	<input type="checkbox"/>	lietuviešu	<input type="checkbox"/>
spāņu	<input type="checkbox"/>	ungāru	<input type="checkbox"/>
čehu	<input type="checkbox"/>	maltiešu	<input type="checkbox"/>
vācu	<input type="checkbox"/>	holandiešu	<input type="checkbox"/>
igauņu	<input type="checkbox"/>	poļu	<input type="checkbox"/>
grieķu	<input type="checkbox"/>	portugāļu	<input type="checkbox"/>
angļu	<input type="checkbox"/>	rumāņu	<input type="checkbox"/>
franču	<input type="checkbox"/>	slovāku	<input type="checkbox"/>
īru	<input type="checkbox"/>	slovēņu	<input type="checkbox"/>
itāļu	<input type="checkbox"/>	somu	<input type="checkbox"/>
latviešu	<input type="checkbox"/>	zviedru	<input type="checkbox"/>
citu	<input type="checkbox"/>	(lūdzu, norādiet):	

Sastādīts:

Datums:

Paraksts un/vai zīmogs:

(*) Nav obligāts.

MT:

Id-dokument meħmuż huwa nnotifikat f'konformità mar-Regolament (KE) Nru 1393/2007 tal-Parlament Ewropew u l-Kunsill dwar is-servizz fl-Istati Membri ta' dokumenti ġudizzjarji u *extra-ġudizzjarji* fi kwistjonijiet ċivili jew kummerċjali.

Inti tista' tirrifjuta li taċċetta d-dokument jekk dan mhux miktub bi jew m'għandux miegħu traduzzjoni f'wahda mill-lingwi li tifhem int jew bil-lingwa uffiċjali jew wahda mill-lingwi uffiċjali tal-post fejn qed issir in-notifika jew il-komunikazzjoni.

Jekk tixtieq teżerċita dan id-dritt, trid tirrifjuta li taċċetta d-dokument fil-mument li ssir in-notifika u dan trid tagħmlu mal-persuna li tikkunsinnalek id-dokument jew inkella billi tibagħtu lura fl-indirizz li jidher hawn taht fi żmien ġingħa u tistqarr li int qed tirrifjuta li taċċettah.

INDIRIZZ:

1. Identità:
2. Indirizz:
 - 2.1. Triq u numru/Kaxxa Postali:
 - 2.2. Lokalià u kodiċi postali
 - 2.3. Pajjiż:
3. Tel.
4. Fax (*):
5. Indirizz elettroniku (*):

DIKJARAZZJONI TAD-DESTINATARJU:

Jien nrrifjuta li naċċetta d-dokument meħmuż għaliex mhux miktub bi jew m'għandux miegħu traduzzjoni f'wahda mill-lingwi li nifhem jien jew bil-lingwa uffiċjali tal-post fejn qed issir in-notifika.

Jien nifhem bil-lingwa/lingwi li ġeja/ġejjin:

Bulgaru	<input type="checkbox"/>	Litwan	<input type="checkbox"/>
Spanjol	<input type="checkbox"/>	Ungeriz	<input type="checkbox"/>
Ċek	<input type="checkbox"/>	Malti	<input type="checkbox"/>
Ġermaniż	<input type="checkbox"/>	Olandiż	<input type="checkbox"/>
Estonjan	<input type="checkbox"/>	Pollakk	<input type="checkbox"/>
Grieg	<input type="checkbox"/>	Portugiż	<input type="checkbox"/>
Ingliż	<input type="checkbox"/>	Rumen	<input type="checkbox"/>
Franciż	<input type="checkbox"/>	Slovakk	<input type="checkbox"/>
Irlandiż	<input type="checkbox"/>	Sloven	<input type="checkbox"/>
Taljan	<input type="checkbox"/>	Finlandiż	<input type="checkbox"/>
Lavjan	<input type="checkbox"/>	Svediż	<input type="checkbox"/>
Oħrajn	<input type="checkbox"/>	jekk jogħġbok speċifika:	

Magħmul fi:

Data:

Firma u/jew timbru:

(*) Dan il-punt mhux obligatorju.

NL:

De betekening of kennisgeving van het bijgevoegde stuk is geschied overeenkomstig Verordening (EG) nr. 1393/2007 van het Europees Parlement en de Raad inzake de betekening en de kennisgeving in de lidstaten van gerechtelijke en buitengerechtelijke stukken in burgerlijke of in handelszaken.

U kunt weigeren het stuk in ontvangst te nemen indien het niet gesteld is in of vergezeld gaat van een vertaling, ofwel in een taal die u begrijpt ofwel in de officiële taal/een van de officiële talen van de plaats van betekening of kennisgeving.

Indien u dat recht wenst uit te oefenen, moet u onmiddellijk bij de betekening of kennisgeving van het stuk en rechtstreeks ten aanzien van de persoon die de betekening of kennisgeving verricht de ontvangst ervan weigeren of moet u het stuk binnen een week terugzenden naar het onderstaande adres en verklaren dat u de ontvangst ervan weigert.

ADRES:

1. Naam:
2. Adres:
- 2.1. Straat + nummer/postbus:
- 2.2. Postcode + plaats:
- 2.3. Land:
3. Telefoon:
4. Fax (*):
5. E-mail (*):

VERKLARING VAN DE GEADRESSEERDE:

Ik weiger de ontvangst van het hieraan gehechte stuk, omdat dit niet gesteld is in of vergezeld gaat van een vertaling, ofwel in een taal die ik begrijp ofwel in de officiële taal/een van de officiële talen van de plaats van betekening of kennisgeving.

Ik begrijp de volgende taal (talen):

- | | | | |
|------------|--------------------------|------------------------------|--------------------------|
| Bulgaars | <input type="checkbox"/> | Litouws | <input type="checkbox"/> |
| Spaans | <input type="checkbox"/> | Hongaars | <input type="checkbox"/> |
| Tsjechisch | <input type="checkbox"/> | Maltees | <input type="checkbox"/> |
| Duits | <input type="checkbox"/> | Nederlands | <input type="checkbox"/> |
| Ests | <input type="checkbox"/> | Pools | <input type="checkbox"/> |
| Grieks | <input type="checkbox"/> | Portugees | <input type="checkbox"/> |
| Engels | <input type="checkbox"/> | Roemeens | <input type="checkbox"/> |
| Frans | <input type="checkbox"/> | Slowaaks | <input type="checkbox"/> |
| Iers | <input type="checkbox"/> | Sloveens | <input type="checkbox"/> |
| Italiaans | <input type="checkbox"/> | Fins | <input type="checkbox"/> |
| Lets | <input type="checkbox"/> | Zweeds | <input type="checkbox"/> |
| Overige | <input type="checkbox"/> | gelieve te preciseren: | |

Gedaan te:

Datum:

Ondertekening en/of stempel:

(*) Facultatief.

PL:

Załączony dokument jest doręczany zgodnie z rozporządzeniem (WE) nr 1393/2007 Parlamentu Europejskiego i Rady dotyczącym doręczania w państwach członkowskich dokumentów sądowych i pozasądowych w sprawach cywilnych i handlowych

Adresat może odmówić przyjęcia dokumentu, jeżeli nie został on sporządzony w języku, który rozumie, ani w języku urzędowym lub w jednym z języków urzędowych miejsca doręczenia lub jeżeli nie dołączono do niego tłumaczenia na taki język.

Jeżeli adresat chce skorzystać z tego prawa, musi odmówić przyjęcia dokumentu w momencie jego doręczenia bezpośrednio w obecności osoby doręczającej lub zwrócić dokument na niżej wskazany adres w terminie tygodnia wraz z oświadczeniem o odmowie przyjęcia.

ADRES:

1. Imię i nazwisko/nazwa:
2. Adres:
 - 2.1. Ulica i numer domu/skrytka pocztowa:
 - 2.2. Miejscowość i kod pocztowy:
 - 2.3. Kraj:
3. Telefon:
4. Faks (*):
5. E-mail (*):

OŚWIADCZENIE ADRESATA

Niniejszym odmawiam przyjęcia załączonego dokumentu, ponieważ nie został on sporządzony w języku, który rozumiem, ani w języku urzędowym lub w jednym z języków urzędowych miejsca doręczenia, ani nie dołączono do niego tłumaczenia na taki język.

Rozumiem następujący(-e) język(-i):

- | | | | |
|------------|--------------------------|------------------------|--------------------------|
| bułgarski | <input type="checkbox"/> | łotewski | <input type="checkbox"/> |
| hiszpański | <input type="checkbox"/> | węgierski | <input type="checkbox"/> |
| czeski | <input type="checkbox"/> | maltański | <input type="checkbox"/> |
| niemiecki | <input type="checkbox"/> | niderlandzki | <input type="checkbox"/> |
| estoński | <input type="checkbox"/> | polski | <input type="checkbox"/> |
| grecki | <input type="checkbox"/> | portugalski | <input type="checkbox"/> |
| angielski | <input type="checkbox"/> | rumuński | <input type="checkbox"/> |
| francuski | <input type="checkbox"/> | słowacki | <input type="checkbox"/> |
| irlandzki | <input type="checkbox"/> | słoweński | <input type="checkbox"/> |
| włoski | <input type="checkbox"/> | fiński | <input type="checkbox"/> |
| inny | <input type="checkbox"/> | proszę określić: | |

Sporządzono w:

Data:

Podpis i/lub pieczęć:

(*) Nieobowiązkowo.

PT:

O acto em anexo é citado ou notificado nos termos do Regulamento (CE) n.º 1393/2007 do Parlamento Europeu e do Conselho relativo à citação e à notificação dos actos judiciais e extrajudiciais em matérias civil e comercial nos Estados-Membros.

Tem a possibilidade de recusar a recepção do acto se este não estiver redigido, ou acompanhado de uma tradução, numa língua que compreenda ou na língua oficial ou numa das línguas oficiais do local de citação ou notificação.

Se desejar exercer esse direito, deve recusar o acto no momento da citação ou notificação, directamente junto da pessoa que a ela procede, ou devolvê-lo ao endereço seguidamente indicado, no prazo de uma semana, declarando que recusa aceitá-lo.

ENDEREÇO:

1. Identificação:
2. Endereço:
 - 2.1. Rua + número/caixa postal:
 - 2.2. Localidade + código postal:
 - 2.3. País:
3. Telefone:
4. Fax (*):
5. Correio electrónico (*e-mail*) (*):

DECLARAÇÃO DO DESTINATÁRIO:

Eu, abaixo assinado(a), recuso aceitar o acto em anexo porque o mesmo não está redigido nem acompanhado de uma tradução numa língua que eu compreenda ou na língua oficial ou numa das línguas oficiais do local de citação ou notificação.

Compreendo a(s) seguinte(s) língua(s):

- | | | | |
|----------|--------------------------|------------------------|--------------------------|
| Búlgaro | <input type="checkbox"/> | Lituano | <input type="checkbox"/> |
| Espanhol | <input type="checkbox"/> | Húngaro | <input type="checkbox"/> |
| Checo | <input type="checkbox"/> | Maltês | <input type="checkbox"/> |
| Alemão | <input type="checkbox"/> | Neerlandês | <input type="checkbox"/> |
| Estónio | <input type="checkbox"/> | Polaco | <input type="checkbox"/> |
| Grego | <input type="checkbox"/> | Português | <input type="checkbox"/> |
| Inglês | <input type="checkbox"/> | Romeno | <input type="checkbox"/> |
| Francês | <input type="checkbox"/> | Eslovaco | <input type="checkbox"/> |
| Irlandês | <input type="checkbox"/> | Esloveno | <input type="checkbox"/> |
| Italiano | <input type="checkbox"/> | Finlandês | <input type="checkbox"/> |
| Letão | <input type="checkbox"/> | Sueco | <input type="checkbox"/> |
| Outra | <input type="checkbox"/> | queira precisar: | |

Feito em:

Data:

Assinatura e/ou carimbo:

(*) Esta informação é facultativa.

RO:

Documentul anexat este notificat sau comunicat în conformitate cu Regulamentul (CE) nr. 1393/2007 al Parlamentului European și al Consiliului privind notificarea sau comunicarea în statele membre a actelor judiciare și extrajudiciare în materie civilă sau comercială.

Puteți refuza primirea actului în cazul în care acesta nu este redactat sau însoțit de o traducere într-una dintre limbile pe care le înțelegeți sau în limba oficială sau una dintre limbile oficiale ale locului de notificare sau comunicare.

Dacă doriți să exercitați acest drept, refuzați primirea actului în momentul notificării sau al comunicării, transmițând acest lucru direct persoanei care notifică sau comunică actul, ori returnați actul la adresa indicată mai jos, în termen de o săptămână, precizând că refuzați primirea acestuia.

ADRESĂ:

1. Nume:
2. Adresă:
- 2.1. Stradă și număr/C.P.:
- 2.2. Localitate și cod poștal:
- 2.3. Țara
3. Tel.:
4. Fax (*):
5. E-mail (*):

DECLARAȚIA DESTINATARULUI:

Refuz primirea actului anexat deoarece acesta nu este redactat sau însoțit de o traducere în una dintre limbile pe care le înțeleg sau în limba oficială sau una dintre limbile oficiale ale locului de notificare sau comunicare.

Înțeleg următoarea (următoarele) limbă (limbi):

- | | | | |
|-----------|--------------------------|----------------------|--------------------------|
| Bulgară | <input type="checkbox"/> | Lituaniană | <input type="checkbox"/> |
| Spaniolă | <input type="checkbox"/> | Maghiară | <input type="checkbox"/> |
| Cehă | <input type="checkbox"/> | Malteză | <input type="checkbox"/> |
| Germană | <input type="checkbox"/> | Olandeză | <input type="checkbox"/> |
| Estonă | <input type="checkbox"/> | Poloneză | <input type="checkbox"/> |
| Greacă | <input type="checkbox"/> | Portugheză | <input type="checkbox"/> |
| Engleză | <input type="checkbox"/> | Română | <input type="checkbox"/> |
| Franceză | <input type="checkbox"/> | Slovacă | <input type="checkbox"/> |
| Irlandeză | <input type="checkbox"/> | Slovenă | <input type="checkbox"/> |
| Italiană | <input type="checkbox"/> | Finlandeză | <input type="checkbox"/> |
| Letonă | <input type="checkbox"/> | Suedeză | <input type="checkbox"/> |
| Altele | <input type="checkbox"/> | vă rugăm, precizați: | |

Întocmită la:

Data:

Semnătura și/sau ștampila:

(*) Element facultativ.

SK:

Priložená písomnosť sa doručuje v súlade s nariadením Európskeho parlamentu a Rady (ES) č. 1393/2007 o doručovaní súdnych a mimosúdnych písomností v občianskych a obchodných veciach v členských štátoch.

Túto písomnosť môžete odmietnuť prevziať, ak nie je vyhotovená ani v jazyku, ktorému rozumiете, ani v úradnom jazyku miesta doručenia alebo v jednom z úradných jazykov miesta doručenia, ani k nej nie je pripojený preklad do niektorého z týchto jazykov.

Ak si želáte využiť toto právo, prevzatie písomnosti musíte odmietnuť pri jej doručení priamo osobe, ktorá písomnosť doručuje, alebo písomnosť musíte do jedného týždňa vrátiť na nižšie uvedenú adresu s vyhlásením, že ju odmietate prevziať.

ADRESA:

1. Označenie:
2. Adresa:
 - 2.1. Ulica a číslo/P. O. Box:
 - 2.2. Miesto a PSČ:
 - 2.3. Štát:
3. Tel.:
4. Fax (*):
5. E-mail (*):

VYHLÁSENIE ADRESÁTA:

Odmietam prevziať pripojenú písomnosť, pretože nie je vyhotovená ani v jazyku, ktorému rozumiem, ani v úradnom jazyku miesta doručenia alebo v jednom z úradných jazykov miesta doručenia, ani k nej nie je pripojený preklad do niektorého z týchto jazykov.

Rozumiem tomuto jazyku/týmto jazykom:

- | | | | |
|--------------|--------------------------|-----------------|--------------------------|
| bulharčina | <input type="checkbox"/> | litovčina | <input type="checkbox"/> |
| španielčina | <input type="checkbox"/> | maďarčina | <input type="checkbox"/> |
| čeština | <input type="checkbox"/> | maltčina | <input type="checkbox"/> |
| nemčina | <input type="checkbox"/> | holandčina | <input type="checkbox"/> |
| estónčina | <input type="checkbox"/> | poľština | <input type="checkbox"/> |
| gréčtina | <input type="checkbox"/> | portugalčina | <input type="checkbox"/> |
| angličtina | <input type="checkbox"/> | rumunčina | <input type="checkbox"/> |
| francúzština | <input type="checkbox"/> | slovenčina | <input type="checkbox"/> |
| írčina | <input type="checkbox"/> | slovínčina | <input type="checkbox"/> |
| taliančina | <input type="checkbox"/> | finčina | <input type="checkbox"/> |
| lotyština | <input type="checkbox"/> | švédčina | <input type="checkbox"/> |
| iný | <input type="checkbox"/> | (uveďte): | |

V:

Dňa:

Podpis a/alebo odtlačok pečiatky:

(*) Tento údaj je nepovinný.

SL:

Priloženo pisanje se vroča v skladu z Uredbo (ES) št. 1393/2007 Evropskega parlamenta in Sveta o vročanju sodnih in izvensodnih pisanj v civilnih ali gospodarskih zadevah v državah članicah.

Sprejem pisanja lahko zavnete, če ni sestavljeno v jeziku, ki ga razumete, ali v uradnem jeziku ali v enem od uradnih jezikov kraja vročitve, oziroma mu ni priložen prevod v enega od teh jezikov.

Če želite uveljaviti to pravico, morate zavrniti sprejem pisanja v trenutku vročitve, in sicer neposredno pri osebi, ki pisanje vroča, ali pisanje vrniti na spodaj navedeni naslov v roku enega tedna z izjavo, da sprejem zavračate.

NASLOV:

1. Ime:

2. Naslov:

2.1 Ulica in številka/poštni predal:

2.2 Kraj in poštna številka:

2.3 Država:

3. Telefon:

4. Faks (*):

5. Elektronska pošta (*):

IZJAVA NASLOVNIKA:

Zavračam sprejem priloženega pisanja, ker ni sestavljeno v jeziku, ki ga razumem, ali v uradnem jeziku ali v enem od uradnih jezikov kraja vročitve, oziroma mu ni priložen prevod v enega od teh jezikov.

Razumem naslednje jezike:

bolgarščino ☐litovščino ☐španščino ☐madžarščino ☐češčino ☐malteščino ☐nemščino ☐nizozemščino ☐estonsščino ☐poljščino ☐grščino ☐portugalščino ☐angleščino ☐romunščino ☐francoščino ☐slovaščino ☐irščino ☐slovenščino ☐italijanščino ☐finščino ☐latvijščino ☐švedščino ☐drugo ☐

prosimo, navedite:

V:

Datum:

Podpis in/ali žig:

(*) Ni obvezno.

SV:

Den bifogade handlingen har delgetts i enlighet med Europaparlamentets och rådets förordning (EG) nr 1393/2007 av den 13 november 2007 om delgivning i medlemsstaterna av rättegångshandlingar och andra handlingar i mål och ärenden av civil eller kommersiell natur.

Ni får vägra att ta emot handlingen om den inte är avfattad på, eller åtföljs av en översättning till, antingen ett språk som ni förstår eller det officiella språket eller något av de officiella språken på delgivningsorten.

Om ni önskar utnyttja denna rättighet, måste ni vägra att emot handlingen vid delgivningen genom att vända er direkt till delgivningsmannen eller genom att återsända handling inom en vecka till nedanstående adress och ange att ni vägrar att ta emot den.

ADRESS

1. Namn:
2. Adress:
- 2.1 Gatuaadress/box:
- 2.2 Postnummer och ort:
- 2.3 Land:
3. Tfn
4. Fax (*):
5. E-post (*):

ADRESSATENS FÖRKLARING

Jag vägrar att ta emot bifogade handling eftersom den inte är avfattad på, eller åtföljs av en översättning till, ett språk som jag förstår eller det officiella språket eller något av de officiella språken på delgivningsorten.

Jag förstår följande språk:

- | | | | |
|-------------|--------------------------|----------------------|--------------------------|
| Bulgariska | <input type="checkbox"/> | Litauiska | <input type="checkbox"/> |
| Spanska | <input type="checkbox"/> | Ungerska | <input type="checkbox"/> |
| Tjeckiska | <input type="checkbox"/> | Maltesiska | <input type="checkbox"/> |
| Tyska | <input type="checkbox"/> | Nederländska | <input type="checkbox"/> |
| Estniska | <input type="checkbox"/> | Polska | <input type="checkbox"/> |
| Grekiska | <input type="checkbox"/> | Portugisiska | <input type="checkbox"/> |
| Engelska | <input type="checkbox"/> | Rumänska | <input type="checkbox"/> |
| Franska | <input type="checkbox"/> | Slovakiska | <input type="checkbox"/> |
| Irländska | <input type="checkbox"/> | Slovenska | <input type="checkbox"/> |
| Italienska | <input type="checkbox"/> | Finska | <input type="checkbox"/> |
| Lettiska | <input type="checkbox"/> | Svenska | <input type="checkbox"/> |
| Annat språk | <input type="checkbox"/> | (ange vilket): | |

(*) Ej obligatoriskt.

Ort:

Datum:

Underskrift och/eller stempel:

(*)

(*) The information contained in this Annex would have read as follows in Danish if the Regulation had applied in Denmark:

DA:

Vedlagte dokument forkyndes hermed i overensstemmelse med Europa-Parlamentets og Rådets forordning (EF) nr. 1393/2007 om forkyndelse i medlemsstaterne af retslige og udenretslige dokumenter i civile og kommercielle sager.

De kan nægte at modtage dokumentet, hvis det ikke er affattet på eller ledsaget af en oversættelse til enten et sprog, som De forstår, eller det officielle sprog eller et af de officielle sprog på forkyndelsesstedet.

Hvis De ønsker at gøre brug af denne ret, skal De nægte at modtage dokumentet ved forkyndelsen direkte over for den person, der forkynder det, eller returnere det til nedenstående adresse senest en uge efter forkyndelsen med angivelse af, at De nægter at modtage det.

ADRESSE:

1. Navn:
2. Adresse:
- 2.1. Gade og nummer/postboks:
- 2.2. Postnummer og bynavn:
- 2.3. Land:
3. Tlf.:
4. Fax (*):
5. E-mail (*):

ERKLÆRING FRA ADRESSATEN:

Jeg nægter at modtage vedlagte dokument, da det ikke er affattet på eller ledsaget af en oversættelse til et sprog, som jeg forstår, eller det officielle sprog eller et af de officielle sprog på forkyndelsesstedet.

Jeg forstår følgende sprog:

Bulgarsk	<input type="checkbox"/>	Litauisk	<input type="checkbox"/>
Spansk	<input type="checkbox"/>	Ungarsk	<input type="checkbox"/>
Tjekkisk	<input type="checkbox"/>	Maltesisk	<input type="checkbox"/>
Tysk	<input type="checkbox"/>	Nederlandsk	<input type="checkbox"/>
Estisk	<input type="checkbox"/>	Polsk	<input type="checkbox"/>
Græsk	<input type="checkbox"/>	Portugisisk	<input type="checkbox"/>
Engelsk	<input type="checkbox"/>	Rumænsk	<input type="checkbox"/>
Fransk	<input type="checkbox"/>	Slovakisk	<input type="checkbox"/>
Irsk	<input type="checkbox"/>	Slovensk	<input type="checkbox"/>
Italiensk	<input type="checkbox"/>	Finsk	<input type="checkbox"/>
Lettisk	<input type="checkbox"/>	Svensk	<input type="checkbox"/>
Andet:	<input type="checkbox"/>	præciseres:

Udfærdiget i:

Den:

Underskrift og/eller stempel:

(*) Fakultativt.

ANNEX III

CORRELATION TABLE

Regulation (EC) No 1348/2000	This Regulation
Article 1(1)	Article 1(1) first sentence
—	Article 1(1) second sentence
Article 1(2)	Article 1(2)
—	Article 1(3)
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7(1)	Article 7(1)
Article 7(2) first sentence	Article 7(2) first sentence
Article 7(2) second sentence	Article 7(2) second sentence (introductory phrase) and Article 7(2)(a)
—	Article 7(2)(b)
Article 7(2) third sentence	—
Article 8(1) introductory phrase	Article 8(1) introductory phrase
Article 8(1)(a)	Article 8(1)(b)
Article 8(1)(b)	Article 8(1)(a)
Article 8(2)	Article 8(2)
—	Article 8(3) to (5)
Article 9(1) and (2)	Article 9(1) and (2)
Article 9(3)	—
—	Article 9(3)
Article 10	Article 10
Article 11(1)	Article 11(1)
Article 11(2)	Article 11(2) first subparagraph
—	Article 11(2) second subparagraph
Article 12	Article 12
Article 13	Article 13
Article 14(1)	Article 14
Article 14(2)	—
Article 15(1)	Article 15
Article 15(2)	—
Article 16	Article 16
Article 17, introductory phrase	Article 17
Article 17(a) to (c)	—
Article 18(1) and (2)	Article 18(1) and (2)

Regulation (EC) No 1348/2000	This Regulation
Article 18(3)	—
Article 19	Article 19
Article 20	Article 20
Article 21	Article 21
Article 22	Article 22
Article 23(1)	Article 23(1) first sentence
—	Article 23(1) second sentence
Article 23(2)	Article 23(2)
—	Article 23(3)
Article 24	Article 24
Article 25	—
—	Article 25
—	Article 26
Annex	Annex I
—	Annex II
—	Annex III

Taking of evidence

6a

Council Regulation (EC) No 1206/2001
of 28 May 2001 on cooperation between the
courts of the Member States in the taking
of evidence in civil or commercial matters



I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1206/2001**of 28 May 2001****on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(1) thereof,

Having regard to the initiative of the Federal Republic of Germany⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing the European Union as an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.
- (2) For the purpose of the proper functioning of the internal market, cooperation between courts in the taking of evidence should be improved, and in particular simplified and accelerated.
- (3) At its meeting in Tampere on 15 and 16 October 1999, the European Council recalled that new procedural legislation in cross-border cases, in particular on the taking of evidence, should be prepared.
- (4) This area falls within the scope of Article 65 of the Treaty.

- (5) The objectives of the proposed action, namely the improvement of cooperation between the courts on the taking of evidence in civil or commercial matters, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level. The Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (6) To date, there is no binding instrument between all the Member States concerning the taking of evidence. The Hague Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters applies between only 11 Member States of the European Union.
- (7) As it is often essential for a decision in a civil or commercial matter pending before a court in a Member State to take evidence in another Member State, the Community's activity cannot be limited to the field of transmission of judicial and extrajudicial documents in civil or commercial matters which falls within the scope of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the serving in the Member States of judicial and extrajudicial documents in civil or commercial matters⁽⁴⁾. It is therefore necessary to continue the improvement of cooperation between courts of Member States in the field of taking of evidence.
- (8) The efficiency of judicial procedures in civil or commercial matters requires that the transmission and execution of requests for the performance of taking of evidence is to be made directly and by the most rapid means possible between Member States' courts.

⁽¹⁾ OJ C 314, 3.11.2000, p. 2.

⁽²⁾ Opinion delivered on 14 March 2001 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 28 February 2001 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 160, 30.6.2000, p. 37.

- (9) Speed in transmission of requests for the performance of taking of evidence warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed. So as to ensure the utmost clarity and legal certainty the request for the performance of taking of evidence must be transmitted on a form to be completed in the language of the Member State of the requested court or in another language accepted by that State. For the same reasons, forms should also be used as far as possible for further communication between the relevant courts.
- (10) A request for the performance of the taking of evidence should be executed expeditiously. If it is not possible for the request to be executed within 90 days of receipt by the requested court, the latter should inform the requesting court accordingly, stating the reasons which prevent the request from being executed swiftly.
- (11) To secure the effectiveness of this Regulation, the possibility of refusing to execute the request for the performance of taking of evidence should be confined to strictly limited exceptional situations.
- (12) The requested court should execute the request in accordance with the law of its Member State.
- (13) The parties and, if any, their representatives, should be able to be present at the performance of the taking of evidence, if that is provided for by the law of the Member State of the requesting court, in order to be able to follow the proceedings in a comparable way as if evidence were taken in the Member State of the requesting court. They should also have the right to request to participate in order to have a more active role in the performance of the taking of evidence. However, the conditions under which they may participate should be determined by the requested court in accordance with the law of its Member State.
- (14) The representatives of the requesting court should be able to be present at the performance of the taking of evidence, if that is compatible with the law of the Member State of the requesting court, in order to have an improved possibility of evaluation of evidence. They should also have the right to request to participate, under the conditions laid down by the requested court in accordance with the law of its Member State, in order to have a more active role in the performance of the taking of evidence.
- (15) In order to facilitate the taking of evidence it should be possible for a court in a Member State, in accordance with the law of its Member State, to take evidence directly in another Member State, if accepted by the latter, and under the conditions determined by the central body or competent authority of the requested Member State.
- (16) The execution of the request, according to Article 10, should not give rise to a claim for any reimbursement of taxes or costs. Nevertheless, if the requested court requires reimbursement, the fees paid to experts and interpreters, as well as the costs occasioned by the application of Article 10(3) and (4), should not be borne by that court. In such a case, the requesting court is to take the necessary measures to ensure reimbursement without delay. Where the opinion of an expert is required, the requested court may, before executing the request, ask the requesting court for an adequate deposit or advance towards the costs.
- (17) This Regulation should prevail over the provisions applying to its field of application, contained in international conventions concluded by the Member States. Member States should be free to adopt agreements or arrangements to further facilitate cooperation in the taking of evidence.
- (18) The information transmitted pursuant to this Regulation should enjoy protection. Since Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾, and Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector⁽²⁾, are applicable, there is no need for specific provisions on data protection in this Regulation.
- (19) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999⁽³⁾ laying down the procedures for the exercise of implementing powers conferred on the Commission.
- (20) For the proper functioning of this Regulation, the Commission should review its application and propose such amendments as may appear necessary.
- (21) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (1) OJ L 281, 23.11.1995, p. 31.
(2) OJ L 24, 30.1.1998, p. 1.
(3) OJ L 184, 17.7.1999, p. 23.

- (22) Denmark, 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 establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation shall apply in civil or commercial matters where the court of a Member State, in accordance with the provisions of the law of that State, requests:

- (a) the competent court of another Member State to take evidence; or
- (b) to take evidence directly in another Member State.

2. A request shall not be made to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.

Article 2

Direct transmission between the courts

1. Requests pursuant to Article 1(1)(a), hereinafter referred to as 'requests', shall be transmitted by the court before which the proceedings are commenced or contemplated, hereinafter referred to as the 'requesting court', directly to the competent court of another Member State, hereinafter referred to as the 'requested court', for the performance of the taking of evidence.

2. Each Member State shall draw up a list of the courts competent for the performance of taking of evidence according to this Regulation. The list shall also indicate the territorial and, where appropriate, the special jurisdiction of those courts.

Article 3

Central body

1. Each Member State shall designate a central body responsible for:

- (a) supplying information to the courts;
- (b) seeking solutions to any difficulties which may arise in respect of a request;
- (c) forwarding, in exceptional cases, at the request of a requesting court, a request to the competent court.

2. A federal State, a State in which several legal systems apply or a State with autonomous territorial entities shall be free to designate more than one central body.

3. Each Member State shall also designate the central body referred to in paragraph 1 or one or several competent authority(ies) to be responsible for taking decisions on requests pursuant to Article 17.

CHAPTER II

TRANSMISSION AND EXECUTION OF REQUESTS

Section 1

Transmission of the request

Article 4

Form and content of the request

1. The request shall be made using form A or, where appropriate, form I in the Annex. It shall contain the following details:

- (a) the requesting and, where appropriate, the requested court;
- (b) the names and addresses of the parties to the proceedings and their representatives, if any;
- (c) the nature and subject matter of the case and a brief statement of the facts;
- (d) a description of the taking of evidence to be performed;
- (e) where the request is for the examination of a person:
 - the name(s) and address(es) of the person(s) to be examined,
 - the questions to be put to the person(s) to be examined or a statement of the facts about which he is (they are) to be examined,
 - where appropriate, a reference to a right to refuse to testify under the law of the Member State of the requesting court,

— any requirement that the examination is to be carried out under oath or affirmation in lieu thereof, and any special form to be used,

— where appropriate, any other information that the requesting court deems necessary;

(f) where the request is for any other form of taking of evidence, the documents or other objects to be inspected;

(g) where appropriate, any request pursuant to Article 10(3) and (4), and Articles 11 and 12 and any information necessary for the application thereof.

2. The request and all documents accompanying the request shall be exempted from authentication or any equivalent formality.

3. Documents which the requesting court deems it necessary to enclose for the execution of the request shall be accompanied by a translation into the language in which the request was written.

Article 5

Language

The request and communications pursuant to this Regulation shall be drawn up in the official language of the requested Member State or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where the requested taking of evidence is to be performed, or in another language which the requested Member State has indicated it can accept. Each Member State shall indicate the official language or languages of the institutions of the European Community other than its own which is or are acceptable to it for completion of the forms.

Article 6

Transmission of requests and other communications

Requests and communications pursuant to this Regulation shall be transmitted by the swiftest possible means, which the requested Member State has indicated it can accept. The transmission may be carried out by any appropriate means, provided that the document received accurately reflects the content of the document forwarded and that all information in it is legible.

Section 2

Receipt of request

Article 7

Receipt of request

1. Within seven days of receipt of the request, the requested competent court shall send an acknowledgement of receipt to the requesting court using form B in the Annex. Where the request does not comply with the conditions laid down in Articles 5 and 6, the requested court shall enter a note to that effect in the acknowledgement of receipt.

2. Where the execution of a request made using form A in the Annex, which complies with the conditions laid down in Article 5, does not fall within the jurisdiction of the court to which it was transmitted, the latter shall forward the request to the competent court of its Member State and shall inform the requesting court thereof using form A in the Annex.

Article 8

Incomplete request

1. If a request cannot be executed because it does not contain all of the necessary information pursuant to Article 4, the requested court shall inform the requesting court thereof without delay and, at the latest, within 30 days of receipt of the request using form C in the Annex, and shall request it to send the missing information, which should be indicated as precisely as possible.

2. If a request cannot be executed because a deposit or advance is necessary in accordance with Article 18(3), the requested court shall inform the requesting court thereof without delay and, at the latest, within 30 days of receipt of the request using form C in the Annex and inform the requesting court how the deposit or advance should be made. The requested Court shall acknowledge receipt of the deposit or advance without delay, at the latest within 10 days of receipt of the deposit or the advance using form D.

Article 9

Completion of the request

1. If the requested court has noted on the acknowledgement of receipt pursuant to Article 7(1) that the request does not comply with the conditions laid down in Articles 5 and 6 or has informed the requesting court pursuant to Article 8 that the request cannot be executed because it does not contain all of the necessary information pursuant to Article 4, the time limit pursuant to Article 10 shall begin to run when the requested court received the request duly completed.

2. Where the requested court has asked for a deposit or advance in accordance with Article 18(3), this time limit shall begin to run when the deposit or the advance is made.

Section 3

Taking of evidence by the requested court

Article 10

General provisions on the execution of the request

1. The requested court shall execute the request without delay and, at the latest, within 90 days of receipt of the request.

2. The requested court shall execute the request in accordance with the law of its Member State.

3. The requesting court may call for the request to be executed in accordance with a special procedure provided for by the law of its Member State, using form A in the Annex. The requested court shall comply with such a requirement unless this procedure is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties. If the requested court does not comply with the requirement for one of these reasons it shall inform the requesting court using form E in the Annex.

4. The requesting court may ask the requested court to use communications technology at the performance of the taking of evidence, in particular by using videoconference and teleconference.

The requested court shall comply with such a requirement unless this is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties.

If the requested court does not comply with the requirement for one of these reasons, it shall inform the requesting court, using form E in the Annex.

If there is no access to the technical means referred to above in the requesting or in the requested court, such means may be made available by the courts by mutual agreement.

Article 11

Performance with the presence and participation of the parties

1. If it is provided for by the law of the Member State of the requesting court, the parties and, if any, their representatives, have the right to be present at the performance of the taking of evidence by the requested court.

2. The requesting court shall, in its request, inform the requested court that the parties and, if any, their representatives, will be present and, where appropriate, that their participation is requested, using form A in the Annex. This information may also be given at any other appropriate time.

3. If the participation of the parties and, if any, their representatives, is requested at the performance of the taking of evidence, the requested court shall determine, in accordance with Article 10, the conditions under which they may participate.

4. The requested court shall notify the parties and, if any, their representatives, of the time when, the place where, the proceedings will take place, and, where appropriate, the conditions under which they may participate, using form F in the Annex.

5. Paragraphs 1 to 4 shall not affect the possibility for the requested court of asking the parties and, if any their representatives, to be present at or to participate in the performance of the taking of evidence if that possibility is provided for by the law of its Member State.

Article 12

Performance with the presence and participation of representatives of the requesting court

1. If it is compatible with the law of the Member State of the requesting court, representatives of the requesting court have the right to be present in the performance of the taking of evidence by the requested court.

2. For the purpose of this Article, the term 'representative' shall include members of the judicial personnel designated by the requesting court, in accordance with the law of its Member State. The requesting court may also designate, in accordance with the law of its Member State, any other person, such as an expert.

3. The requesting court shall, in its request, inform the requested court that its representatives will be present and, where appropriate, that their participation is requested, using form A in the Annex. This information may also be given at any other appropriate time.

4. If the participation of the representatives of the requesting court is requested in the performance of the taking of evidence, the requested court shall determine, in accordance with Article 10, the conditions under which they may participate.

5. The requested court shall notify the requesting court, of the time when, and the place where, the proceedings will take place, and, where appropriate, the conditions under which the representatives may participate, using form F in the Annex.

Article 13

Coercive measures

Where necessary, in executing a request the requested court shall apply the appropriate coercive measures in the instances and to the extent as are provided for by the law of the Member State of the requested court for the execution of a request made for the same purpose by its national authorities or one of the parties concerned.

Article 14

Refusal to execute

1. A request for the hearing of a person shall not be executed when the person concerned claims the right to refuse to give evidence or to be prohibited from giving evidence,

- (a) under the law of the Member State of the requested court; or
- (b) under the law of the Member State of the requesting court, and such right has been specified in the request, or, if need be, at the instance of the requested court, has been confirmed by the requesting court.

2. In addition to the grounds referred to in paragraph 1, the execution of a request may be refused only if:

- (a) the request does not fall within the scope of this Regulation as set out in Article 1; or
- (b) the execution of the request under the law of the Member State of the requested court does not fall within the functions of the judiciary; or
- (c) the requesting court does not comply with the request of the requested court to complete the request pursuant to Article 8 within 30 days after the requested court asked it to do so; or
- (d) a deposit or advance asked for in accordance with Article 18(3) is not made within 60 days after the requested court asked for such a deposit or advance.

3. Execution may not be refused by the requested court solely on the ground that under the law of its Member State a court of that Member State has exclusive jurisdiction over the subject matter of the action or that the law of that Member State would not admit the right of action on it.

4. If execution of the request is refused on one of the grounds referred to in paragraph 2, the requested court shall notify the requesting court thereof within 60 days of receipt of the request by the requested court using form H in the Annex.

Article 15

Notification of delay

If the requested court is not in a position to execute the request within 90 days of receipt, it shall inform the requesting court thereof, using form G in the Annex. When it does so, the grounds for the delay shall be given as well as the estimated time that the requested court expects it will need to execute the request.

Article 16

Procedure after execution of the request

The requested court shall send without delay to the requesting court the documents establishing the execution of the request and, where appropriate, return the documents received from the requesting court. The documents shall be accompanied by a confirmation of execution using form H in the Annex.

Section 4

Direct taking of evidence by the requesting court

Article 17

1. Where a court requests to take evidence directly in another Member State, it shall submit a request to the central body or the competent authority referred to in Article 3(3) in that State, using form I in the Annex.

2. Direct taking of evidence may only take place if it can be performed on a voluntary basis without the need for coercive measures.

Where the direct taking of evidence implies that a person shall be heard, the requesting court shall inform that person that the performance shall take place on a voluntary basis.

3. The taking of evidence shall be performed by a member of the judicial personnel or by any other person such as an expert, who will be designated, in accordance with the law of the Member State of the requesting court.

4. Within 30 days of receiving the request, the central body or the competent authority of the requested Member State shall inform the requesting court if the request is accepted and, if necessary, under what conditions according to the law of its Member State such performance is to be carried out, using form J.

In particular, the central body or the competent authority may assign a court of its Member State to take part in the performance of the taking of evidence in order to ensure the proper application of this Article and the conditions that have been set out.

The central body or the competent authority shall encourage the use of communications technology, such as videoconferences and teleconferences.

5. The central body or the competent authority may refuse direct taking of evidence only if:

- (a) the request does not fall within the scope of this Regulation as set out in Article 1;
- (b) the request does not contain all of the necessary information pursuant to Article 4; or
- (c) the direct taking of evidence requested is contrary to fundamental principles of law in its Member State.

6. Without prejudice to the conditions laid down in accordance with paragraph 4, the requesting court shall execute the request in accordance with the law of its Member State.

Section 5

Costs

Article 18

1. The execution of the request, in accordance with Article 10, shall not give rise to a claim for any reimbursement of taxes or costs.

2. Nevertheless, if the requested court so requires, the requesting court shall ensure the reimbursement, without delay, of:

- the fees paid to experts and interpreters, and
- the costs occasioned by the application of Article 10(3) and(4).

The duty for the parties to bear these fees or costs shall be governed by the law of the Member State of the requesting court.

3. Where the opinion of an expert is required, the requested court may, before executing the request, ask the requesting court for an adequate deposit or advance towards the requested costs. In all other cases, a deposit or advance shall not be a condition for the execution of a request.

The deposit or advance shall be made by the parties if that is provided for by the law of the Member State of the requesting court.

CHAPTER III

FINAL PROVISIONS

Article 19

Implementing rules

1. The Commission shall draw up and regularly update a manual, which shall also be available electronically, containing the information provided by the Member States in accordance with Article 22 and the agreements or arrangements in force, according to Article 21.

2. The updating or making of technical amendments to the standard forms set out in the Annex shall be carried out in accordance with the advisory procedure set out in Article 20(2).

Article 20

Committee

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

3. The Committee shall adopt its Rules of Procedure.

Article 21

Relationship with existing or future agreements or arrangements between Member States

1. This Regulation shall, in relation to matters to which it applies, prevail over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States and in particular the Hague Convention of 1 March 1954 on Civil Procedure and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, in relations between the Member States party thereto.

2. This Regulation shall not preclude Member States from maintaining or concluding agreements or arrangements between two or more of them to further facilitate the taking of evidence, provided that they are compatible with this Regulation.

3. Member States shall send to the Commission:

- (a) by 1 July 2003, a copy of the agreements or arrangements maintained between the Member States referred to in paragraph 2;
- (b) a copy of the agreements or arrangements concluded between the Member States referred to in paragraph 2 as well as drafts of such agreements or arrangements which they intend to adopt; and
- (c) any denunciation of, or amendments to, these agreements or arrangements.

Article 22

Communication

By 1 July 2003 each Member State shall communicate to the Commission the following:

- (a) the list pursuant to Article 2(2) indicating the territorial and, where appropriate, the special jurisdiction of the courts;
- (b) the names and addresses of the central bodies and competent authorities pursuant to Article 3, indicating their territorial jurisdiction;

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 28 May 2001.

- (c) the technical means for the receipt of requests available to the courts on the list pursuant to Article 2(2);
- (d) the languages accepted for the requests as referred to in Article 5.

Member States shall inform the Commission of any subsequent changes to this information.

Article 23

Review

No later than 1 January 2007, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation, paying special attention to the practical application of Article 3(1)(c) and 3, and Articles 17 and 18.

Article 24

Entry into force

- 1. This Regulation shall enter into force on 1 July 2001.
- 2. This Regulation shall apply from 1 January 2004, except for Articles 19, 21 and 22, which shall apply from 1 July 2001.

For the Council

The President

T. BODSTRÖM

ANNEX

FORM A

Request for the taking of evidence

(Article 4 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1))

1. Reference of the requesting court:
2. Reference of the requested court:
3. Requesting court:
 - 3.1. Name:
 - 3.2. Address:
 - 3.2.1. Street and No/PO box:
 - 3.2.2. Place and postcode:
 - 3.2.3. Country:
 - 3.3. Tel.
 - 3.4. Fax
 - 3.5. E-mail:
4. Requested court:
 - 4.1. Name:
 - 4.2. Address:
 - 4.2.1. Street and No/PO box:
 - 4.2.2. Place and postcode:
 - 4.2.3. Country:
 - 4.3. Tel.
 - 4.4. Fax
 - 4.5. E-mail:
5. In the case brought by the claimant/petitioner:
 - 5.1. Name:
 - 5.2. Address:
 - 5.2.1. Street and No/PO box:
 - 5.2.2. Place and postcode:
 - 5.2.3. Country:

- 5.3. Tel.
- 5.4. Fax
- 5.5. E-mail:
6. Representatives of the claimant/petitioner:
 - 6.1. Name:
 - 6.2. Address:
 - 6.2.1. Street and No/PO box:
 - 6.2.2. Place and postcode:
 - 6.2.3. Country:
 - 6.3. Tel.
 - 6.4. Fax
 - 6.5. E-mail:
7. Against the defendant/respondent:
 - 7.1. Name:
 - 7.2. Address:
 - 7.2.1. Street and No/PO box:
 - 7.2.2. Place and postcode:
 - 7.2.3. Country:
 - 7.3. Tel.
 - 7.4. Fax
 - 7.5. E-mail:
8. Representatives of defendant/respondent:
 - 8.1. Name:
 - 8.2. Address:
 - 8.2.1. Street and No/PO box:
 - 8.2.2. Place and postcode:
 - 8.2.3. Country:
 - 8.3. Tel:
 - 8.4. Fax:
 - 8.5. E-mail:

9. Presence and participation of the parties:

9.1. Parties and, if any, their representatives will be present at the taking of evidence: ☐9.2. Participation of the parties and, if any, their representatives is requested: ☐

10. Presence and participation of the representatives of the requesting court:

10.1. Representatives will be present at the taking of evidence: ☐10.2. Participation of the representatives is requested: ☐

10.2.1. Name:

10.2.2. Title:

10.2.3. Function:

10.2.4. Task:

11. Nature and subject matter of the case and a brief statement of the facts (in annex, where appropriate):

12. Taking of evidence to be performed

12.1. Description of the taking of evidence to be performed (in annex, where appropriate):

12.2. Examination of witnesses:

12.2.1. Name and surname:

12.2.2. Address:

12.2.3. Tel.

12.2.4. Fax

12.2.5. E-mail:

12.2.6. Questions to be put to the witness or a statement of the facts about which they are to be examined (in annex, where appropriate):

12.2.7. Right to refuse to testify under the law of the Member State of the requesting court (in annex, where appropriate):

12.2.8. Please examine the witness:

12.2.8.1. under oath: ☐12.2.8.2. on affirmation: ☐

12.2.9. Any other information that the requesting court deems necessary (in annex, where appropriate):

12.3. Other taking of evidence:

12.3.1. Documents to be inspected and a description of the requested taking of evidence (in annex, where appropriate):

12.3.2. Objects to be inspected and a description of the requested taking of evidence (in annex, where appropriate):

13. Please execute the request

13.1. In accordance with a special procedure (Article 10(3)) provided for by the law of the Member State of the requesting court and/or by the use of communications technology (Article 10(4)) described in annex:

13.2. Following information is necessary for the application thereof:

Done at:

Date:

Notification of forwarding the request

Article 7(2) of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

14. The request does not fall within the jurisdiction of the court indicated in point 4 above and was forwarded to

14.1. Name of the competent court:

14.2. Address:

14.2.1. Street and No/PO box:

14.2.2. Place and postcode:

14.2.3. Country:

14.3. Tel.

14.4. Fax

14.5. E-mail:

Done at:

Date:

FORM B

Acknowledgement of receipt of a request for the taking of evidence

(Article 7(1) of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1))

1. Reference of the requesting court:
2. Reference of the requested court:
3. Name of the requesting court:
4. Requested court:
 - 4.1. Name:
 - 4.2. Address:
 - 4.2.1. Street and No/PO box:
 - 4.2.2. Place and postcode:
 - 4.2.3. Country:
 - 4.3. Tel.
 - 4.4. Fax
 - 4.5. E-mail:
5. The request was received on ... (date of receipt) by the court indicated in point 4 above.
6. The request cannot be dealt with because:
 - 6.1. The language used to complete the form is not acceptable (Article 5): ☐
 - 6.1.1. Please use one the following languages:
 - 6.2. The document is not legible (Article 6): ☐

Done at:

Date:

FORM C

Request for additional information for the taking of evidence

(Article 8 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1))

1. Reference of the requested court:
2. Reference of the requesting court:
3. Name of the requesting court:
4. Name of the requested court:
5. The request cannot be executed without the following additional information:
6. The request cannot be executed before a deposit or advance is made in accordance with Article 18(3). The deposit or advance should be made in the following way:

Done at:

Date:

FORM D**Acknowledgement of receipt of the deposit or advance**

(Article 8(2) of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1))

1. Reference of the requesting court:
2. Reference of the requested court:
3. Name of the requesting court:
4. Name of the requested court:
5. The deposit or advance was received on ... (date of receipt) by the court indicated in point 4 above.

Done at:

Date:

FORM E

Notification concerning the request for special procedures and/or for the use of communications technologies

(Article 10(3) and (4) of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1))

1. Reference of the requested court:
2. Reference of the requesting court:
3. Name of the requesting court:
4. Name of the requested court:
5. The requirement for execution of the request according to the special procedure indicated in point 13.1 of the request (Form A) could not be complied with because:
 - 5.1. the required procedure is incompatible with the law of the Member State of the requested court: ☐
 - 5.2. the performance of the requested procedure is not possible by reason of major practical difficulties: ☐
6. The requirement for execution of the request for the use of communications technologies indicated in point 13.1 of the request (Form A) could not be complied with because:
 - 6.1. The use of communications technology is incompatible with the law of the Member State of the requested court ☐
 - 6.2. The use of the communications technology is not possible by reason of major practical difficulties ☐

Done at:

Date:

FORM F

Notification of the date, time, place of performance of the taking of evidence and the conditions for participation

(Articles 11(4) and 12(5) of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1))

1. Reference of the requesting court:
2. Reference of the requested court:
3. Requesting court
 - 3.1. Name:
 - 3.2. Address:
 - 3.2.1. Street and No/PO box:
 - 3.2.2. Place and postcode:
 - 3.2.3. Country:
 - 3.3. Tel.
 - 3.4. Fax
 - 3.5. E-mail:
4. Requested court
 - 4.1. Name:
 - 4.2. Address:
 - 4.2.1. Street and No/PO box:
 - 4.2.2. Place and postcode:
 - 4.2.3. Country:
 - 4.3. Tel.
 - 4.4. Fax
 - 4.5. E-mail:
5. Date and time of the performance of the taking of evidence:
6. Place of the performance of the taking of evidence, if different from that referred to in point 4 above:
7. Where appropriate, conditions under which the parties and, if any, their representatives may participate:

8. Where appropriate, conditions under which the representatives of the requesting court may participate:

Done at:

Date:

FORM G

Notification of delay

(Article 15 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1))

1. Reference of the requested court:
2. Reference of the requesting court:
3. Name of the requesting court:
4. Name of the requested court:
5. The request can not be executed within 90 days of receipt for the following reasons:
6. It is estimated that the request will be executed by ... (indicate an estimated date)

Done at:

Date:

FORM H

Information on the outcome of the request

(Articles 14 and 16 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1))

1. Reference of the requested court:
2. Reference of the requesting court:
3. Name of the requesting court:
4. Name of the requested court:
5. The request has been executed. ☐
The documents establishing execution of the request are attached:
6. Execution of the request has been refused because:
 - 6.1. the person to be examined has claimed the right to refuse to give evidence or has claimed to be prohibited from giving evidence:
 - 6.1.1. under the law of the Member State of the requested court: ☐
 - 6.1.2. under the law of the Member State of the requesting court: ☐
 - 6.2. The request does not fall within the scope of this Regulation ☐
 - 6.3. Under the law of the Member State of the requested court, the execution of the request does not fall within the functions of the judiciary: ☐
 - 6.4. The requesting court has not complied with the request for additional information from the requested court dated ... (date of the request): ☐
 - 6.5. A deposit or advance asked for in accordance with Article 18(3) has not been made: ☐

Done at:

Date:

FORM I

Request for direct taking of evidence

(Article 17 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1))

1. Reference of the requesting court:
2. Reference of the central body/competent authority:
3. Requesting court:
 - 3.1. Name:
 - 3.2. Address:
 - 3.2.1. Street and No/PO box:
 - 3.2.2. Place and postcode:
 - 3.2.3. Country:
 - 3.3. Tel.
 - 3.4. Fax
 - 3.5. E-mail:
4. Central body/competent authority of the requested State:
 - 4.1. Name:
 - 4.2. Address:
 - 4.2.1. Street and No/PO box:
 - 4.2.2. Place and postcode:
 - 4.2.3. Country:
 - 4.3. Tel.
 - 4.4. Fax
 - 4.5. E-mail:
5. In the case brought by the claimant/petitioner:
 - 5.1. Name:
 - 5.2. Address:
 - 5.2.1. Street and No/PO box:
 - 5.2.2. Place and postcode:
 - 5.2.3. Country:

- 5.3. Tel.:
- 5.4. Fax
- 5.5. E-mail:
- 6. Representatives of the claimant/petitioner:
 - 6.1. Name:
 - 6.2. Address:
 - 6.2.1. Street and No/PO box:
 - 6.2.2. Place and postcode:
 - 6.2.3. Country:
 - 6.3. Tel.
 - 6.4. Fax
 - 6.5. E-mail:
- 7. Against the defendant/respondent:
 - 7.1. Name:
 - 7.2. Address:
 - 7.2.1. Street and No/PO box:
 - 7.2.2. Place and postcode:
 - 7.2.3. Country:
 - 7.3. Tel.
 - 7.4. Fax
 - 7.5. E-mail:
- 8. Representatives of defendant/respondent:
 - 8.1. Name:
 - 8.2. Address:
 - 8.2.1. Street and No/PO box:
 - 8.2.2. Place and postcode:
 - 8.2.3. Country:
 - 8.3. Tel.
 - 8.4. Fax
 - 8.5. E-mail:

9. The taking of evidence shall be performed by:
 - 9.1. Name:
 - 9.2. Title:
 - 9.3. Function:
 - 9.4. Task:
10. Nature and subject matter of the case and a brief statement of the facts (in annex, where appropriate):
11. Taking of evidence to be performed:
 - 11.1. Description of the taking of evidence to be performed (in annex, where appropriate):
 - 11.2. Examination of witnesses:
 - 11.2.1. First names and surname:
 - 11.2.2. Address:
 - 11.2.3. Tel.
 - 11.2.4. Fax
 - 11.2.5. E-mail:
 - 11.2.6. Questions to be put to the witness or a statement of the facts about which they are to be examined (in the annex, where appropriate):
 - 11.2.7. Right to refuse to testify under the law of the Member State of the requesting court (in annex, where appropriate):
 - 11.3. Other taking of evidence (in annex, where appropriate):
12. The requesting court requests to take evidence directly by use of the following communications technology (in annex, where appropriate):

Done at:

Date:

FORM J

Information from the central body/competent authority

(Article 17 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1))

1. Reference of the requesting court:
2. Reference of the central body/competent authority:
3. Name of the requesting court:
4. Central body/competent authority:
 - 4.1. Name:
 - 4.2. Address:
 - 4.2.1. Street and No/PO box:
 - 4.2.2. Place and postcode:
 - 4.2.3. Country:
 - 4.3. Tel.
 - 4.4. Fax
 - 4.5. E-mail:
5. Information from the central body/competent authority:
 - 5.1. Direct taking of evidence in accordance with the request is accepted: ☐
 - 5.2. Direct taking of evidence in accordance with the request is accepted under the following conditions (in annex, where appropriate): ☐
 - 5.3. Direct taking of evidence in accordance with the request is refused for the following reasons:
 - 5.3.1. The request does not fall within the scope of this Regulation: ☐
 - 5.3.2. The request does not contain all of the necessary information pursuant to Article 4: ☐
 - 5.3.3. The direct taking of evidence requested for is contrary to fundamental principles of law of the Member State of the central body/competent authority: ☐

Done at:

Date:

European Judicial Network in civil and commercial matters

7a

2001/470/EC: Council Decision of 28 May 2001
establishing a European Judicial Network
in civil and commercial matters



II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 28 May 2001

establishing a European Judicial Network in civil and commercial matters

(2001/470/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and (d), 66 and 67(1) thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing the European Union as an area of freedom, security and justice, in which the free movement of persons is assured.
- (2) The gradual establishment of this area and the sound operation of the internal market entails the need to improve, simplify and expedite effective judicial cooperation between the Member States in civil and commercial matters.

- (3) The action plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice⁽⁴⁾ which was adopted by the Council on 3 December 1998 and approved by the European Council on 11 and 12 December 1998 acknowledges that reinforcement of judicial cooperation in civil matters represents a fundamental stage in the creation of a European judicial area which will bring tangible benefits for every European Union citizen.

- (4) One of the measures provided for in paragraph 40 of the action plan is to examine the possibility of extending the concept of the European Judicial Network in criminal matters to embrace civil proceedings.

- (5) The conclusions of the special European Council held at Tampere on 15 and 16 October 1999 recommend the establishment of an easily accessible information system, to be maintained and updated by a Network of competent national authorities.

- (6) In order to improve, simplify and expedite effective judicial cooperation between the Member States in civil and commercial matters, it is necessary to establish at Community level a network cooperation structure — the European Judicial Network in civil and commercial matters.

⁽¹⁾ OJ C 29 E, 30.1.2001, p. 281.

⁽²⁾ Opinion delivered on 5 April 2001 (not yet published in the Official Journal).

⁽³⁾ OJ C 139, 11.5.2001, p. 6.

⁽⁴⁾ OJ C 19, 23.1.1999, p. 1.

- (7) This is a subject falling within the ambit of Articles 65 and 66 of the Treaty, and the measures are to be adopted in accordance with Article 67.
- (8) To ensure the attainment of the objectives of the European Judicial Network in civil and commercial matters, the rules governing its establishment should be laid down in a mandatory instrument of Community law.
- (9) The objectives of the proposed action, namely to improve effective judicial cooperation between the Member States and effective access to justice for persons engaging in cross-border litigation cannot be sufficiently achieved by the Member States and can therefore by reason of the scale or effects of the action be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (10) The European Judicial Network in civil and commercial matters established by this Decision seeks to facilitate judicial cooperation between the Member States in civil and commercial matters both in areas to which existing instruments apply and in those where no instrument is currently applicable.
- (11) In certain specific areas, Community or international instruments relating to judicial cooperation in civil and commercial matters already provide for cooperation mechanisms. The European Judicial Network in civil and commercial matters does not set out to replace these mechanisms, and it must operate in full compliance with them. This Decision will consequently be without prejudice to Community or international instruments relating to judicial cooperation in civil or commercial matters.
- (12) The European Judicial Network in civil and commercial matters should be established in stages on the basis of the closest cooperation between the Commission and the Member States. It should be able to take advantage of modern communication and information technologies.
- (13) To attain its objectives, the European Judicial Network in civil and commercial matters needs to be supported by contact points designated by the Member States and to be sure of the participation of their authorities with specific responsibilities for judicial cooperation in civil and commercial matters. Contacts between them and periodic meetings are essential to the operation of the Network.
- (14) It is essential that efforts to establish an area of freedom, security and justice produce tangible benefits for persons engaging in cross-border litigation. It is accordingly necessary for the European Judicial Network in civil and commercial matters to promote access to justice. To this end, using the information supplied and updated by the contact points, the Network should progressively establish an information system that is accessible to the public, both the general public and specialists.
- (15) This Decision does not preclude the provision of other information than that which is provided for herein, within the European Judicial Network in civil and commercial matters and to the public. The enumeration in Title III is accordingly not to be regarded as exhaustive.
- (16) Processing of information and data should take place in compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data⁽¹⁾ and Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector⁽²⁾.
- (17) To ensure that the European Judicial Network in civil and commercial matters remains an effective instrument, incorporates the best practice in judicial cooperation and internal operation and meets the public's expectations, provision should be made for periodic evaluations and for proposals for such changes as may be found necessary.
- (18) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Decision.
- (19) Denmark, 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 establishing the European Community, is not participating in the adoption of this Decision and is therefore not bound by it nor subject to its application,
- ⁽¹⁾ OJ L 281, 23.11.1995, p. 31.
⁽²⁾ OJ L 24, 30.1.1998, p. 1.

HAS ADOPTED THIS DECISION:

TITLE I

PRINCIPLES OF THE EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS

Article 1

Establishment

1. A European Judicial Network in civil and commercial matters ('the Network') is hereby established among the Member States.

2. In this Decision, the term 'Member State' shall mean Member States with the exception of Denmark.

Article 2

Composition

1. The Network shall be composed of:
 - (a) contact points designated by the Member States, in accordance with paragraph 2;
 - (b) central bodies and central authorities provided for in Community instruments, instruments of international law to which the Member States are parties or rules of domestic law in the area of judicial cooperation in civil and commercial matters;
 - (c) the liaison magistrates to whom Joint Action 96/277/JAI of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union⁽¹⁾ applies, where they have responsibilities in cooperation in civil and commercial matters;
 - (d) any other appropriate judicial or administrative authority with responsibilities for judicial cooperation in civil and commercial matters whose membership of the Network is considered to be useful by the Member State to which it belongs.

2. Each Member State shall designate a contact point. Each Member State may, however, designate a limited number of other contact points if they consider this necessary on the basis of the existence of separate legal systems, the domestic distribution of jurisdiction, the tasks to be entrusted to the contact points or in order to associate judicial bodies that frequently deal with cross-border litigation directly with the activities of the contact points.

Where a Member State designates several contact points, it shall ensure that appropriate coordination mechanisms apply between them.

3. The Member States shall identify the authorities mentioned at points (b) and (c) of paragraph 1.

4. The Member States shall designate the authorities mentioned at point (d) of paragraph 1.

5. The Member States shall notify the Commission, in accordance with Article 20, of the names and full addresses of the authorities referred to in paragraph 1, specifying:

- (a) the communication facilities available to them;
- (b) their knowledge of languages; and
- (c) where appropriate, their specific functions in the Network.

Article 3

Tasks and activities of the Network

1. The Network shall be responsible for:
 - (a) facilitating judicial cooperation between the Member States in civil and commercial matters, including devising, progressively establishing and updating an information system for the members of the Network;
 - (b) devising, progressively establishing and updating an information system that is accessible to the public.
2. Without prejudice to other Community or international instruments relating to judicial cooperation in civil or commercial matters, the Network shall develop its activities for the following purposes in particular:
 - (a) the smooth operation of procedures having a cross-border impact and the facilitation of requests for judicial cooperation between the Member States, in particular where no Community or international instrument is applicable;
 - (b) the effective and practical application of Community instruments or conventions in force between two or more Member States;
 - (c) the establishment and maintenance of an information system for the public on judicial cooperation in civil and commercial matters in the European Union, relevant Community and international instruments and the domestic law of the Member States, with particular reference to access to justice.

⁽¹⁾ OJ L 105, 27.4.1996, p. 1.

*Article 4***Modus operandi of the Network**

The Network shall accomplish its tasks in particular by the following means:

1. it shall facilitate appropriate contacts between the authorities of the Member States mentioned in Article 2(1) for the accomplishment of the tasks provided for by Article 3;
2. it shall organise periodic meetings of the contact points and of the members of the Network in accordance with the rules laid down in Title II;
3. it shall draw up and keep updated the information on judicial cooperation in civil and commercial matters and the legal systems of the Member States referred to in Title III, in accordance with the rules laid down in that Title.

*Article 5***Contact points**

1. The contact points shall be at the disposal of the authorities referred to in Article 2(1)(b) to (d) for the accomplishment of the tasks provided for by Article 3.

The contact points shall also be at the disposal of the local judicial authorities in their own Member State for the same purposes, in accordance with rules to be determined by each Member State.

2. In particular, the contact points shall:
 - (a) supply the other contact points, the authorities mentioned in Article 2(1)(b) to (d) and the local judicial authorities in their own Member State with all the information needed for sound judicial cooperation between the Member States in accordance with Article 3, in order to assist them in preparing operable requests for judicial cooperation and in establishing the most appropriate direct contacts;
 - (b) seek solutions to difficulties arising on the occasion of a request for judicial cooperation, without prejudice to paragraph 4 of this Article and to Article 6;
 - (c) facilitate coordination of the processing of requests for judicial cooperation in the relevant Member State, in particular where several requests from the judicial authorities in that Member State fall to be executed in another Member State;
 - (d) collaborate in the organisation of, and participate in, the meetings referred to in Article 9;
 - (e) assist with the preparation and updating of the information referred to in Title III, and in particular with the information system for the public, in accordance with the rules laid down in that Title.

3. Where a contact point receives a request for information from another member of the Network to which it is unable to respond, it shall forward it to the contact point or the member of the Network which is best able to respond to it. The contact point shall remain available for any such assistance as may be useful for subsequent contacts.

4. In areas where Community or international instruments governing judicial cooperation already provide for the designation of authorities responsible for facilitating judicial cooperation, contact points shall address requesters to such authorities.

*Article 6***Relevant authorities for the purposes of Community or international instruments relating to judicial cooperation in civil and commercial matters**

1. The involvement of relevant authorities provided for by Community or international instruments relating to judicial cooperation in civil and commercial matters in the Network shall be without prejudice to the powers conferred on them by the instrument providing for their designation.

Contacts within the Network shall be without prejudice to regular or occasional contacts between these authorities.

2. In each Member State the authorities provided for by Community or international instruments relating to judicial cooperation in civil and commercial matters and the contact points of the Network shall engage in regular exchanges of views and contacts to ensure that their respective experience is disseminated as widely as possible.

3. The contact points of the Network shall be at the disposal of the authorities provided for by Community or international instruments relating to judicial cooperation in civil and commercial matters and shall assist them in all practicable ways.

*Article 7***Language knowledge of the contact points**

To facilitate the practical operation of the Network, each Member State shall ensure that the contact points have adequate knowledge of an official language of the institutions of the European Community other than their own, given that they need to be able to communicate with the contact points in other Member States.

Member States shall facilitate and encourage specialised language training for contact point staff and promote exchanges of staff between contact points in the Member States.

*Article 8***Communication facilities**

The contact points shall use the most appropriate technological facilities in order to reply as efficiently and as swiftly as possible to requests made to them.

- (f) identify specific initiatives other than those referred to in Title III which pursue comparable objectives.

2. The Member States shall ensure that experience in the operation of specific cooperation mechanisms provided for by Community or international instruments is shared at meetings of the contact points.

TITLE II

*Article 11***MEETINGS WITHIN THE NETWORK****Meetings of members of the Network***Article 9***Meetings of the contact points**

1. The contact points of the Network shall meet no less of ten than once each half year, in accordance with Article 12.
2. Each Member State shall be represented at these meetings by one or more contact points, who may be accompanied by other members of the Network, but there shall be no more than four representatives per Member State.
3. The first meeting of the contact points shall be held no later than 1 March 2003 without prejudice to the possibility of prior preparatory meetings.

1. Meetings open to all members of the Network shall be held to enable them to get to know each other and exchange experience, to provide a platform for discussion of practical and legal problems met and to deal with specific questions.

Meetings can also be held on specific issues.

2. Meetings shall be convened, where appropriate, in accordance with Article 12.
3. The Commission, in close cooperation with the Presidency of the Council and with the Member States, shall fix for each meeting the maximum number of participants.

*Article 10***Purpose of periodic meetings of contact points**

1. The purpose of the periodic meetings of contact points shall be to:
 - (a) enable the contact points to get to know each other and exchange experience, in particular as regards the operation of the Network;
 - (b) provide a platform for discussion of practical and legal problems encountered by the Member States in the course of judicial cooperation, with particular reference to the application of measures adopted by the European Community;
 - (c) identify best practices in judicial cooperation in civil and commercial matters and ensure that relevant information is disseminated within the Network;
 - (d) exchange data and views, in particular on the structure, organisation and content of and access to the available information mentioned in Title III;
 - (e) draw up guidelines for progressively establishing the practical information sheets provided for by Article 15, in particular as regards the subject matter to be covered and the form of such information sheets;

*Article 12***Organisation and proceedings of meetings of the Network**

1. The Commission, in close cooperation with the Presidency of the Council and with the Member States, shall convene the meetings provided for by Articles 9 and 11. It shall chair them and provide secretarial services.
2. Before each meeting the Commission shall prepare the draft agenda in agreement with the Presidency of the Council and in consultation with the Member States via their respective contact points.
3. The contact points shall be notified of the agenda prior to the meeting. They may ask for changes to be made or for additional items to be entered.
4. After each meeting the Commission shall prepare a record, which shall be notified to the contact points.
5. Meetings of the contact points and of members of the Network may take place in any Member State.

TITLE III

Article 15

**INFORMATION AVAILABLE WITHIN THE NETWORK, AND
INFORMATION SYSTEM FOR THE PUBLIC****Information sheets***Article 13***Information disseminated within the Network**

1. The information disseminated within the network shall include:

- (a) the information referred to in Article 2(5);
- (b) any further information deemed useful by the contact points for the proper functioning of the Network.

2. For the purpose of paragraph 1, the Commission shall progressively establish a secure limited-access electronic information exchange-system in consultation with the contact points.

*Article 14***Information system for the public**

1. An Internet-based information system for the public, including the dedicated website for the Network, shall be progressively established in accordance with Articles 17 and 18.

2. The information system shall comprise the following elements:

- (a) Community instruments in force or in preparation relating to judicial cooperation in civil and commercial matters;
- (b) national measures for the domestic implementation of the instruments in force referred to in point (a);
- (c) international instruments in force relating to judicial cooperation in civil and commercial matters to which the Member States are parties, and declarations and reservations made in connection with such instruments;
- (d) the relevant elements of Community case-law in the area of judicial cooperation in civil and commercial matters;
- (e) the information sheets provided for by Article 15.

3. For the purposes of access to the information mentioned in paragraph 2(a) to (d), the Network should, where appropriate, in its site, make use of links to other sites where the original information is to be found.

4. The site dedicated to the Network shall likewise facilitate access to comparable public information initiatives in related matters and to sites containing information relating to the legal systems of the Member States.

1. The information sheets shall be devoted by way of priority to questions relating to access to justice in the Member States and shall include information on the procedures for bringing cases in the courts and for obtaining legal aid, without prejudice to other Community initiatives, to which the Network shall have the fullest regard.

2. Information sheets shall be of a practical and concise nature. They shall be written in easily comprehensible language and contain practical information for the public. They shall progressively be produced on at least the following subjects:

- (a) principles of the legal system and judicial organisation of the Member States;
- (b) procedures for bringing cases to court, with particular reference to small claims, and subsequent court procedures, including appeal possibilities and procedures;
- (c) conditions and procedures for obtaining legal aid, including descriptions of the tasks of non-governmental organisations active in this field, account being taken of work already done in the Dialogue with Citizens;
- (d) national rules governing the service of documents;
- (e) rules and procedures for the enforcement of judgments given in other Member States;
- (f) possibilities and procedures for obtaining interim relief measures, with particular reference to seizures of assets for the purposes of enforcement;
- (g) alternative dispute-settlement possibilities, with an indication of the national information and advice centres of the Community-wide Network for the Extra-judicial Settlement of Consumer Disputes;
- (h) organisation and operation of the legal professions.

4. The information sheets shall, where appropriate, include elements of the relevant case-law of the Member States.

5. The information sheets may provide more detailed information for the specialists.

*Article 16***Updating of information**

All information distributed within the Network and to the public under Articles 13 to 15 shall be updated regularly.

*Article 17***Role of the Commission in the public information system**

The Commission shall:

1. be responsible for managing the information system for the public;
2. construct, in consultation with the contact points, a dedicated website for the Network on its Internet site;
3. provide information on relevant aspects of Community law and procedures, including Community case-law, in accordance with Article 14;
4.
 - (a) ensure that the format of the information sheets is consistent and that they include all information considered necessary by the Network;
 - (b) thereafter arrange for them to be translated into the other official languages of the Institutions of the Community, and install them on the site dedicated to the Network.

*Article 18***Role of contact points in the public information system**

Contact points shall ensure that

1. the appropriate information needed to create and operate the information system is supplied to the Commission;
2. the information installed in the system is accurate;
3. the Commission is notified forthwith of any updates as soon as an item of information requires changing;
4. the information sheets relating to their respective Member States are progressively established, according to the guidelines referred to in Article 10(1)(e);
5. the broadest possible dissemination of the information sheets installed on the site dedicated to the Network is arranged in their Member State.

TITLE IV

FINAL PROVISIONS*Article 19***Review**

1. No later than 1 December 2005, and at least every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Decision on the basis of information supplied by the contact points. The report shall be accompanied if need be by proposals for adaptations.

2. The report shall consider, among other relevant matters, the question of possible direct public access to the contact points of the Network, access to and involvement of the legal professions in its activities, and synergy with the Community-wide Network for the Extra-Judicial Settlement of Consumer Disputes. It shall also consider the relationship between the contact points of the Network and the competent authorities provided for in Community or international instruments relating to judicial cooperation in civil and commercial matters.

*Article 20***Establishment of the basic components of the Network**

No later than 1 June 2002, the Member States shall notify the Commission of the information required by Article 2(5).

*Article 21***Date of application**

This Decision shall apply from 1 December 2002, except for Articles 2 and 20 which shall apply from the date of notification of the Decision to the Member States to which it is addressed.

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 28 May 2001.

For the Council

The President

T. BODSTRÖM

Legal Aid

8a

Council Directive 2002/8/EC
of 27 January 2003 to improve access
to justice in cross-border disputes
by establishing minimum common rules
relating to legal aid for such disputes



COUNCIL DIRECTIVE 2002/8/EC**of 27 January 2003****to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters having cross-border implications and needed for the proper functioning of the internal market.
- (2) According to Article 65(c) of the Treaty, these measures are to include measures eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.
- (3) The Tampere European Council on 15 and 16 October 1999 called on the Council to establish minimum standards ensuring an adequate level of legal aid in cross-border cases throughout the Union.
- (4) All Member States are contracting parties to the European Convention for the Protection of Human Rights and Fundamental Freedom of 4 November 1950. The matters referred to in this Directive shall be dealt with in compliance with that Convention and in particular the respect of the principle of equality of both parties in a dispute.
- (5) This Directive seeks to promote the application of legal aid in cross-border disputes for persons who lack sufficient resources where aid is necessary to secure effective access to justice. The generally recognised right to access to justice is also reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union.
- (6) Neither the lack of resources of a litigant, whether acting as claimant or as defendant, nor the difficulties flowing from a dispute's cross-border dimension should be allowed to hamper effective access to justice.
- (7) Since the objectives of this Directive cannot be sufficiently achieved by the Member States acting alone and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (8) The main purpose of this Directive is to guarantee an adequate level of legal aid in cross-border disputes by laying down certain minimum common standards relating to legal aid in such disputes. A Council directive is the most suitable legislative instrument for this purpose.
- (9) This Directive applies in cross-border disputes, to civil and commercial matters.
- (10) All persons involved in a civil or commercial dispute within the scope of this Directive must be able to assert their rights in the courts even if their personal financial situation makes it impossible for them to bear the costs of the proceedings. Legal aid is regarded as appropriate when it allows the recipient effective access to justice under the conditions laid down in this Directive.
- (11) Legal aid should cover pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings, legal assistance in bringing a case before a court and representation in court and assistance with or exemption from the cost of proceedings.
- (12) It shall be left to the law of the Member State in which the court is sitting or where enforcement is sought whether the costs of proceedings may include the costs of the opponent imposed on the recipient of legal aid.
- (13) All Union citizens, wherever they are domiciled or habitually resident in the territory of a Member State, must be eligible for legal aid in cross-border disputes if they meet the conditions provided for by this Directive. The same applies to third-country nationals who habitually and lawfully reside in a Member State.

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 368.

⁽²⁾ Opinion delivered on 25 September 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 221, 17.9.2002, p. 64.

- (14) Member States should be left free to define the threshold above which a person would be presumed able to bear the costs of proceedings, in the conditions defined in this Directive. Such thresholds are to be defined in the light of various objective factors such as income, capital or family situation.
- (15) The objective of this Directive could not, however, be attained if legal aid applicants did not have the possibility of proving that they cannot bear the costs of proceedings even if their resources exceed the threshold defined by the Member State where the court is sitting. When making the assessment of whether legal aid is to be granted on this basis, the authorities in the Member State where the court is sitting may take into account information as to the fact that the applicant satisfies criteria in respect of financial eligibility in the Member State of domicile or habitual residence.
- (16) The possibility in the instant case of resorting to other mechanisms to ensure effective access to justice is not a form of legal aid. But it can warrant a presumption that the person concerned can bear the costs of the procedure despite his/her unfavourable financial situation.
- (17) Member States should be allowed to reject applications for legal aid in respect of manifestly unfounded actions or on grounds related to the merits of the case in so far as pre-litigation advice is offered and access to justice is guaranteed. When taking a decision on the merits of an application, Member States may reject legal aid applications when the applicant is claiming damage to his or her reputation, but has suffered no material or financial loss or the application concerns a claim arising directly out of the applicant's trade or self-employed profession.
- (18) The complexity of and differences between the legal systems of the Member States and the costs inherent in the cross-border dimension of a dispute should not preclude access to justice. Legal aid should accordingly cover costs directly connected with the cross-border dimension of a dispute.
- (19) When considering if the physical presence of a person in court is required, the courts of a Member State should take into consideration the full advantage of the possibilities offered by Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters ⁽¹⁾.
- (20) If legal aid is granted, it must cover the entire proceeding, including expenses incurred in having a judgment enforced; the recipient should continue receiving this aid if an appeal is brought either against or by the recipient in so far as the conditions relating to the financial resources and the substance of the dispute remain fulfilled.
- (21) Legal aid is to be granted on the same terms both for conventional legal proceedings and for out-of-court procedures such as mediation, where recourse to them is required by the law, or ordered by the court.
- (22) Legal aid should also be granted for the enforcement of authentic instruments in another Member State under the conditions defined in this Directive.
- (23) Since legal aid is given by the Member State in which the court is sitting or where enforcement is sought, except pre-litigation assistance if the legal aid applicant is not domiciled or habitually resident in the Member State where the court is sitting, that Member State must apply its own legislation, in compliance with the principles of this Directive.
- (24) It is appropriate that legal aid is granted or refused by the competent authority of the Member State in which the court is sitting or where a judgment is to be enforced. This is the case both when that court is trying the case in substance and when it first has to decide whether it has jurisdiction.
- (25) Judicial cooperation in civil matters should be organised between Member States to encourage information for the public and professional circles and to simplify and accelerate the transmission of legal aid applications between Member States.
- (26) The notification and transmission mechanisms provided for by this Directive are inspired directly by those of the European Agreement on the transmission of applications for legal aid, signed in Strasbourg on 27 January 1977, hereinafter referred to as '1977 Agreement'. A time limit, not provided for by the 1977 Agreement, is set for the transmission of legal aid applications. A relatively short time limit contributes to the smooth operation of justice.
- (27) The information transmitted pursuant to this Directive should enjoy protection. Since Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾, and Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector ⁽³⁾, are applicable, there is no need for specific provisions on data protection in this Directive.

⁽¹⁾ OJ L 174, 27.6.2001, p. 1.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

⁽³⁾ OJ L 24, 30.1.1998, p. 1.

- (28) The establishment of a standard form for legal aid applications and for the transmission of legal aid applications in the event of cross-border litigation will make the procedures easier and faster.
- (29) Moreover, these application forms, as well as national application forms, should be made available on a European level through the information system of the European Judicial Network, established in accordance with Decision 2001/470/EC ⁽¹⁾.
- (30) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾.
- (31) It should be specified that the establishment of minimum standards in cross-border disputes does not prevent Member States from making provision for more favourable arrangements for legal aid applicants and recipients.
- (32) The 1977 Agreement and the additional Protocol to the European Agreement on the transmission of applications for legal aid, signed in Moscow in 2001, remain applicable to relations between Member States and third countries that are parties to the 1977 Agreement or the Protocol. But this Directive takes precedence over provisions contained in the 1977 Agreement and the Protocol in relations between Member States.
- (33) The United Kingdom and Ireland have given notice of their wish to participate in the adoption of this Directive in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community.
- (34) 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 establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Aims and scope

1. The purpose of this Directive is to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid in such disputes.

2. It shall apply, in cross-border disputes, to civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

3. In this Directive, 'Member State' shall mean Member States with the exception of Denmark.

Article 2

Cross-border disputes

1. For the purposes of this Directive, a cross-border dispute is one where the party applying for legal aid in the context of this Directive is domiciled or habitually resident in a Member State other than the Member State where the court is sitting or where the decision is to be enforced.

2. The Member State in which a party is domiciled shall be determined in accordance with Article 59 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽³⁾.

3. The relevant moment to determine if there is a cross-border dispute is the time when the application is submitted, in accordance with this Directive.

CHAPTER II

RIGHT TO LEGAL AID

Article 3

Right to legal aid

1. Natural persons involved in a dispute covered by this Directive shall be entitled to receive appropriate legal aid in order to ensure their effective access to justice in accordance with the conditions laid down in this Directive.

2. Legal aid is considered to be appropriate when it guarantees:

- pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings;
- legal assistance and representation in court, and exemption from, or assistance with, the cost of proceedings of the recipient, including the costs referred to in Article 7 and the fees to persons mandated by the court to perform acts during the proceedings.

In Member States in which a losing party is liable for the costs of the opposing party, if the recipient loses the case, the legal aid shall cover the costs incurred by the opposing party, if it would have covered such costs had the recipient been domiciled or habitually resident in the Member State in which the court is sitting.

⁽¹⁾ OJ L 174, 27.6.2001, p. 25.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ L 12, 16.1.2001, p. 1; Regulation as amended by Commission Regulation (EC) No 1496/2002 (OJ L 225, 22.8.2002, p. 13).

3. Member States need not provide legal assistance or representation in the courts or tribunals in proceedings especially designed to enable litigants to make their case in person, except when the courts or any other competent authority otherwise decide in order to ensure equality of parties or in view of the complexity of the case.

4. Member States may request that legal aid recipients pay reasonable contributions towards the costs of proceedings taking into account the conditions referred to in Article 5.

5. Member States may provide that the competent authority may decide that recipients of legal aid must refund it in whole or in part if their financial situation has substantially improved or if the decision to grant legal aid had been taken on the basis of inaccurate information given by the recipient.

Article 4

Non-discrimination

Member States shall grant legal aid without discrimination to Union citizens and third-country nationals residing lawfully in a Member State.

CHAPTER III

CONDITIONS AND EXTENT OF LEGAL AID

Article 5

Conditions relating to financial resources

1. Member States shall grant legal aid to persons referred to in Article 3(1) who are partly or totally unable to meet the costs of proceedings referred to in Article 3(2) as a result of their economic situation, in order to ensure their effective access to justice.

2. The economic situation of a person shall be assessed by the competent authority of the Member State in which the court is sitting, in the light of various objective factors such as income, capital or family situation, including an assessment of the resources of persons who are financially dependant on the applicant.

3. Member States may define thresholds above which legal aid applicants are deemed partly or totally able to bear the costs of proceedings set out in Article 3(2). These thresholds shall be defined on the basis of the criteria defined in paragraph 2 of this Article.

4. Thresholds defined according to paragraph 3 of this Article may not prevent legal aid applicants who are above the thresholds from being granted legal aid if they prove that they are unable to pay the cost of the proceedings referred to in Article 3(2) as a result of differences in the cost of living between the Member States of domicile or habitual residence and of the forum.

5. Legal aid does not need to be granted to applicants in so far as they enjoy, in the instant case, effective access to other mechanisms that cover the cost of proceedings referred to in Article 3(2).

Article 6

Conditions relating to the substance of disputes

1. Member States may provide that legal aid applications for actions which appear to be manifestly unfounded may be rejected by the competent authorities.

2. If pre-litigation advice is offered, the benefit of further legal aid may be refused or cancelled on grounds related to the merits of the case in so far as access to justice is guaranteed.

3. When taking a decision on the merits of an application and without prejudice to Article 5, Member States shall consider the importance of the individual case to the applicant but may also take into account the nature of the case when the applicant is claiming damage to his or her reputation but has suffered no material or financial loss or when the application concerns a claim arising directly out of the applicant's trade or self-employed profession.

Article 7

Costs related to the cross-border nature of the dispute

Legal aid granted in the Member State in which the court is sitting shall cover the following costs directly related to the cross-border nature of the dispute:

- (a) interpretation;
- (b) translation of the documents required by the court or by the competent authority and presented by the recipient which are necessary for the resolution of the case; and
- (c) travel costs to be borne by the applicant where the physical presence of the persons concerned with the presentation of the applicant's case is required in court by the law or by the court of that Member State and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means.

Article 8

Costs covered by the Member State of the domicile or habitual residence

The Member State in which the legal aid applicant is domiciled or habitually resident shall provide legal aid, as referred to in Article 3(2), necessary to cover:

- (a) costs relating to the assistance of a local lawyer or any other person entitled by the law to give legal advice, incurred in that Member State until the application for legal aid has been received, in accordance with this Directive, in the Member State where the court is sitting;
- (b) the translation of the application and of the necessary supporting documents when the application is submitted to the authorities in that Member State.

*Article 9***Continuity of legal aid**

1. Legal aid shall continue to be granted totally or partially to recipients to cover expenses incurred in having a judgment enforced in the Member State where the court is sitting.

2. A recipient who in the Member State where the court is sitting has received legal aid shall receive legal aid provided for by the law of the Member State where recognition or enforcement is sought.

3. Legal aid shall continue to be available if an appeal is brought either against or by the recipient, subject to Articles 5 and 6.

4. Member States may make provision for the re-examination of the application at any stage in the proceedings on the grounds set out in Articles 3(3) and (5), 5 and 6, including proceedings referred to in paragraphs 1 to 3 of this Article.

*Article 10***Extrajudicial procedures**

Legal aid shall also be extended to extrajudicial procedures, under the conditions defined in this Directive, if the law requires the parties to use them, or if the parties to the dispute are ordered by the court to have recourse to them.

*Article 11***Authentic instruments**

Legal aid shall be granted for the enforcement of authentic instruments in another Member State under the conditions defined in this Directive.

CHAPTER IV

PROCEDURE*Article 12***Authority granting legal aid**

Legal aid shall be granted or refused by the competent authority of the Member State in which the court is sitting, without prejudice to Article 8.

*Article 13***Introduction and transmission of legal aid applications**

1. Legal aid applications may be submitted to either:

- (a) the competent authority of the Member State in which the applicant is domiciled or habitually resident (transmitting authority); or

- (b) the competent authority of the Member State in which the court is sitting or where the decision is to be enforced (receiving authority).

2. Legal aid applications shall be completed in, and supporting documents translated into:

- (a) the official language or one of the languages of the Member State of the competent receiving authority which corresponds to one of the languages of the Community institutions; or

- (b) another language which that Member State has indicated it can accept in accordance with Article 14(3).

3. The competent transmitting authorities may decide to refuse to transmit an application if it is manifestly:

- (a) unfounded; or
- (b) outside the scope of this Directive.

The conditions referred to in Article 15(2) and (3) apply to such decisions.

4. The competent transmitting authority shall assist the applicant in ensuring that the application is accompanied by all the supporting documents known by it to be required to enable the application to be determined. It shall also assist the applicant in providing any necessary translation of the supporting documents, in accordance with Article 8(b).

The competent transmitting authority shall transmit the application to the competent receiving authority in the other Member State within 15 days of the receipt of the application duly completed in one of the languages referred to in paragraph 2, and the supporting documents, translated, where necessary, into one of those languages.

5. Documents transmitted under this Directive shall be exempt from legalisation or any equivalent formality.

6. The Member States may not charge for services rendered in accordance with paragraph 4. Member States in which the legal aid applicant is domiciled or habitually resident may lay down that the applicant must repay the costs of translation borne by the competent transmitting authority if the application for legal aid is rejected by the competent authority.

*Article 14***Competent authorities and language**

1. Member States shall designate the authority or authorities competent to send (transmitting authorities) and receive (receiving authorities) the application.

2. Each Member State shall provide the Commission with the following information:

- the names and addresses of the competent receiving or transmitting authorities referred to in paragraph 1,
- the geographical areas in which they have jurisdiction,

- the means by which they are available to receive applications, and
- the languages that may be used for the completion of the application.

3. Member States shall notify the Commission of the official language or languages of the Community institutions other than their own which is or are acceptable to the competent receiving authority for completion of the legal aid applications to be received, in accordance with this Directive.

4. Member States shall communicate to the Commission the information referred to in paragraphs 2 and 3 before 30 November 2004. Any subsequent modification of such information shall be notified to the Commission no later than two months before the modification enters into force in that Member State.

5. The information referred to in paragraphs 2 and 3 shall be published in the *Official Journal of the European Communities*.

Article 15

Processing of applications

1. The national authorities empowered to rule on legal aid applications shall ensure that the applicant is fully informed of the processing of the application.

2. Where applications are totally or partially rejected, the reasons for rejection shall be given.

3. Member States shall make provision for review of or appeals against decisions rejecting legal aid applications. Member States may exempt cases where the request for legal aid is rejected by a court or tribunal against whose decision on the subject of the case there is no judicial remedy under national law or by a court of appeal.

4. When the appeals against a decision refusing or cancelling legal aid by virtue of Article 6 are of an administrative nature, they shall always be ultimately subject to judicial review.

Article 16

Standard form

1. To facilitate transmission, a standard form for legal aid applications and for the transmission of such applications shall be established in accordance with the procedure set out in Article 17(2).

2. The standard form for the transmission of legal aid applications shall be established at the latest by 30 May 2003.

The standard form for legal aid applications shall be established at the latest by 30 November 2004.

CHAPTER V

FINAL PROVISIONS

Article 17

Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. The Committee shall adopt its Rules of Procedure.

Article 18

Information

The competent national authorities shall cooperate to provide the general public and professional circles with information on the various systems of legal aid, in particular via the European Judicial Network, established in accordance with Decision 2001/470/EC.

Article 19

More favourable provisions

This Directive shall not prevent the Member States from making provision for more favourable arrangements for legal aid applicants and recipients.

Article 20

Relation with other instruments

This Directive shall, as between the Member States, and in relation to matters to which it applies, take precedence over provisions contained in bilateral and multilateral agreements concluded by Member States including:

- (a) the European Agreement on the transmission of applications for legal aid, signed in Strasbourg on 27 January 1977, as amended by the additional Protocol to the European Agreement on the transmission of applications for legal aid, signed in Moscow in 2001;
- (b) the Hague Convention of 25 October 1980 on International Access to Justice.

Article 21

Transposition into national law

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 30 November 2004 with the exception of Article 3(2)(a) where the transposition of this Directive into national law shall take place no later than 30 May 2006. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 22

Entry into force

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Article 23

Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 27 January 2003.

For the Council

The President

G. PAPANDREOU

Compensation to crime victims

9a

Council Directive 2004/80/EC of 29 April 2004
relating to compensation to crime victims



COUNCIL DIRECTIVE 2004/80/EC
of 29 April 2004
relating to compensation to crime victims

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽³⁾,

Whereas:

- (1) One of the objectives of the European Community is to abolish, as between Member States, obstacles to the free movement of persons and services.
- (2) The Court of Justice held in the Cowan ⁽⁴⁾ Case that, when Community law guarantees to a natural person the freedom to go to another Member State, the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. Measures to facilitate compensation to victims of crimes should form part of the realisation of this objective.
- (3) At its meeting in Tampere on 15 and 16 October 1999, the European Council called for the drawing-up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and their rights to compensation for damages, including legal costs.
- (4) The Brussels European Council, meeting on 25 and 26 March 2004, in the Declaration on Combating Terrorism, called for the adoption of this Directive before 1 May 2004.
- (5) On 15 March 2001 the Council adopted Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. ⁽⁵⁾ This Decision, based on Title VI of the Treaty on the European Union, allows crime victims to claim compensation from the offender in the course of criminal proceedings.
- (6) Crime victims in the European Union should be entitled to fair and appropriate compensation for the injuries

they have suffered, regardless of where in the European Community the crime was committed

- (7) This Directive sets up a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, which should operate on the basis of Member States' schemes on compensation to victims of violent intentional crime, committed in their respective territories. Therefore, a compensation mechanism should be in place in all Member States.
- (8) Most Member States have already established such compensation schemes, some of them in fulfilment of their obligations under the European Convention of 24 November 1983 on the compensation of victims of violent crimes.
- (9) Since the measures contained in this Directive are necessary in order to attain objectives of the Community and the Treaty provides for no powers other than those in Article 308 thereof for the adoption of this Directive, that Article should be applied.
- (10) Crime victims will often not be able to obtain compensation from the offender, since the offender may lack the necessary means to satisfy a judgment on damages or because the offender cannot be identified or prosecuted.
- (11) A system of cooperation between the authorities of the Member States should be introduced to facilitate access to compensation in cases where the crime was committed in a Member State other than that of the victim's residence.
- (12) This system should ensure that crime victims could always turn to an authority in their Member State of residence and should ease any practical and linguistic difficulties that occur in a cross-border situation.
- (13) The system should include the provisions necessary for allowing the crime victim to find the information needed to make the application and for allowing for efficient cooperation between the authorities involved.
- (14) This Directive respects the fundamental rights and observes the principles reaffirmed in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law.

⁽¹⁾ OJ C 45 E, 25.2.2003, p. 69.

⁽²⁾ Opinion delivered on 23 October 2003 (not yet published in the Official Journal).

⁽³⁾ OJ C 95, 23.4.2003, p. 40.

⁽⁴⁾ Case 186/87, European Court reports 1989, p. 195.

⁽⁵⁾ OJ L 82, 22.3.2001, p. 1.

- (15) Since the objective of facilitating access to compensation to victims of crimes of cross-border situations cannot be sufficiently achieved by the Member States because of the cross-border elements and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (16) The measures necessary for the implementation of the Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

ACCESS TO COMPENSATION IN CROSS-BORDER SITUATIONS

Article 1

Right to submit an application in the Member State of residence

Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.

Article 2

Responsibility for paying compensation

Compensation shall be paid by the competent authority of the Member State on whose territory the crime was committed.

Article 3

Responsible authorities and administrative procedures

1. Member States shall establish or designate one or several authorities or any other bodies, hereinafter referred to as 'assisting authority or authorities', to be responsible for applying Article 1.
2. Member States shall establish or designate one or several authorities or any other bodies to be responsible for deciding upon applications for compensation, hereinafter referred to as 'deciding authority or authorities'.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

3. Member States shall endeavour to keep to a minimum the administrative formalities required of an applicant for compensation.

Article 4

Information to potential applicants

Member States shall ensure that potential applicants for compensation have access to essential information on the possibilities to apply for compensation, by any means Member States deem appropriate.

Article 5

Assistance to the applicant

1. The assisting authority shall provide the applicant with the information referred to in Article 4 and the required application forms, on the basis of the manual drawn up in accordance with Article 13(2).
2. The assisting authority shall, upon the request of the applicant, provide him or her with general guidance and information on how the application should be completed and what supporting documentation may be required.
3. The assisting authority shall not make any assessment of the application.

Article 6

Transmission of applications

1. The assisting authority shall transmit the application and any supporting documentation as quickly as possible to the deciding authority.
2. The assisting authority shall transmit the application using the standard form referred to in Article 14.
3. The language of the application and any supporting documentation shall be determined in accordance with Article 11(1).

Article 7

Receipt of applications

Upon receipt of an application transmitted in accordance with Article 6, the deciding authority shall send the following information as soon as possible to the assisting authority and to the applicant:

- (a) the contact person or the department responsible for handling the matter;
- (b) an acknowledgement of receipt of the application;
- (c) if possible, an indication of the approximate time by which a decision on the application will be made.

Article 8

Requests for supplementary information

The assisting authority shall if necessary provide general guidance to the applicant in meeting any request for supplementary information from the deciding authority.

It shall upon the request of the applicant subsequently transmit it as soon as possible directly to the deciding authority, enclosing, where appropriate, a list of any supporting documentation transmitted.

Article 9

Hearing of the applicant

1. If the deciding authority decides, in accordance with the law of its Member State, to hear the applicant or any other person such as a witness or an expert, it may contact the assisting authority for the purpose of arranging for:

- (a) the person(s) to be heard directly by the deciding authority, in accordance with the law of its Member State, through the use in particular of telephone- or video-conferencing; or
- (b) the person(s) to be heard by the assisting authority, in accordance with the law of its Member State, which will subsequently transmit a report of the hearing to the deciding authority.

2. The direct hearing in accordance with paragraph 1(a) may only take place in cooperation with the assisting authority and on a voluntary basis without the possibility of coercive measures being imposed by the deciding authority.

Article 10

Communication of the decision

The deciding authority shall send the decision on the application for compensation, by using the standard form referred to in Article 14, to the applicant and to the assisting authority, as soon as possible, in accordance with national law, after the decision has been taken.

Article 11

Other provisions

1. Information transmitted between the authorities pursuant to Articles 6 to 10 shall be expressed in:

- (a) the official languages or one of the languages of the Member State of the authority to which the information is sent, which corresponds to one of the languages of the Community institutions; or
- (b) another language of the Community institutions that that Member State has indicated it can accept;

with the exception of:

(i) the full text of decisions taken by the deciding authority, where the use of languages shall be governed by the law of its Member State;

(ii) reports drawn up following a hearing in accordance with Article 9(1)(b), where the use of languages shall be determined by the assisting authority, subject to the requirement that it corresponds to one of the languages of the Community institutions.

2. Services rendered by the assisting authority in accordance with Articles 1 to 10 shall not give rise to a claim for any reimbursement of charges or costs from the applicant or from the deciding authority.

3. Application forms and any other documentation transmitted in accordance with Articles 6 to 10 shall be exempted from authentication or any equivalent formality.

CHAPTER II

NATIONAL SCHEMES ON COMPENSATION

Article 12

1. The rules on access to compensation in cross-border situations drawn up by this Directive shall operate on the basis of Member States' schemes on compensation to victims of violent intentional crime committed in their respective territories.

2. All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.

CHAPTER III

IMPLEMENTING PROVISIONS

Article 13

Information to be sent to the Commission and the manual

1. Member States shall, no later than 1 July 2005, send to the Commission details of:

- (a) the list of authorities established or designated in accordance with Articles 3(1) and 3(2), including, where appropriate, information on the special and territorial jurisdiction of these authorities;
- (b) the language(s) referred to in Article 11(1)(a) which the authorities can accept for the purpose of applying Articles 6 to 10 and the official language or languages other than its own which is or are acceptable to it for the transmission of applications in accordance with Article 11(1)(b).

- (c) the information established in accordance with Article 4;
- (d) the application forms for compensation;

Member States shall inform the Commission of any subsequent changes to this information.

2. The Commission shall, in cooperation with the Member States establish and publish on the internet a manual containing the information provided by the Member States pursuant to paragraph 1. The Commission shall be responsible for arranging the necessary translations of the manual.

Article 14

Standard form for transmission of applications and decisions

Standard forms shall be established, at the latest by 31 October 2005, for the transmission of applications and decisions in accordance with the procedure referred to in Article 15(2).

Article 15

Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. The Committee shall adopt its Rules of Procedure.

Article 16

Central contact points

Member States shall appoint a central contact point for the purposes of:

- (a) assisting with the implementation of Article 13(2);
- (b) furthering close cooperation and exchange of information between the assisting and deciding authorities in the Member States; and
- (c) giving assistance and seeking solutions to any difficulties that may occur in the application of Articles 1 to 10.

The contact points shall meet regularly.

Article 17

More favourable provisions

This Directive shall not prevent Member States, in so far as such provisions are compatible with this Directive, from:

- (a) introducing or maintaining more favourable provisions for the benefit of victims of crime or any other persons affected by crime;
- (b) introducing or retaining provisions for the purpose of compensating victims of crime committed outside their

territory, or any other person affected by such a crime, subject to any conditions that Member States may specify for that purpose.

Article 18

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2006 at the latest, with the exception of Article 12(2), in which case the date of compliance shall be 1 July 2005. They shall forthwith inform the Commission thereof.
2. Member States may provide that the measures necessary to comply with this Directive shall apply only to applicants whose injuries result from crimes committed after 30 June 2005.
3. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.
4. Member States shall communicate to the Commission the text of the main provisions of domestic law, which they adopt in the field governed by this Directive.

Article 19

Review

No later than by 1 January 2009, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive.

Article 20

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 21

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

Mediation in civil matters

10a

Directive 2008/52/EC of the
European Parliament and of the Council
of 21 May 2008 on certain aspects
of mediation in civil and commercial matters



DIRECTIVES

DIRECTIVE 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 May 2008

on certain aspects of mediation in civil and commercial matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To that end, the Community has to adopt, inter alia, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.
- (2) The principle of access to justice is fundamental and, with a view to facilitating better access to justice, the European Council at its meeting in Tampere on 15 and 16 October 1999 called for alternative, extra-judicial procedures to be created by the Member States.
- (3) In May 2000 the Council adopted Conclusions on alternative methods of settling disputes under civil and commercial law, stating that the establishment of basic principles in this area is an essential step towards enabling the appropriate development and operation of extrajudicial procedures for the settlement of disputes in civil and commercial matters so as to simplify and improve access to justice.

- (4) In April 2002 the Commission presented a Green Paper on alternative dispute resolution in civil and commercial law, taking stock of the existing situation as concerns alternative dispute resolution methods in the European Union and initiating widespread consultations with Member States and interested parties on possible measures to promote the use of mediation.

- (5) The objective of securing better access to justice, as part of the policy of the European Union to establish an area of freedom, security and justice, should encompass access to judicial as well as extrajudicial dispute resolution methods. This Directive should contribute to the proper functioning of the internal market, in particular as concerns the availability of mediation services.

- (6) Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.

- (7) In order to promote further the use of mediation and ensure that parties having recourse to mediation can rely on a predictable legal framework, it is necessary to introduce framework legislation addressing, in particular, key aspects of civil procedure.

- (8) The provisions of this Directive should apply only to mediation in cross-border disputes, but nothing should prevent Member States from applying such provisions also to internal mediation processes.

- (9) This Directive should not in any way prevent the use of modern communication technologies in the mediation process.

⁽¹⁾ OJ C 286, 17.11.2005, p. 1.

⁽²⁾ Opinion of the European Parliament of 29 March 2007 (OJ C 27 E, 31.1.2008, p. 129). Council Common Position of 28 February 2008 (not yet published in the Official Journal) and Position of the European Parliament of 23 April 2008 (not yet published in the Official Journal).

- (10) This Directive should apply to processes whereby two or more parties to a cross-border dispute attempt by themselves, on a voluntary basis, to reach an amicable agreement on the settlement of their dispute with the assistance of a mediator. It should apply in civil and commercial matters. However, it should not apply to rights and obligations on which the parties are not free to decide themselves under the relevant applicable law. Such rights and obligations are particularly frequent in family law and employment law.
- (11) This Directive should not apply to pre-contractual negotiations or to processes of an adjudicatory nature such as certain judicial conciliation schemes, consumer complaint schemes, arbitration and expert determination or to processes administered by persons or bodies issuing a formal recommendation, whether or not it be legally binding as to the resolution of the dispute.
- (12) This Directive should apply to cases where a court refers parties to mediation or in which national law prescribes mediation. Furthermore, in so far as a judge may act as a mediator under national law, this Directive should also apply to mediation conducted by a judge who is not responsible for any judicial proceedings relating to the matter or matters in dispute. This Directive should not, however, extend to attempts made by the court or judge seised to settle a dispute in the context of judicial proceedings concerning the dispute in question or to cases in which the court or judge seised requests assistance or advice from a competent person.
- (13) The mediation provided for in this Directive should be a voluntary process in the sense that the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time. However, it should be possible under national law for the courts to set time-limits for a mediation process. Moreover, the courts should be able to draw the parties' attention to the possibility of mediation whenever this is appropriate.
- (14) Nothing in this Directive should prejudice national legislation making the use of mediation compulsory or subject to incentives or sanctions provided that such legislation does not prevent parties from exercising their right of access to the judicial system. Nor should anything in this Directive prejudice existing self-regulating mediation systems in so far as these deal with aspects which are not covered by this Directive.
- (15) In order to provide legal certainty, this Directive should indicate which date should be relevant for determining whether or not a dispute which the parties attempt to settle through mediation is a cross-border dispute. In the absence of a written agreement, the parties should be deemed to agree to use mediation at the point in time when they take specific action to start the mediation process.
- (16) To ensure the necessary mutual trust with respect to confidentiality, effect on limitation and prescription periods, and recognition and enforcement of agreements resulting from mediation, Member States should encourage, by any means they consider appropriate, the training of mediators and the introduction of effective quality control mechanisms concerning the provision of mediation services.
- (17) Member States should define such mechanisms, which may include having recourse to market-based solutions, and should not be required to provide any funding in that respect. The mechanisms should aim at preserving the flexibility of the mediation process and the autonomy of the parties, and at ensuring that mediation is conducted in an effective, impartial and competent way. Mediators should be made aware of the existence of the European Code of Conduct for Mediators which should also be made available to the general public on the Internet.
- (18) In the field of consumer protection, the Commission has adopted a Recommendation⁽¹⁾ establishing minimum quality criteria which out-of-court bodies involved in the consensual resolution of consumer disputes should offer to their users. Any mediators or organisations coming within the scope of that Recommendation should be encouraged to respect its principles. In order to facilitate the dissemination of information concerning such bodies, the Commission should set up a database of out-of-court schemes which Member States consider as respecting the principles of that Recommendation.
- (19) Mediation should not be regarded as a poorer alternative to judicial proceedings in the sense that compliance with agreements resulting from mediation would depend on the good will of the parties. Member States should therefore ensure that the parties to a written agreement resulting from mediation can have the content of their agreement made enforceable. It should only be possible for a Member State to refuse to make an agreement enforceable if the content is contrary to its law, including its private international law, or if its law does not provide for the enforceability of the content of the specific agreement. This could be the case if the obligation specified in the agreement was by its nature unenforceable.

⁽¹⁾ Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJ L 109, 19.4.2001, p. 56).

- (20) The content of an agreement resulting from mediation which has been made enforceable in a Member State should be recognised and declared enforceable in the other Member States in accordance with applicable Community or national law. This could, for example, be on the basis of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾ or Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility ⁽²⁾.
- (21) Regulation (EC) No 2201/2003 specifically provides that, in order to be enforceable in another Member State, agreements between the parties have to be enforceable in the Member State in which they were concluded. Consequently, if the content of an agreement resulting from mediation in a family law matter is not enforceable in the Member State where the agreement was concluded and where the request for enforceability is made, this Directive should not encourage the parties to circumvent the law of that Member State by having their agreement made enforceable in another Member State.
- (22) This Directive should not affect the rules in the Member States concerning enforcement of agreements resulting from mediation.
- (23) Confidentiality in the mediation process is important and this Directive should therefore provide for a minimum degree of compatibility of civil procedural rules with regard to how to protect the confidentiality of mediation in any subsequent civil and commercial judicial proceedings or arbitration.
- (24) In order to encourage the parties to use mediation, Member States should ensure that their rules on limitation and prescription periods do not prevent the parties from going to court or to arbitration if their mediation attempt fails. Member States should make sure that this result is achieved even though this Directive does not harmonise national rules on limitation and prescription periods. Provisions on limitation and prescription periods in international agreements as implemented in the Member States, for instance in the area of transport law, should not be affected by this Directive.
- (25) Member States should encourage the provision of information to the general public on how to contact mediators and organisations providing mediation services. They should also encourage legal practitioners to inform their clients of the possibility of mediation.
- (26) In accordance with point 34 of the Interinstitutional agreement on better law-making ⁽³⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (27) This Directive seeks to promote the fundamental rights, and takes into account the principles, recognised in particular by the Charter of Fundamental Rights of the European Union.
- (28) Since the objective of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (29) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Directive.
- (30) 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 establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application,

⁽¹⁾ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ L 338, 23.12.2003, p. 1. Regulation as amended by Regulation (EC) No 2116/2004 (OJ L 367, 14.12.2004, p. 1).

⁽³⁾ OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective and scope

1. The objective of this Directive is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings.

2. This Directive shall apply, in cross-border disputes, to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

3. In this Directive, the term 'Member State' shall mean Member States with the exception of Denmark.

Article 2

Cross-border disputes

1. For the purposes of this Directive a cross-border dispute shall be one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which:

- (a) the parties agree to use mediation after the dispute has arisen;
- (b) mediation is ordered by a court;
- (c) an obligation to use mediation arises under national law; or
- (d) for the purposes of Article 5 an invitation is made to the parties.

2. Notwithstanding paragraph 1, for the purposes of Articles 7 and 8 a cross-border dispute shall also be one in which judicial proceedings or arbitration following mediation between the parties are initiated in a Member State other than that in which the parties were domiciled or habitually resident on the date referred to in paragraph 1(a), (b) or (c).

3. For the purposes of paragraphs 1 and 2, domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

- (a) 'Mediation' means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seised to settle a dispute in the course of judicial proceedings concerning the dispute in question.

- (b) 'Mediator' means any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation.

Article 4

Ensuring the quality of mediation

1. Member States shall encourage, by any means which they consider appropriate, the development of, and adherence to, voluntary codes of conduct by mediators and organisations providing mediation services, as well as other effective quality control mechanisms concerning the provision of mediation services.

2. Member States shall encourage the initial and further training of mediators in order to ensure that the mediation is conducted in an effective, impartial and competent way in relation to the parties.

Article 5

Recourse to mediation

1. A court before which an action is brought may, when appropriate and having regard to all the circumstances of the case, invite the parties to use mediation in order to settle the dispute. The court may also invite the parties to attend an information session on the use of mediation if such sessions are held and are easily available.

2. This Directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not prevent the parties from exercising their right of access to the judicial system.

Article 6

Enforceability of agreements resulting from mediation

1. Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable. The content of such an agreement shall be made enforceable unless, in the case in question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability.

2. The content of the agreement may be made enforceable by a court or other competent authority in a judgment or decision or in an authentic instrument in accordance with the law of the Member State where the request is made.

3. Member States shall inform the Commission of the courts or other authorities competent to receive requests in accordance with paragraphs 1 and 2.

4. Nothing in this Article shall affect the rules applicable to the recognition and enforcement in another Member State of an agreement made enforceable in accordance with paragraph 1.

Article 7

Confidentiality of mediation

1. Given that mediation is intended to take place in a manner which respects confidentiality, Member States shall ensure that, unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except:

- (a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or

- (b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

2. Nothing in paragraph 1 shall preclude Member States from enacting stricter measures to protect the confidentiality of mediation.

Article 8

Effect of mediation on limitation and prescription periods

1. Member States shall ensure that parties who choose mediation in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process.

2. Paragraph 1 shall be without prejudice to provisions on limitation or prescription periods in international agreements to which Member States are party.

Article 9

Information for the general public

Member States shall encourage, by any means which they consider appropriate, the availability to the general public, in particular on the Internet, of information on how to contact mediators and organisations providing mediation services.

Article 10

Information on competent courts and authorities

The Commission shall make publicly available, by any appropriate means, information on the competent courts or authorities communicated by the Member States pursuant to Article 6(3).

Article 11

Review

Not later than 21 May 2016, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive. The report shall consider the development of mediation throughout the European Union and the impact of this Directive in the Member States. If necessary, the report shall be accompanied by proposals to adapt this Directive.

*Article 12***Transposition**

1. Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive before 21 May 2011, with the exception of Article 10, for which the date of compliance shall be 21 November 2010 at the latest. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 13***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 14***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 21 May 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J. LENARČIČ

Applicable law

11a

1980 Rome Convention on the law
applicable to contractual obligations



Convention on the law applicable to contractual obligations (consolidated version)

First Protocol on the interpretation of the 1980 Convention by the Court of Justice
(consolidated version)

Second Protocol conferring on the Court of Justice powers to interpret the 1980 Convention
(consolidated version)

(98/C 27/02)

PRELIMINARY NOTE

The signing on 29 November 1996 of the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Rome Convention on the law applicable to contractual obligations and to the two Protocols on its interpretation by the Court of Justice has made it desirable to produce a consolidated version of the Rome convention and of those two Protocols.

These texts are accompanied by three Declarations, one made in 1980 with regard to the need for consistency between measures to be adopted on choice-of-law rules by the Community and those under the Convention, a

second, also made in 1980, on the interpretation of the Convention by the Court of Justice and a third, made in 1996, concerning compliance with the procedure provided for in Article 23 of the Rome Convention as regards carriage of goods by sea.

The text printed in this edition was drawn up by the General Secretariat of the Council, in whose archives the originals of the instruments concerned are deposited. It should be noted, however, that this text has no binding force. The official texts of the instruments consolidated are to be found in the following Official Journals.

Language version of the Official Journal	1980 Convention	1984 Accession	1988 First Protocol	1988 Second Protocol	1992 Accession Convention	1996 Accession Convention
German	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
English	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Danish	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
French	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Greek	L 146, 31. 5. 1984, p. 7	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Irish	Special Edition (L 266)	Special Edition (L 146)	Special Edition (L 48)	Special Edition (L 48)	Special Edition (L 333)	Special Edition (C 15)
Italian	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10

Language version of the Official Journal	1980 Convention	1984 Accession	1988 First Protocol	1988 Second Protocol	1992 Accession Convention	1996 Accession Convention
Dutch	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Spanish	Special Edition, Chapter 1, Volume 3, p. 36 (See also OJ L 333, p. 17)	Special Edition, Chapter 1, Volume 4, p. 36 (See also OJ L 333, p. 72)	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Portuguese	Special Edition, Chapter 1, Volume 3, p. 36 (See also OJ L 333, p. 7)	Special Edition, Chapter 1, Volume 4, p. 72 (See also OJ L 333, p. 74)	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Finnish	C 15, 15. 1. 1997, p. 70	C 15, 15. 1. 1997, p. 66	C 15, 15. 1. 1997, p. 60	C 15, 15. 1. 1997, p. 64	C 15, 15. 1. 1997, p. 68	C 15, 15. 1. 1997, p. 53
Swedish	C 15, 15. 1. 1997, p. 70	C 15, 15. 1. 1997, p. 66	C 15, 15. 1. 1997, p. 60	C 15, 15. 1. 1997, p. 64	C 15, 15. 1. 1997, p. 68	C 15, 15. 1. 1997, p. 53

ANNEX

CONVENTION

on the law applicable to contractual obligations⁽¹⁾

opened for signature in Rome on 19 June 1980

PREAMBLE

THE HIGH CONTRACTING PARTIES to the Treaty establishing the European Economic Community,

ANXIOUS to continue in the field of private international law the work of unification of law which has already been done within the Community, in particular in the field of jurisdiction and enforcement of judgments,

WISHING to establish uniform rules concerning the law applicable to contractual obligations,

HAVE AGREED AS FOLLOWS:

TITLE I

SCOPE OF THE CONVENTION

Article 1

Scope of the Convention

1. The rules of this Convention shall apply to contractual obligations in any situation involving a choice between the laws of different countries.

2. They shall not apply to:

(a) questions involving the status or legal capacity of natural persons, without prejudice to Article 11;

(b) contractual obligations relating to:

— wills and succession,

— rights in property arising out of a matrimonial relationship,

— rights and duties arising out of a family relationship, parentage, marriage or affinity, including maintenance obligations in respect of children who are not legitimate;

(c) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;

(d) arbitration agreements and agreements on the choice of court;

(c) questions governed by the law of companies and other bodies corporate or unincorporate such as the creation, by registration or otherwise, legal capacity, internal organization or winding up of companies and other bodies corporate or unincorporate and the personal liability of officers and members as such for the obligations of the company or body;

(f) the question whether an agent is able to bind a principal, or an organ to bind a company or body corporate or unincorporate, to a third party;

(g) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;

(h) evidence and procedure, without prejudice to Article 14.

3. The rules of this Convention do not apply to contracts of insurance which cover risks situated in the territories of the Member States of the European

⁽¹⁾ Text as amended by the Convention of 10 April 1984 on the accession of the Hellenic Republic — hereafter referred to as the '1984 Accession Convention' —, by the Convention of 18 May 1992 on the accession of the Kingdom of Spain and the Portuguese Republic — hereafter referred to as the '1992 Accession Convention' — and by the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden — hereafter referred to as the '1996 Accession Convention'.

Economic Community. In order to determine whether a risk is situated in those territories the court shall apply its internal law.

4. The proceeding paragraph does not apply to contracts of re-insurance.

Article 2

Application of law of non-contracting States

Any law specified by this Convention shall be applied whether or not it is the law of a Contracting State.

TITLE II

UNIFORM RULES

Article 3

Freedom of choice

1. A contract shall be governed by the law chosen by the parties. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice under this Article or of other provisions of this Convention. Any variation by the parties of the law to be applied made after the conclusion of the contract shall not prejudice its formal validity under Article 9 or adversely affect the rights of third parties.

3. The fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of the law at the country which cannot be derogated from by contract, hereinafter called 'mandatory rules'.

4. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 8, 9 and 11.

Article 4

Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the

contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a separable part of the contract which has a closer connection with another country may by way of exception be governed by the law of that other country.

2. Subject to the provisions of paragraph 5 of this Article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration. However, if the contract is entered into in the course of that party's trade or profession, that country shall be the country in which the principal place of business is situated or, where under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated.

3. Notwithstanding the provisions of paragraph 2 of this Article, to the extent that the subject matter of the contract is a right in immovable property or a right to use immovable property it shall be presumed that the contract is most closely connected with the country where the immovable property is situated.

4. A contract for the carriage of goods shall not be subject to the presumption in paragraph 2. In such a contract if the country in which, at the time the contract is concluded, the carrier has his principal place of business is also the country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated, it shall be presumed that the contract is most closely connected with that country. In applying this paragraph single voyage charter-parties and other contracts the main purpose of which is the carriage of goods shall be treated as contracts for the carriage of goods.

5. Paragraph 2 shall not apply if the characteristic performance cannot be determined, and the presumptions in paragraphs 2, 3 and 4 shall be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country.

Article 5

Certain consumer contracts

1. This Article applies to a contract the object of which is the supply of goods or services to a person ('the consumer') for a purpose which can be regarded as being outside his trade or profession, or a contract for the provision of credit for that object.

2. Notwithstanding the provisions of Article 3, a choice of law made by the parties shall not have the result of depriving the consumer of the protection

afforded to him by the mandatory rules of the law of the country in which he has his habitual residence:

- if in that country the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and he had taken in that country all the steps necessary on his part for the conclusion of the contract, or
- if the other party or his agent received the consumer's order in that country, or
- if the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order, provided that the consumer's journey was arranged by the seller for the purpose of inducing the consumer to buy.

3. Notwithstanding the provisions of Article 4, a contract to which this Article applies shall, in the absence of choice in accordance with Article 3, be governed by the law of the country in which the consumer has his habitual residence if it is entered into in the circumstances described in paragraph 2 of this Article.

4. This Article shall not apply to:

- (a) a contract of carriage;
- (b) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence.

5. Notwithstanding the provisions of paragraph 4, this Article shall apply to a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 6

Individual employment contracts

1. Notwithstanding the provisions of Article 3, in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice.

2. Notwithstanding the provisions of Article 4, a contract of employment shall, in the absence of choice in accordance with Article 3, be governed:

- (a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or

- (b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated;

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.

Article 7

Mandatory rules

1. When applying under this Convention the law of a country, effect may be given to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

2. Nothing in this Convention shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract.

Article 8

Material validity

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Convention if the contract or term were valid.

2. Nevertheless a party may rely upon the law of the country in which he has his habitual residence to establish that he did not consent if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in the preceding paragraph.

Article 9

Formal validity

1. A contract concluded between persons who are in the same country is formally valid if it satisfies the formal requirements of the law which governs it under this Convention or of the law of the country where it is concluded.

2. A contract concluded between persons who are in different countries is formally valid if it satisfies the formal requirements of the law which governs it under this Convention or of the law of one of those countries.

3. Where a contract is concluded by an agent, the country in which the agent acts is the relevant country for the purposes of paragraphs 1 and 2.

4. An act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which under this Convention governs or would govern the contract or of the law of the country where the act was done.

5. The provisions of the preceding paragraphs shall not apply to a contract to which Article 5 applies, concluded in the circumstances described in paragraph 2 of Article 5. The formal validity of such a contract is governed by the law of the country in which the consumer has his habitual residence.

6. Notwithstanding paragraphs 1 to 4 of this Article, a contract the subject matter of which is a right in immovable property or a right to use immovable property shall be subject to the mandatory requirements of form of the law of the country where the property is situated if by that law those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract.

Article 10

Scope of applicable law

1. The law applicable to a contract by virtue of Articles 3 to 6 and 12 of this Convention shall govern in particular:

- (a) interpretation;
- (b) performance;
- (c) within the limits of the powers conferred on the court by its procedural law, the consequences of breach, including the assessment of damages in so far as it is governed by rules of law;
- (d) the various ways of extinguishing obligations, and prescription and limitation of actions;
- (e) the consequences of nullity of the contract.

2. In relation to the manner of performance and the steps to be taken in the event of defective performance regard shall be had to the law of the country in which performance takes place.

Article 11

Incapacity

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from another law only if the other party to the contract was aware of this incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.

Article 12

Voluntary assignment

1. The mutual obligations of assignor and assignee under a voluntary assignment of a right against another person ('the debtor') shall be governed by the law which under this Convention applies to the contract between the assignor and assignee.

2. The law governing the right to which the assignment relates shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged.

Article 13

Subrogation

1. Where a person ('the creditor') has a contractual claim upon another ('the debtor'), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship and, if so, whether he may do so in full or only to a limited extent.

2. The same rule applies where several persons are subject to the same contractual claim and one of them has satisfied the creditor.

Article 14

Burden of proof, etc.

1. The law governing the contract under this Convention applies to the extent that it contains, in the law of contract, rules which raise presumptions of law or determine the burden of proof.

2. A contract or an act intended to have legal effect may be proved by any mode of proof recognized by the law of the forum or by any of the laws referred to in Article 9 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

*Article 15***Exclusion of convoi**

The application of the law of any country specified by this Convention means the application of the rules of law in force in that country other than its rules of private international law.

*Article 16***'Ordre public'**

The application of a rule of the law of any country specified by this Convention may be refused only if such application is manifestly incompatible with the public policy ('ordre public') of the forum.

*Article 17***No retrospective effect**

This Convention shall apply in a Contracting State to contracts made after the date on which this Convention has entered into force with respect to that State.

*Article 18***Uniform interpretation**

In the interpretation and application of the preceding uniform rules, regard shall be had to their international character and to the desirability of achieving uniformity in their interpretation and application.

*Article 19***States with more than one legal system**

1. Where a State comprises several territorial units each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Convention.

2. A State within which different territorial units have their own rules of law in respect of contractual obligations shall not be bound to apply this Convention to conflicts solely between the laws of such units.

*Article 20***Precedence of Community law**

This Convention shall not affect the application of provisions which, in relation to particular matters, lay down choice of law rules relating to contractual obligations and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.

*Article 21***Relationship with other conventions**

This Convention shall not prejudice the application of international conventions to which a Contracting State is, or becomes, a party.

*Article 22***Reservations**

1. Any Contracting State may, at the time of signature, ratification, acceptance or approval, reserve the right not to apply:

- (a) the provisions of Article 7 (1);
- (b) the provisions of Article 10 (1) (e).

2. ...⁽¹⁾

3. Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the third calendar month after notification of the withdrawal.

TITLE III

FINAL PROVISIONS

Article 23

1. If, after the date on which this Convention has entered into force for a Contracting State, that State wishes to adopt any new choice of law rule in regard to any particular category of contract within the scope of this Convention, it shall communicate its intention to the other signatory States through the Secretary-General of the Council of the European Communities.

2. Any signatory State may, within six months from the date of the communication made to the Secretary-General, request him to arrange consultations between signatory States in order to reach agreement.

3. If no signatory State has requested consultations within this period or if within two years following the communication made to the Secretary-General no agreement is reached in the course of consultations, the Contracting State concerned may amend its law in the manner indicated. The measures taken by that State shall be brought to the knowledge of the other signatory States through the Secretary-General of the Council of the European Communities.

⁽¹⁾ Paragraph deleted by Article 2 (1) of the 1992 Accession Convention.

Article 24

1. If, after the date on which this Convention has entered into force with respect to a Contracting State, that State wishes to become a party to a multilateral convention whose principal aim or one of whose principal aims is to lay down rules of private international law concerning any of the matters governed by this Convention, the procedure set out in Article 23 shall apply. However, the period of two years, referred to in paragraph 3 of that Article, shall be reduced to one year.

2. The procedure referred to in the preceding paragraph need not be followed if a Contracting State or one of the European Communities is already a party to the multilateral convention, or if its object is to revise a convention to which the State concerned is already a party, or if it is a convention concluded within the framework of the Treaties establishing the European Communities.

Article 25

If a Contracting State considers that the unification achieved by this Convention is prejudiced by the conclusion of agreements not covered by Article 24 (1), that State may request the Secretary-General of the Council of the European Communities to arrange consultations between the signatory States of this Convention.

Article 26

Any Contracting State may request the revision of this Convention. In this event a revision conference shall be convened by the President of the Council of the European Communities.

*Article 27⁽¹⁾**Article 28*

1. This Convention shall be open from 19 June 1980 for signature by the States party to the Treaty establishing the European Economic Community.

2. This Convention shall be subject to ratification, acceptance or approval by the signatory States. The instruments of ratification, acceptance or approval shall

be deposited with the Secretary-General of the Council of the European Communities⁽²⁾.

Article 29⁽³⁾

1. This Convention shall enter into force on the first day of the third month following the deposit of the seventh instrument of ratification, acceptance or approval.

2. This Convention shall enter into force for each signatory State ratifying, accepting or approving at a later date on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval.

⁽²⁾ Ratification of the Accession Conventions is governed by the following provisions of those conventions:

— as regards the 1984 Accession Convention, by Article 3 of that Convention, which reads as follows:

'Article 3

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.'

— as regards the 1992 Accession Convention, by Article 4 of that Convention, which reads as follows:

'Article 4

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.'

— as regards the 1996 Accession Convention, by Article 5 of that Convention, which reads as follows:

'Article 5

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Union.'

⁽³⁾ The entry into force of the Accession Conventions is governed by the following provisions of those Conventions:

— as regards the 1984 Accession Convention, by Article 4 of that Convention, which reads as follows:

'Article 4

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Hellenic Republic and seven States which have ratified the Convention on the law applicable to contractual obligations.

This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.'

— as regards the 1992 Accession Convention, by Article 5 of that Convention which reads as follows:

'Article 5

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Kingdom of Spain or the Portuguese Republic and by one State which has ratified the Convention on the law applicable to contractual obligations.

⁽¹⁾ Article deleted by Article 2 (1) of the 1992 Accession Convention.

Article 30

1. This Convention shall remain in force for 10 years from the date of its entry into force in accordance with Article 29 (1), even for States for which it enters into force at a later date.

2. If there has been no denunciation it shall be renewed tacitly every five years.

3. A Contracting State which wishes to denounce shall, not less than six months before the expiration of the period of 10 or five years, as the case may be, give notice to the Secretary-General of the Council of the European Communities. Denunciation may be limited to any territory to which the Convention has been extended by a declaration under Article 27 (2)⁽¹⁾.

4. The denunciation shall have effect only in relation to the State which has notified it. The Convention will remain in force as between all other Contracting States.

Article 31⁽²⁾

The Secretary-General of the Council of the European Communities shall notify the States party to the Treaty establishing the European Economic Community of:

- (a) the signatures;
- (b) deposit of each instrument of ratification, acceptance or approval;
- (c) the date of entry into force of this Convention;
- (d) communications made in pursuance of Articles 23, 24, 25, 26 and 30⁽³⁾;
- (e) the reservations and withdrawals of reservations referred to in Article 22.

Article 32

The Protocol annexed to this Convention shall form an integral part thereof.

Article 33⁽⁴⁾

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Irish and Italian languages, these texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy thereof to the Government of each signatory State.

This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.'

- as regards the 1996 Accession Convention, by Article 6 of that Convention, which reads as follows:

'Article 6

1. This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Republic of Austria, the Republic of Finland or the Kingdom of Sweden and by one Contracting State which has ratified the Convention on the law applicable to contractual obligations.

2. This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.'

⁽¹⁾ Phrase deleted by the 1992 Accession Convention.

⁽²⁾ Notification concerning the Accession Convention is governed by the following provisions of those Conventions:

- as regards the 1984 Accession Convention, by Article 5 of that Convention, which reads as follows:

'Article 5

The Secretary-General of the Council of the European Communities shall notify Signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the dates of entry into force of this Convention for the Contracting States.'

- as regards the 1992 Accession Convention, by Article 6 of that Convention, which reads as follows:

'Article 6

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the dates of entry into force of this Convention for the Contracting States.'

- as regards the 1996 Accession Convention, by Article 7 of that Convention, which reads as follows:

'Article 7

The Secretary-General of the Council of the European Union shall notify the signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the dates of entry into force of this Convention for the Contracting States.'

⁽³⁾ Point (d) as amended by the 1992 Accession Convention.

⁽⁴⁾ An indication of the authentic texts of the Accession Convention is to be found in the following provisions:

- as regards the 1984 Accession Convention, in Articles 2 and 6 of that Convention, which reads as follows:

'Article 2

The Secretary-General of the Council of the European Communities shall transmit a certified copy of the Convention on the law applicable to contractual obligations in the Danish, Dutch, English, French, German, Irish and Italian languages to the Government of the Hellenic Republic.

The text of the Convention on the law applicable to contractual obligations in the Greek language is annexed hereto. The text in the Greek language shall be authentic under the same conditions as the other texts of the Convention on the law applicable to contractual obligations.'

In witness whereof the undersigned, being duly authorized thereto, having signed this Convention.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the plenipotentiaries]

'Article 6

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish and Italian languages, all eight texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each Signatory State.',

- as regards the 1992 Accession Convention, in Articles 3 and 7 of that Convention, which read as follows:

'Article 3

The Secretary-General of the Council of the European Communities shall transmit a certified copy of the Convention on the law applicable to contractual obligations in the Danish, Dutch, English, French, German, Greek, Irish and Italian languages to the Governments of the Kingdom of Spain and the Portuguese Republic.

The text of the Convention on the law applicable to contractual obligations in the Portuguese and Spanish languages is set out in Annexes I and II to this Convention. The texts drawn up in the Portuguese and Spanish languages shall be authentic under the same conditions as the other texts of the Convention on the law applicable to contractual obligations.'

'Article 7

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European

Communities. The Secretary-General shall transmit a certified copy to the Government of each Signatory State.',

- as regards the 1996 Accession Convention, in Articles 4 and 8 of that Convention, which read as follows:

'Article 4

1. The Secretary-General of the Council of the European Union shall transmit a certified copy of the Convention of 1980, the Convention of 1984, the First Protocol of 1988, the Second Protocol of 1988 and the Convention of 1992 in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Spanish and Portuguese languages to the Governments of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

2. The text of the Convention of 1980, the Convention of 1984, the First Protocol of 1988, the Second Protocol of 1988 and the Convention of 1992 in the Finnish and Swedish languages shall be authentic under the same conditions as the other texts of the Convention of 1980, the Convention of 1984, the First Protocol of 1988, the Second Protocol of 1988 and the Convention of 1992.'

'Article 8

This Convention, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all 12 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to the Government of each signatory State.'

PROTOCOL⁽¹⁾

The High Contracting Parties have agreed upon the following provision which shall be annexed to the Convention:

‘Notwithstanding the provisions of the Convention, Denmark, Sweden and Finland may retain national provisions concerning the law applicable to questions relating to the carriage of goods by sea and may amend such provisions without following the procedure provided for in Article 23 of the Convention of Rome. The national provisions applicable in this respect are the following:

- in Denmark, paragraphs 252 and 321 (3) and (4) of the “Solov” (maritime law),
- in Sweden, Chapter 13, Article 2 (1) and (2), and Chapter 14, Article 1 (3), of “sjölagen” (maritime law),
- in Finland, Chapter 13, Article 2 (1) and (2), and Chapter 14, Article 1 (3), of “merilaki”/“sjölagen” (maritime law).’

In witness whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the Plenipotentiaries]

⁽¹⁾ Text as amended by the 1996 Accession Convention.

JOINT DECLARATION

At the time of the signature of the Convention on the law applicable to contractual obligations, the Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland,

- I. anxious to avoid, as far as possible, dispersion of choice of law rules among several instruments and differences between these rules, express the wish that the institutions of the European Communities, in the exercise of their powers under the Treaties by which they were established, will, where the need arises, endeavour to adopt choice of law rules which are as far as possible consistent with those of this Convention;
- II. declare their intention as from the date of signature of this Convention until becoming bound by Article 24, to consult with each other if any one of the signatory States wishes to become a party to any convention to which the procedure referred to in Article 24 would apply;
- III. having regard to the contribution of the Convention on the law applicable to contractual obligations to the unification of choice of law rules within the European Communities, express the view that any State which becomes a member of the European Communities should accede to this Convention.

In witness whereof the undersigned, being duly authorized thereto, have signed this Joint Declaration.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the Plenipotentiaries]

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland,

On signing the Convention on the law applicable to contractual obligations;

Desiring to ensure that the Convention is applied as effectively as possible;

Anxious to prevent differences of interpretation of the Convention from impairing its unifying effect;

Declare themselves ready:

1. to examine the possibility of conferring jurisdiction in certain matters on the Court of Justice of the European Communities and, if necessary, to negotiate an agreement to this effect;
2. to arrange meetings at regular intervals between their representatives.

In witness whereof the undersigned, being duly authorized thereto, have signed this Joint Declaration.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the Plenipotentiaries]

FIRST PROTOCOL⁽¹⁾

on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

HAVING REGARD to the Joint Declaration annexed to the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

HAVE DECIDED to conclude a Protocol conferring jurisdiction on the Court of Justice of the European Communities to interpret that Convention, and to this end have designated as their Plenipotentiaries:

[Plenipotentiaries designated by the Member States]

WHO, meeting within the Council of the European Communities, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of:

- (a) the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, hereinafter referred to as 'the Rome Convention';
- (b) the Convention on accession to the Rome Convention by the States which have become Members of the European Communities since the date on which it was opened for signature;
- (c) this Protocol.

Article 2

Any of the courts referred to below may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning interpretation of the provisions contained in the instruments referred to in Article 1 if that court considers that a decision on the question is necessary to enable it to give judgment:

- (a) — in Belgium:
'la Cour de cassation' ('het Hof van Cassatie')
and 'le Conseil d'État' ('de Raad van State'),

- in Denmark:
'Højesteret',
- in the Federal Republic of Germany:
'die obersten Gerichtshöfe des Bundes',
- in Greece:
'Τα ανώτατα Δικαστήρια',
- in Spain:
'el Tribunal Supremo',
- in France:
'la Cour de cassation' and 'le Conseil d'État',
- in Ireland:
the Supreme Court,
- in Italy:
'la Corte suprema di cassazione' and 'il Consiglio di Stato',
- in Luxembourg:
'la Cour Supérieure de Justice', when sitting as
'Cour de cassation',
- in Austria:
the 'Oberste Gerichtshof', the 'Verwaltungsgerichtshof' and the 'Verfassungsgerichtshof',
- in the Netherlands:
'de Hoge Raad',
- in Portugal:
'o Supremo Tribunal de Justiça' and 'o Supremo Tribunal Administrativo',

⁽¹⁾ Text as amended by the 1996 Accession Convention.

— in Finland:

‘korkein oikeus/högsta domstolen’, ‘korkein hallinto-oikeus/högsta förvaltningsdomstolen’, ‘markkinatuomioistuim/marknadsdomstolen’ and ‘työtuomioistuim/arbetsdomstolen’,

— in Sweden:

‘Högsta domstolen’, ‘Regeringsrätten’, ‘Arbetsdomstolen’ and ‘Marknadsdomstolen’,

— in the United Kingdom:

the House of Lords and other courts from which no further appeal is possible;

(b) the courts of the Contracting States when acting as appeal courts.

Article 3

1. The competent authority of a Contracting State may request the Court of Justice to give a ruling on a question of interpretation of the provisions contained in the instruments referred to in Article 1 if judgments given by courts of that State conflict with the interpretation given either by the Court of Justice or in a judgment of one of the courts of another Contracting State referred to in Article 2. The provisions of this paragraph shall apply only to judgments which have become *res judicata*.

2. The interpretation given by the Court of Justice in response to such a request shall not affect the judgments which gave rise to the request for interpretation.

3. The Procurators-General of the Supreme Courts of Appeal of the Contracting States, or any other authority designated by a Contracting State, shall be entitled to request the Court of Justice for a ruling on interpretation in accordance with paragraph 1.

4. The Registrar of the Court of Justice shall give notice of the request to the Contracting States, to the Commission and to the Council of the European Communities; they shall then be entitled within two months of the notification to submit statements of case or written observations to the Court.

5. No fees shall be levied or any costs or expenses awarded in respect of the proceedings provided for in this Article.

Article 4

1. Except where this Protocol otherwise provides, the provisions of the Treaty establishing the European Economic Community and those of the Protocol on the Statute of the Court of Justice annexed thereto, which are applicable when the Court is requested to give a preliminary ruling, shall also apply to any proceedings for the interpretation of the instruments referred to in Article 1.

2. The Rules of Procedure of the Court of Justice shall, if necessary, be adjusted and supplemented in accordance with Article 188 of the Treaty establishing the European Economic Community.

Article 5⁽¹⁾

This Protocol shall be subject to ratification by the Signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

Article 6⁽²⁾

1. To enter into force, this Protocol must be ratified by seven States in respect of which the Rome Convention is in force. This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last such State to take this step. If, however, the Second Protocol conferring on the Court of Justice of the European Communities certain powers to interpret the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, concluded in Brussels on 19 December 1988⁽³⁾ enters into force on a later date, this Protocol shall enter into force on the date of entry into force of the Second Protocol.

2. Any ratification subsequent to the entry into force of this Protocol shall take effect on the first day of the third month following the deposit of the instrument of ratification, provided that the ratification, acceptance or approval of the Rome Convention by the State in question has become effective.

Article 7⁽⁴⁾

The Secretary-General of the Council of the European Communities shall notify the Signatory States of:

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Protocol;
- (c) any designation communicated pursuant to Article 3 (3);
- (d) any communication made pursuant to Article 8.

Article 8

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the texts of any provisions of their laws which necessitate an amendment to the list of courts in Article 2 (a).

⁽¹⁾ See footnote 2 on page 41.

⁽²⁾ See footnote 3 on page 41.

⁽³⁾ See page 44.

⁽⁴⁾ See footnote 2 on page 42.

Article 9

This Protocol shall have effect for as long as the Rome Convention remains in force under the conditions laid down in Article 30 of that Convention.

Article 10

Any Contracting State may request the revision of this Protocol. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 11⁽¹⁾

This Protocol, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all 10 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each Signatory State.

In witness whereof, the undersigned Plenipotentiaries have affixed their signatures below this Protocol.

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

⁽¹⁾ See footnote 4 on page 42.

JOINT DECLARATIONS

Joint Declaration

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland,

On signing the First Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

Desiring to ensure that the Convention is applied as effectively and as uniformly as possible,

Declare themselves ready to organize, in cooperation with the Court of Justice of the European Communities, an exchange of information on judgments which have become *res judicata* and have been handed down pursuant to the Convention on the law applicable to contractual obligations by the courts referred to in Article 2 of the said Protocol. The exchange of information will comprise:

- the forwarding to the Court of Justice by the competent national authorities of judgments handed down by the courts referred to in Article 2 (a) and significant judgments handed down by the courts referred to in Article 2 (b),
- the classification and the documentary exploitation of these judgments by the Court of Justice including, as far as necessary, the drawing up of abstracts and translations, and the publication of judgments of particular importance,
- the communication by the Court of Justice of the documentary material to the competent national authorities of the States parties to the Protocol and to the Commission and the Council of the European Communities.

In witness whereof, the undersigned Plenipotentiaries have affixed their signature below this Joint Declaration.

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

—

Joint Declaration

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland,

On signing the First Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

Having regard to the Joint Declaration annexed to the Convention on the law applicable to contractual obligations,

Desiring to ensure that the Convention is applied as effectively and as uniformly as possible,

Anxious to prevent differences of interpretation of the Convention from impairing its unifying effect,

Express the view that any State which becomes a member of the European Communities should accede to this Protocol.

In witness whereof, the undersigned Plenipotentiaries have affixed their signatures below this Joint Declaration.

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

SECOND PROTOCOL

conferring on the Court of Justice of the European Communities certain powers to interpret the Convention on the law applicable to contractual obligations; opened for signature in Rome on 19 June 1980

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

WHEREAS the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, hereinafter referred to as 'the Rome Convention', will enter into force after the deposit of the seventh instrument of ratification, acceptance or approval;

WHEREAS the uniform application of the rules laid down in the Rome Convention requires that machinery to ensure uniform interpretation be set up and whereas to that end appropriate powers should be conferred upon the Court of Justice of the European Communities, even before the Rome Convention enters into force with respect to all the Member States of the European Economic Community,

HAVE DECIDED to conclude this Protocol and to this end have designated as their Plenipotentiaries:

[Plenipotentiaries designated by the Member States]

WHO, meeting within the Council of the European Communities, having exchanged their full powers; found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

1. The Court of Justice of the European Communities shall, with respect to the Rome Convention, have the jurisdiction conferred upon it by the First Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, concluded in Brussels on 19 December 1988⁽¹⁾. The Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of the Court of Justice shall apply.

2. The Rules of Procedure of the Court of Justice shall be adapted and supplemented as necessary in accordance with Article 188 of the Treaty establishing the European Economic Community.

Article 2⁽²⁾

This Protocol shall be subject to ratification by the Signatory States. The instruments of ratification shall be

deposited with the Secretary-General of the Council of the European Communities.

Article 3⁽³⁾

This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification of the last Signatory State to complete that formality.

Article 4⁽⁴⁾

This Protocol, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all 10 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory.

⁽¹⁾ See page 34.

⁽²⁾ See footnote 2 on page 41.

⁽³⁾ See footnote 3 on page 41.

⁽⁴⁾ See footnote 4 on page 42.

In witness whereof, the undersigned Plenipotentiaries have affixed their signature below this Protocol.

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

11b

Regulation (EC) No 593/2008
of the European Parliament and of the Council
of 17 June 2008 on the law applicable
to contractual obligations (known as 'Rome I')



REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 June 2008

on the law applicable to contractual obligations (Rome I)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice. For the progressive establishment of such an area, the Community is to adopt measures relating to judicial cooperation in civil matters with a cross-border impact to the extent necessary for the proper functioning of the internal market.
- (2) According to Article 65, point (b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.
- (4) On 30 November 2000 the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters ⁽³⁾. The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.
- (5) The Hague Programme ⁽⁴⁾, adopted by the European Council on 5 November 2004, called for work to be pursued actively on the conflict-of-law rules regarding contractual obligations (Rome I).
- (6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.
- (7) The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽⁵⁾ (Brussels I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) ⁽⁶⁾.
- (8) Family relationships should cover parentage, marriage, affinity and collateral relatives. The reference in Article 1(2) to relationships having comparable effects to marriage and other family relationships should be interpreted in accordance with the law of the Member State in which the court is seised.
- (9) Obligations under bills of exchange, cheques and promissory notes and other negotiable instruments should also cover bills of lading to the extent that the obligations under the bill of lading arise out of its negotiable character.
- (10) Obligations arising out of dealings prior to the conclusion of the contract are covered by Article 12 of Regulation (EC) No 864/2007. Such obligations should therefore be excluded from the scope of this Regulation.
- (11) The parties' freedom to choose the applicable law should be one of the cornerstones of the system of conflict-of-law rules in matters of contractual obligations.
- (12) An agreement between the parties to confer on one or more courts or tribunals of a Member State exclusive jurisdiction to determine disputes under the contract should be one of the factors to be taken into account in determining whether a choice of law has been clearly demonstrated.
- (13) This Regulation does not preclude parties from incorporating by reference into their contract a non-State body of law or an international convention.

⁽¹⁾ OJ C 318, 23.12.2006, p. 56.

⁽²⁾ Opinion of the European Parliament of 29 November 2007 (not yet published in the Official Journal) and Council Decision of 5 June 2008.

⁽³⁾ OJ C 12, 15.1.2001, p. 1.

⁽⁴⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁵⁾ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽⁶⁾ OJ L 199, 31.7.2007, p. 40.

- (14) Should the Community adopt, in an appropriate legal instrument, rules of substantive contract law, including standard terms and conditions, such instrument may provide that the parties may choose to apply those rules.
- (15) Where a choice of law is made and all other elements relevant to the situation are located in a country other than the country whose law has been chosen, the choice of law should not prejudice the application of provisions of the law of that country which cannot be derogated from by agreement. This rule should apply whether or not the choice of law was accompanied by a choice of court or tribunal. Whereas no substantial change is intended as compared with Article 3(3) of the 1980 Convention on the Law Applicable to Contractual Obligations⁽¹⁾ (the Rome Convention), the wording of this Regulation is aligned as far as possible with Article 14 of Regulation (EC) No 864/2007.
- (16) To contribute to the general objective of this Regulation, legal certainty in the European judicial area, the conflict-of-law rules should be highly foreseeable. The courts should, however, retain a degree of discretion to determine the law that is most closely connected to the situation.
- (17) As far as the applicable law in the absence of choice is concerned, the concept of 'provision of services' and 'sale of goods' should be interpreted in the same way as when applying Article 5 of Regulation (EC) No 44/2001 in so far as sale of goods and provision of services are covered by that Regulation. Although franchise and distribution contracts are contracts for services, they are the subject of specific rules.
- (18) As far as the applicable law in the absence of choice is concerned, multilateral systems should be those in which trading is conducted, such as regulated markets and multilateral trading facilities as referred to in Article 4 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments⁽²⁾, regardless of whether or not they rely on a central counterparty.
- (19) Where there has been no choice of law, the applicable law should be determined in accordance with the rule specified for the particular type of contract. Where the contract cannot be categorised as being one of the specified types or where its elements fall within more than one of the specified types, it should be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence. In the case of a contract consisting of a bundle of rights and obligations capable of being categorised as falling within more than one of the specified types of contract, the characteristic performance of the contract should be determined having regard to its centre of gravity.
- (20) Where the contract is manifestly more closely connected with a country other than that indicated in Article 4(1) or (2), an escape clause should provide that the law of that other country is to apply. In order to determine that country, account should be taken, *inter alia*, of whether the contract in question has a very close relationship with another contract or contracts.
- (21) In the absence of choice, where the applicable law cannot be determined either on the basis of the fact that the contract can be categorised as one of the specified types or as being the law of the country of habitual residence of the party required to effect the characteristic performance of the contract, the contract should be governed by the law of the country with which it is most closely connected. In order to determine that country, account should be taken, *inter alia*, of whether the contract in question has a very close relationship with another contract or contracts.
- (22) As regards the interpretation of contracts for the carriage of goods, no change in substance is intended with respect to Article 4(4), third sentence, of the Rome Convention. Consequently, single-voyage charter parties and other contracts the main purpose of which is the carriage of goods should be treated as contracts for the carriage of goods. For the purposes of this Regulation, the term 'consignor' should refer to any person who enters into a contract of carriage with the carrier and the term 'the carrier' should refer to the party to the contract who undertakes to carry the goods, whether or not he performs the carriage himself.
- (23) As regards contracts concluded with parties regarded as being weaker, those parties should be protected by conflict-of-law rules that are more favourable to their interests than the general rules.
- (24) With more specific reference to consumer contracts, the conflict-of-law rule should make it possible to cut the cost of settling disputes concerning what are commonly relatively small claims and to take account of the development of distance-selling techniques. Consistency with Regulation (EC) No 44/2001 requires both that there be a reference to the concept of directed activity as a condition for applying the consumer protection rule and that the concept be interpreted harmoniously in Regulation (EC) No 44/2001 and this Regulation, bearing in mind that a joint declaration by the Council and the Commission on Article 15 of Regulation (EC) No 44/2001 states that 'for Article 15(1)(c) to be applicable it is not sufficient for an undertaking to target its activities at the Member State of the consumer's residence, or at a number of Member States including that Member State; a contract must also be concluded within the framework of its activities'. The declaration also states that 'the mere fact that an Internet site is accessible is not sufficient for Article 15 to be applicable, although a factor will be that this Internet site solicits the conclusion of distance contracts and that a contract has actually been concluded at a distance, by

⁽¹⁾ OJ C 334, 30.12.2005, p. 1.

⁽²⁾ OJ L 145, 30.4.2004, p. 1. Directive as last amended by Directive 2008/10/EC (OJ L 76, 19.3.2008, p. 33).

whatever means. In this respect, the language or currency which a website uses does not constitute a relevant factor.’.

- (25) Consumers should be protected by such rules of the country of their habitual residence that cannot be derogated from by agreement, provided that the consumer contract has been concluded as a result of the professional pursuing his commercial or professional activities in that particular country. The same protection should be guaranteed if the professional, while not pursuing his commercial or professional activities in the country where the consumer has his habitual residence, directs his activities by any means to that country or to several countries, including that country, and the contract is concluded as a result of such activities.
- (26) For the purposes of this Regulation, financial services such as investment services and activities and ancillary services provided by a professional to a consumer, as referred to in sections A and B of Annex I to Directive 2004/39/EC, and contracts for the sale of units in collective investment undertakings, whether or not covered by Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ⁽¹⁾, should be subject to Article 6 of this Regulation. Consequently, when a reference is made to terms and conditions governing the issuance or offer to the public of transferable securities or to the subscription and redemption of units in collective investment undertakings, that reference should include all aspects binding the issuer or the offeror to the consumer, but should not include those aspects involving the provision of financial services.
- (27) Various exceptions should be made to the general conflict-of-law rule for consumer contracts. Under one such exception the general rule should not apply to contracts relating to rights *in rem* in immovable property or tenancies of such property unless the contract relates to the right to use immovable property on a timeshare basis within the meaning of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis ⁽²⁾.
- (28) It is important to ensure that rights and obligations which constitute a financial instrument are not covered by the general rule applicable to consumer contracts, as that could lead to different laws being applicable to each of the instruments issued, therefore changing their nature and preventing their fungible trading and offering. Likewise, whenever such instruments are issued or offered, the contractual relationship established between the issuer or the offeror and the consumer should not necessarily be subject to the mandatory application of the law of the country of habitual residence of the consumer, as there is a need to ensure uniformity in the terms and conditions of an issuance or an offer. The same rationale should apply with regard to the multilateral systems covered by Article 4(1)(h), in respect of which it should be ensured that the law of the country of habitual residence of the consumer will not interfere with the rules applicable to contracts concluded within those systems or with the operator of such systems.
- (29) For the purposes of this Regulation, references to rights and obligations constituting the terms and conditions governing the issuance, offers to the public or public take-over bids of transferable securities and references to the subscription and redemption of units in collective investment undertakings should include the terms governing, *inter alia*, the allocation of securities or units, rights in the event of over-subscription, withdrawal rights and similar matters in the context of the offer as well as those matters referred to in Articles 10, 11, 12 and 13, thus ensuring that all relevant contractual aspects of an offer binding the issuer or the offeror to the consumer are governed by a single law.
- (30) For the purposes of this Regulation, financial instruments and transferable securities are those instruments referred to in Article 4 of Directive 2004/39/EC.
- (31) Nothing in this Regulation should prejudice the operation of a formal arrangement designated as a system under Article 2(a) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems ⁽³⁾.
- (32) Owing to the particular nature of contracts of carriage and insurance contracts, specific provisions should ensure an adequate level of protection of passengers and policy holders. Therefore, Article 6 should not apply in the context of those particular contracts.
- (33) Where an insurance contract not covering a large risk covers more than one risk, at least one of which is situated in a Member State and at least one of which is situated in a third country, the special rules on insurance contracts in this Regulation should apply only to the risk or risks situated in the relevant Member State or Member States.
- (34) The rule on individual employment contracts should not prejudice the application of the overriding mandatory provisions of the country to which a worker is posted in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ⁽⁴⁾.

⁽¹⁾ OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2008/18/EC of the European Parliament and of the Council (OJ L 76, 19.3.2008, p. 42).

⁽²⁾ OJ L 280, 29.10.1994, p. 83.

⁽³⁾ OJ L 166, 11.6.1998, p. 45.

⁽⁴⁾ OJ L 18, 21.1.1997, p. 1.

- (35) Employees should not be deprived of the protection afforded to them by provisions which cannot be derogated from by agreement or which can only be derogated from to their benefit.
- (36) As regards individual employment contracts, work carried out in another country should be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad. The conclusion of a new contract of employment with the original employer or an employer belonging to the same group of companies as the original employer should not preclude the employee from being regarded as carrying out his work in another country temporarily.
- (37) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. The concept of 'overriding mandatory provisions' should be distinguished from the expression 'provisions which cannot be derogated from by agreement' and should be construed more restrictively.
- (38) In the context of voluntary assignment, the term 'relationship' should make it clear that Article 14(1) also applies to the property aspects of an assignment, as between assignor and assignee, in legal orders where such aspects are treated separately from the aspects under the law of obligations. However, the term 'relationship' should not be understood as relating to any relationship that may exist between assignor and assignee. In particular, it should not cover preliminary questions as regards a voluntary assignment or a contractual subrogation. The term should be strictly limited to the aspects which are directly relevant to the voluntary assignment or contractual subrogation in question.
- (39) For the sake of legal certainty there should be a clear definition of habitual residence, in particular for companies and other bodies, corporate or unincorporated. Unlike Article 60(1) of Regulation (EC) No 44/2001, which establishes three criteria, the conflict-of-law rule should proceed on the basis of a single criterion; otherwise, the parties would be unable to foresee the law applicable to their situation.
- (40) A situation where conflict-of-law rules are dispersed among several instruments and where there are differences between those rules should be avoided. This Regulation, however, should not exclude the possibility of inclusion of conflict-of-law rules relating to contractual obligations in provisions of Community law with regard to particular matters.
- This Regulation should not prejudice the application of other instruments laying down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of this Regulation. The application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments, such as Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) ⁽¹⁾.
- (41) Respect for international commitments entered into by the Member States means that this Regulation should not affect international conventions to which one or more Member States are parties at the time when this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the *Official Journal of the European Union* on the basis of information supplied by the Member States.
- (42) The Commission will make a proposal to the European Parliament and to the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude, on their own behalf, agreements with third countries in individual and exceptional cases, concerning sectoral matters and containing provisions on the law applicable to contractual obligations.
- (43) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to attain its objective.
- (44) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified its wish to take part in the adoption and application of the present Regulation.
- (45) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (46) 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 establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

⁽¹⁾ OJ L 178, 17.7.2000, p. 1.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE

Article 1

Material scope

1. This Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.

It shall not apply, in particular, to revenue, customs or administrative matters.

2. The following shall be excluded from the scope of this Regulation:

- (a) questions involving the status or legal capacity of natural persons, without prejudice to Article 13;
- (b) obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects, including maintenance obligations;
- (c) obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;
- (d) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;
- (e) arbitration agreements and agreements on the choice of court;
- (f) questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated, and the personal liability of officers and members as such for the obligations of the company or body;
- (g) the question whether an agent is able to bind a principal, or an organ to bind a company or other body corporate or unincorporated, in relation to a third party;
- (h) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;
- (i) obligations arising out of dealings prior to the conclusion of a contract;

- (j) insurance contracts arising out of operations carried out by organisations other than undertakings referred to in Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance⁽¹⁾ the object of which is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or to a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, or of sickness related to work or accidents at work.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Article 18.

4. In this Regulation, the term 'Member State' shall mean Member States to which this Regulation applies. However, in Article 3(4) and Article 7 the term shall mean all the Member States.

Article 2

Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

CHAPTER II

UNIFORM RULES

Article 3

Freedom of choice

1. A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 11 or adversely affect the rights of third parties.

3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

4. Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the

⁽¹⁾ OJ L 345, 19.12.2002, p. 1. Directive as last amended by Directive 2008/19/EC (OJ L 76, 19.3.2008, p. 44).

parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

5. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13.

Article 4

Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

- (a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;
- (b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;
- (c) a contract relating to a right *in rem* in immovable property or to a tenancy of immovable property shall be governed by the law of the country where the property is situated;
- (d) notwithstanding point (c), a tenancy of immovable property concluded for temporary private use for a period of no more than six consecutive months shall be governed by the law of the country where the landlord has his habitual residence, provided that the tenant is a natural person and has his habitual residence in the same country;
- (e) a franchise contract shall be governed by the law of the country where the franchisee has his habitual residence;
- (f) a distribution contract shall be governed by the law of the country where the distributor has his habitual residence;
- (g) a contract for the sale of goods by auction shall be governed by the law of the country where the auction takes place, if such a place can be determined;
- (h) a contract concluded within a multilateral system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, as defined by Article 4(1), point (17) of Directive 2004/39/EC, in accordance with non-discretionary rules and governed by a single law, shall be governed by that law.

2. Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the

characteristic performance of the contract has his habitual residence.

3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

4. Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.

Article 5

Contracts of carriage

1. To the extent that the law applicable to a contract for the carriage of goods has not been chosen in accordance with Article 3, the law applicable shall be the law of the country of habitual residence of the carrier, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also situated in that country. If those requirements are not met, the law of the country where the place of delivery as agreed by the parties is situated shall apply.

2. To the extent that the law applicable to a contract for the carriage of passengers has not been chosen by the parties in accordance with the second subparagraph, the law applicable shall be the law of the country where the passenger has his habitual residence, provided that either the place of departure or the place of destination is situated in that country. If these requirements are not met, the law of the country where the carrier has his habitual residence shall apply.

The parties may choose as the law applicable to a contract for the carriage of passengers in accordance with Article 3 only the law of the country where:

- (a) the passenger has his habitual residence; or
- (b) the carrier has his habitual residence; or
- (c) the carrier has his place of central administration; or
- (d) the place of departure is situated; or
- (e) the place of destination is situated.

3. Where it is clear from all the circumstances of the case that the contract, in the absence of a choice of law, is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

Article 6

Consumer contracts

1. Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another

person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

- (a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or
- (b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.

2. Notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.

3. If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be determined pursuant to Articles 3 and 4.

4. Paragraphs 1 and 2 shall not apply to:

- (a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;
- (b) a contract of carriage other than a contract relating to package travel within the meaning of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽¹⁾;
- (c) a contract relating to a right *in rem* in immovable property or a tenancy of immovable property other than a contract relating to the right to use immovable properties on a timeshare basis within the meaning of Directive 94/47/EC;
- (d) rights and obligations which constitute a financial instrument and rights and obligations constituting the terms and conditions governing the issuance or offer to the public and public take-over bids of transferable securities, and the subscription and redemption of units in collective investment undertakings in so far as these activities do not constitute provision of a financial service;
- (e) a contract concluded within the type of system falling within the scope of Article 4(1)(h).

⁽¹⁾ OJ L 158, 23.6.1990, p. 59.

Article 7

Insurance contracts

1. This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States. It shall not apply to reinsurance contracts.

2. An insurance contract covering a large risk as defined in Article 5(d) of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance ⁽²⁾ shall be governed by the law chosen by the parties in accordance with Article 3 of this Regulation.

To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.

3. In the case of an insurance contract other than a contract falling within paragraph 2, only the following laws may be chosen by the parties in accordance with Article 3:

- (a) the law of any Member State where the risk is situated at the time of conclusion of the contract;
- (b) the law of the country where the policy holder has his habitual residence;
- (c) in the case of life assurance, the law of the Member State of which the policy holder is a national;
- (d) for insurance contracts covering risks limited to events occurring in one Member State other than the Member State where the risk is situated, the law of that Member State;
- (e) where the policy holder of a contract falling under this paragraph pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different Member States, the law of any of the Member States concerned or the law of the country of habitual residence of the policy holder.

Where, in the cases set out in points (a), (b) or (e), the Member States referred to grant greater freedom of choice of the law applicable to the insurance contract, the parties may take advantage of that freedom.

⁽²⁾ OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2005/68/EC of the European Parliament and of the Council (OJ L 323, 9.12.2005, p. 1).

To the extent that the law applicable has not been chosen by the parties in accordance with this paragraph, such a contract shall be governed by the law of the Member State in which the risk is situated at the time of conclusion of the contract.

4. The following additional rules shall apply to insurance contracts covering risks for which a Member State imposes an obligation to take out insurance:

(a) the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the Member State that imposes the obligation. Where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail;

(b) by way of derogation from paragraphs 2 and 3, a Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance.

5. For the purposes of paragraph 3, third subparagraph, and paragraph 4, where the contract covers risks situated in more than one Member State, the contract shall be considered as constituting several contracts each relating to only one Member State.

6. For the purposes of this Article, the country in which the risk is situated shall be determined in accordance with Article 2(d) of the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services ⁽¹⁾ and, in the case of life assurance, the country in which the risk is situated shall be the country of the commitment within the meaning of Article 1(1) (g) of Directive 2002/83/EC.

Article 8

Individual employment contracts

1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.

2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the

work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.

4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.

Article 9

Overriding mandatory provisions

1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

Article 10

Consent and material validity

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Regulation if the contract or term were valid.

2. Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Article 11

Formal validity

1. A contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion is

⁽¹⁾ OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2005/14/EC of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 14).

formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation or of the law of the country where it is concluded.

2. A contract concluded between persons who, or whose agents, are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation, or of the law of either of the countries where either of the parties or their agent is present at the time of conclusion, or of the law of the country where either of the parties had his habitual residence at that time.

3. A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which governs or would govern the contract in substance under this Regulation, or of the law of the country where the act was done, or of the law of the country where the person by whom it was done had his habitual residence at that time.

4. Paragraphs 1, 2 and 3 of this Article shall not apply to contracts that fall within the scope of Article 6. The form of such contracts shall be governed by the law of the country where the consumer has his habitual residence.

5. Notwithstanding paragraphs 1 to 4, a contract the subject matter of which is a right *in rem* in immovable property or a tenancy of immovable property shall be subject to the requirements of form of the law of the country where the property is situated if by that law:

- (a) those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract; and
- (b) those requirements cannot be derogated from by agreement.

Article 12

Scope of the law applicable

1. The law applicable to a contract by virtue of this Regulation shall govern in particular:

- (a) interpretation;
- (b) performance;
- (c) within the limits of the powers conferred on the court by its procedural law, the consequences of a total or partial breach of obligations, including the assessment of damages in so far as it is governed by rules of law;
- (d) the various ways of extinguishing obligations, and prescription and limitation of actions;
- (e) the consequences of nullity of the contract.

2. In relation to the manner of performance and the steps to be taken in the event of defective performance, regard shall be had to the law of the country in which performance takes place.

Article 13

Incapacity

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from the law of another country, only if the other party to the contract was aware of that incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.

Article 14

Voluntary assignment and contractual subrogation

1. The relationship between assignor and assignee under a voluntary assignment or contractual subrogation of a claim against another person (the debtor) shall be governed by the law that applies to the contract between the assignor and assignee under this Regulation.

2. The law governing the assigned or subrogated claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and whether the debtor's obligations have been discharged.

3. The concept of assignment in this Article includes outright transfers of claims, transfers of claims by way of security and pledges or other security rights over claims.

Article 15

Legal subrogation

Where a person (the creditor) has a contractual claim against another (the debtor) and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether and to what extent the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

Article 16

Multiple liability

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the law governing the debtor's obligation towards the creditor also governs the debtor's right to

claim recourse from the other debtors. The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.

Article 17

Set-off

Where the right to set-off is not agreed by the parties, set-off shall be governed by the law applicable to the claim against which the right to set-off is asserted.

Article 18

Burden of proof

1. The law governing a contractual obligation under this Regulation shall apply to the extent that, in matters of contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. A contract or an act intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 11 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

CHAPTER III

OTHER PROVISIONS

Article 19

Habitual residence

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.

The habitual residence of a natural person acting in the course of his business activity shall be his principal place of business.

2. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such a branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

3. For the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the contract.

Article 20

Exclusion of *renvoi*

The application of the law of any country specified by this Regulation means the application of the rules of law in force in

that country other than its rules of private international law, unless provided otherwise in this Regulation.

Article 21

Public policy of the forum

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 22

States with more than one legal system

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

2. A Member State where different territorial units have their own rules of law in respect of contractual obligations shall not be required to apply this Regulation to conflicts solely between the laws of such units.

Article 23

Relationship with other provisions of Community law

With the exception of Article 7, this Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to contractual obligations.

Article 24

Relationship with the Rome Convention

1. This Regulation shall replace the Rome Convention in the Member States, except as regards the territories of the Member States which fall within the territorial scope of that Convention and to which this Regulation does not apply pursuant to Article 299 of the Treaty.

2. In so far as this Regulation replaces the provisions of the Rome Convention, any reference to that Convention shall be understood as a reference to this Regulation.

Article 25

Relationship with existing international conventions

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to contractual obligations.

2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

Article 26

List of Conventions

1. By 17 June 2009, Member States shall notify the Commission of the conventions referred to in Article 25(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. Within six months of receipt of the notifications referred to in paragraph 1, the Commission shall publish in the *Official Journal of the European Union*:

- (a) a list of the conventions referred to in paragraph 1;
- (b) the denunciations referred to in paragraph 1.

Article 27

Review clause

1. By 17 June 2013, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If appropriate, the report shall be accompanied by proposals to amend this Regulation. The report shall include:

- (a) a study on the law applicable to insurance contracts and an assessment of the impact of the provisions to be introduced, if any; and

- (b) an evaluation on the application of Article 6, in particular as regards the coherence of Community law in the field of consumer protection.

2. By 17 June 2010, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced.

Article 28

Application in time

This Regulation shall apply to contracts concluded after 17 December 2009.

CHAPTER IV

FINAL PROVISIONS

Article 29

Entry into force and application

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 17 December 2009 except for Article 26 which shall apply from 17 June 2009.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 17 June 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J. LENARČIČ

11c

Regulation (EC) No 864/2007 of the European
Parliament and of the Council of 11 July 2007
on the law applicable to non-contractual
obligations (known as 'Rome II')



REGULATION (EC) No 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 July 2007

on the law applicable to non-contractual obligations (Rome II)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty in the light of the joint text approved by the Conciliation Committee on 25 June 2007 ⁽²⁾,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice. For the progressive establishment of such an area, the Community is to adopt measures relating to judicial cooperation in civil matters with a cross-border impact to the extent necessary for the proper functioning of the internal market.
- (2) According to Article 65(b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement the principle of mutual recognition.
- (4) On 30 November 2000, the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters ⁽³⁾. The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.

(5) The Hague Programme ⁽⁴⁾, adopted by the European Council on 5 November 2004, called for work to be pursued actively on the rules of conflict of laws regarding non-contractual obligations (Rome II).

(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

(7) The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽⁵⁾ (Brussels I) and the instruments dealing with the law applicable to contractual obligations.

(8) This Regulation should apply irrespective of the nature of the court or tribunal seised.

(9) Claims arising out of *acta iure imperii* should include claims against officials who act on behalf of the State and liability for acts of public authorities, including liability of publicly appointed office-holders. Therefore, these matters should be excluded from the scope of this Regulation.

(10) Family relationships should cover parentage, marriage, affinity and collateral relatives. The reference in Article 1(2) to relationships having comparable effects to marriage and other family relationships should be interpreted in accordance with the law of the Member State in which the court is seised.

(11) The concept of a non-contractual obligation varies from one Member State to another. Therefore for the purposes of this Regulation non-contractual obligation should be understood as an autonomous concept. The conflict-of-law rules set out in this Regulation should also cover non-contractual obligations arising out of strict liability.

(12) The law applicable should also govern the question of the capacity to incur liability in tort/delict.

⁽¹⁾ OJ C 241, 28.9.2004, p. 1.

⁽²⁾ Opinion of the European Parliament of 6 July 2005 (OJ C 157 E, 6.7.2006, p. 371), Council Common Position of 25 September 2006 (OJ C 289 E, 28.11.2006, p. 68) and Position of the European Parliament of 18 January 2007 (not yet published in the Official Journal), European Parliament Legislative Resolution of 10 July 2007 and Council Decision of 28 June 2007.

⁽³⁾ OJ C 12, 15.1.2001, p. 1.

⁽⁴⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁵⁾ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

- (13) Uniform rules applied irrespective of the law they designate may avert the risk of distortions of competition between Community litigants.
- (14) The requirement of legal certainty and the need to do justice in individual cases are essential elements of an area of justice. This Regulation provides for the connecting factors which are the most appropriate to achieve these objectives. Therefore, this Regulation provides for a general rule but also for specific rules and, in certain provisions, for an 'escape clause' which allows a departure from these rules where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country. This set of rules thus creates a flexible framework of conflict-of-law rules. Equally, it enables the court seised to treat individual cases in an appropriate manner.
- (15) The principle of the *lex loci delicti commissi* is the basic solution for non-contractual obligations in virtually all the Member States, but the practical application of the principle where the component factors of the case are spread over several countries varies. This situation engenders uncertainty as to the law applicable.
- (16) Uniform rules should enhance the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage. A connection with the country where the direct damage occurred (*lex loci damni*) strikes a fair balance between the interests of the person claimed to be liable and the person sustaining the damage, and also reflects the modern approach to civil liability and the development of systems of strict liability.
- (17) The law applicable should be determined on the basis of where the damage occurs, regardless of the country or countries in which the indirect consequences could occur. Accordingly, in cases of personal injury or damage to property, the country in which the damage occurs should be the country where the injury was sustained or the property was damaged respectively.
- (18) The general rule in this Regulation should be the *lex loci damni* provided for in Article 4(1). Article 4(2) should be seen as an exception to this general principle, creating a special connection where the parties have their habitual residence in the same country. Article 4(3) should be understood as an 'escape clause' from Article 4(1) and (2), where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country.
- (19) Specific rules should be laid down for special torts/delicts where the general rule does not allow a reasonable balance to be struck between the interests at stake.
- (20) The conflict-of-law rule in matters of product liability should meet the objectives of fairly spreading the risks inherent in a modern high-technology society, protecting consumers' health, stimulating innovation, securing undistorted competition and facilitating trade. Creation of a cascade system of connecting factors, together with a foreseeability clause, is a balanced solution in regard to these objectives. The first element to be taken into account is the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country. The other elements of the cascade are triggered if the product was not marketed in that country, without prejudice to Article 4(2) and to the possibility of a manifestly closer connection to another country.
- (21) The special rule in Article 6 is not an exception to the general rule in Article 4(1) but rather a clarification of it. In matters of unfair competition, the conflict-of-law rule should protect competitors, consumers and the general public and ensure that the market economy functions properly. The connection to the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected generally satisfies these objectives.
- (22) The non-contractual obligations arising out of restrictions of competition in Article 6(3) should cover infringements of both national and Community competition law. The law applicable to such non-contractual obligations should be the law of the country where the market is, or is likely to be, affected. In cases where the market is, or is likely to be, affected in more than one country, the claimant should be able in certain circumstances to choose to base his or her claim on the law of the court seised.
- (23) For the purposes of this Regulation, the concept of restriction of competition should cover prohibitions on agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition within a Member State or within the internal market, as well as prohibitions on the abuse of a dominant position within a Member State or within the internal market, where such agreements, decisions, concerted practices or abuses are prohibited by Articles 81 and 82 of the Treaty or by the law of a Member State.
- (24) 'Environmental damage' should be understood as meaning adverse change in a natural resource, such as water, land or air, impairment of a function performed by that resource for the benefit of another natural resource or the public, or impairment of the variability among living organisms.

- (25) Regarding environmental damage, Article 174 of the Treaty, which provides that there should be a high level of protection based on the precautionary principle and the principle that preventive action should be taken, the principle of priority for corrective action at source and the principle that the polluter pays, fully justifies the use of the principle of discriminating in favour of the person sustaining the damage. The question of when the person seeking compensation can make the choice of the law applicable should be determined in accordance with the law of the Member State in which the court is seised.
- (26) Regarding infringements of intellectual property rights, the universally acknowledged principle of the *lex loci protectionis* should be preserved. For the purposes of this Regulation, the term 'intellectual property rights' should be interpreted as meaning, for instance, copyright, related rights, the *sui generis* right for the protection of databases and industrial property rights.
- (27) The exact concept of industrial action, such as strike action or lock-out, varies from one Member State to another and is governed by each Member State's internal rules. Therefore, this Regulation assumes as a general principle that the law of the country where the industrial action was taken should apply, with the aim of protecting the rights and obligations of workers and employers.
- (28) The special rule on industrial action in Article 9 is without prejudice to the conditions relating to the exercise of such action in accordance with national law and without prejudice to the legal status of trade unions or of the representative organisations of workers as provided for in the law of the Member States.
- (29) Provision should be made for special rules where damage is caused by an act other than a tort/delict, such as unjust enrichment, *negotiorum gestio* and *culpa in contrahendo*.
- (30) *Culpa in contrahendo* for the purposes of this Regulation is an autonomous concept and should not necessarily be interpreted within the meaning of national law. It should include the violation of the duty of disclosure and the breakdown of contractual negotiations. Article 12 covers only non-contractual obligations presenting a direct link with the dealings prior to the conclusion of a contract. This means that if, while a contract is being negotiated, a person suffers personal injury, Article 4 or other relevant provisions of this Regulation should apply.
- (31) To respect the principle of party autonomy and to enhance legal certainty, the parties should be allowed to make a choice as to the law applicable to a non-contractual obligation. This choice should be expressed or demonstrated with reasonable certainty by the circumstances of the case.
- Where establishing the existence of the agreement, the court has to respect the intentions of the parties. Protection should be given to weaker parties by imposing certain conditions on the choice.
- (32) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. In particular, the application of a provision of the law designated by this Regulation which would have the effect of causing non-compensatory exemplary or punitive damages of an excessive nature to be awarded may, depending on the circumstances of the case and the legal order of the Member State of the court seised, be regarded as being contrary to the public policy (*ordre public*) of the forum.
- (33) According to the current national rules on compensation awarded to victims of road traffic accidents, when quantifying damages for personal injury in cases in which the accident takes place in a State other than that of the habitual residence of the victim, the court seised should take into account all the relevant actual circumstances of the specific victim, including in particular the actual losses and costs of after-care and medical attention.
- (34) In order to strike a reasonable balance between the parties, account must be taken, in so far as appropriate, of the rules of safety and conduct in operation in the country in which the harmful act was committed, even where the non-contractual obligation is governed by the law of another country. The term 'rules of safety and conduct' should be interpreted as referring to all regulations having any relation to safety and conduct, including, for example, road safety rules in the case of an accident.
- (35) A situation where conflict-of-law rules are dispersed among several instruments and where there are differences between those rules should be avoided. This Regulation, however, does not exclude the possibility of inclusion of conflict-of-law rules relating to non-contractual obligations in provisions of Community law with regard to particular matters.
- This Regulation should not prejudice the application of other instruments laying down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of this Regulation. The application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments, such as Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) ⁽¹⁾.

⁽¹⁾ OJ L 178, 17.7.2000, p. 1.

- (36) Respect for international commitments entered into by the Member States means that this Regulation should not affect international conventions to which one or more Member States are parties at the time this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the *Official Journal of the European Union* on the basis of information supplied by the Member States.
- (37) The Commission will make a proposal to the European Parliament and the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude on their own behalf agreements with third countries in individual and exceptional cases, concerning sectoral matters, containing provisions on the law applicable to non-contractual obligations.
- (38) Since the objective of this Regulation cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that Article, this Regulation does not go beyond what is necessary to attain that objective.
- (39) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Regulation.
- (40) 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 establishing the European Community, Denmark does not take part in the adoption of this Regulation, and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE

Article 1

Scope

1. This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

2. The following shall be excluded from the scope of this Regulation:

- (a) non-contractual obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects including maintenance obligations;
- (b) non-contractual obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;
- (c) non-contractual obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;
- (d) non-contractual obligations arising out of the law of companies and other bodies corporate or unincorporated regarding matters such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies corporate or unincorporated, the personal liability of officers and members as such for the obligations of the company or body and the personal liability of auditors to a company or to its members in the statutory audits of accounting documents;
- (e) non-contractual obligations arising out of the relations between the settlors, trustees and beneficiaries of a trust created voluntarily;
- (f) non-contractual obligations arising out of nuclear damage;
- (g) non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Articles 21 and 22.

4. For the purposes of this Regulation, 'Member State' shall mean any Member State other than Denmark.

Article 2

Non-contractual obligations

1. For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*.

2. This Regulation shall apply also to non-contractual obligations that are likely to arise.

3. Any reference in this Regulation to:
- (a) an event giving rise to damage shall include events giving rise to damage that are likely to occur; and
 - (b) damage shall include damage that is likely to occur.

Article 3

Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

CHAPTER II

TORTS/DELICTS

Article 4

General rule

1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.
2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.
3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Article 5

Product liability

1. Without prejudice to Article 4(2), the law applicable to a non-contractual obligation arising out of damage caused by a product shall be:
 - (a) the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country; or, failing that,
 - (b) the law of the country in which the product was acquired, if the product was marketed in that country; or, failing that,

- (c) the law of the country in which the damage occurred, if the product was marketed in that country.

However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he or she could not reasonably foresee the marketing of the product, or a product of the same type, in the country the law of which is applicable under (a), (b) or (c).

2. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraph 1, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Article 6

Unfair competition and acts restricting free competition

1. The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.
2. Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 4 shall apply.
3.
 - (a) The law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country where the market is, or is likely to be, affected.
 - (b) When the market is, or is likely to be, affected in more than one country, the person seeking compensation for damage who sues in the court of the domicile of the defendant, may instead choose to base his or her claim on the law of the court seised, provided that the market in that Member State is amongst those directly and substantially affected by the restriction of competition out of which the non-contractual obligation on which the claim is based arises; where the claimant sues, in accordance with the applicable rules on jurisdiction, more than one defendant in that court, he or she can only choose to base his or her claim on the law of that court if the restriction of competition on which the claim against each of these defendants relies directly and substantially affects also the market in the Member State of that court.
4. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 7

Environmental damage

The law applicable to a non-contractual obligation arising out of environmental damage or damage sustained by persons or property as a result of such damage shall be the law determined pursuant to Article 4(1), unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred.

Article 8

Infringement of intellectual property rights

1. The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.

2. In the case of a non-contractual obligation arising from an infringement of a unitary Community intellectual property right, the law applicable shall, for any question that is not governed by the relevant Community instrument, be the law of the country in which the act of infringement was committed.

3. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 9

Industrial action

Without prejudice to Article 4(2), the law applicable to a non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken.

CHAPTER III

UNJUST ENRICHMENT, NEGOTIORUM GESTIO AND CULPA IN CONTRAHENDO

Article 10

Unjust enrichment

1. If a non-contractual obligation arising out of unjust enrichment, including payment of amounts wrongly received, concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that unjust enrichment, it shall be governed by the law that governs that relationship.

2. Where the law applicable cannot be determined on the basis of paragraph 1 and the parties have their habitual residence in the same country when the event giving rise to unjust enrichment occurs, the law of that country shall apply.

3. Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the unjust enrichment took place.

4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of unjust enrichment is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.

Article 11

Negotiorum gestio

1. If a non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that non-contractual obligation, it shall be governed by the law that governs that relationship.

2. Where the law applicable cannot be determined on the basis of paragraph 1, and the parties have their habitual residence in the same country when the event giving rise to the damage occurs, the law of that country shall apply.

3. Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the act was performed.

4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.

Article 12

Culpa in contrahendo

1. The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.

2. Where the law applicable cannot be determined on the basis of paragraph 1, it shall be:

- (a) the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occurred; or
- (b) where the parties have their habitual residence in the same country at the time when the event giving rise to the damage occurs, the law of that country; or
- (c) where it is clear from all the circumstances of the case that the non-contractual obligation arising out of dealings prior to the conclusion of a contract is manifestly more closely connected with a country other than that indicated in points (a) and (b), the law of that other country.

*Article 13***Applicability of Article 8**

For the purposes of this Chapter, Article 8 shall apply to non-contractual obligations arising from an infringement of an intellectual property right.

CHAPTER IV

FREEDOM OF CHOICE*Article 14***Freedom of choice**

1. The parties may agree to submit non-contractual obligations to the law of their choice:

- (a) by an agreement entered into after the event giving rise to the damage occurred;

or

- (b) where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred.

The choice shall be expressed or demonstrated with reasonable certainty by the circumstances of the case and shall not prejudice the rights of third parties.

2. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

3. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in one or more of the Member States, the parties' choice of the law applicable other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

CHAPTER V

COMMON RULES*Article 15***Scope of the law applicable**

The law applicable to non-contractual obligations under this Regulation shall govern in particular:

- (a) the basis and extent of liability, including the determination of persons who may be held liable for acts performed by them;
- (b) the grounds for exemption from liability, any limitation of liability and any division of liability;

- (c) the existence, the nature and the assessment of damage or the remedy claimed;
- (d) within the limits of powers conferred on the court by its procedural law, the measures which a court may take to prevent or terminate injury or damage or to ensure the provision of compensation;
- (e) the question whether a right to claim damages or a remedy may be transferred, including by inheritance;
- (f) persons entitled to compensation for damage sustained personally;
- (g) liability for the acts of another person;
- (h) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.

*Article 16***Overriding mandatory provisions**

Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.

*Article 17***Rules of safety and conduct**

In assessing the conduct of the person claimed to be liable, account shall be taken, as a matter of fact and in so far as is appropriate, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the liability.

*Article 18***Direct action against the insurer of the person liable**

The person having suffered damage may bring his or her claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.

*Article 19***Subrogation**

Where a person (the creditor) has a non-contractual claim upon another (the debtor), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether, and the extent to which, the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

Article 20

Multiple liability

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the question of that debtor's right to demand compensation from the other debtors shall be governed by the law applicable to that debtor's non-contractual obligation towards the creditor.

Article 21

Formal validity

A unilateral act intended to have legal effect and relating to a non-contractual obligation shall be formally valid if it satisfies the formal requirements of the law governing the non-contractual obligation in question or the law of the country in which the act is performed.

Article 22

Burden of proof

1. The law governing a non-contractual obligation under this Regulation shall apply to the extent that, in matters of non-contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. Acts intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 21 under which that act is formally valid, provided that such mode of proof can be administered by the forum.

CHAPTER VI

OTHER PROVISIONS

Article 23

Habitual residence

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.

Where the event giving rise to the damage occurs, or the damage arises, in the course of operation of a branch, agency or any other establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

2. For the purposes of this Regulation, the habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business.

Article 24

Exclusion of renvoi

The application of the law of any country specified by this Regulation means the application of the rules of law in force in that country other than its rules of private international law.

Article 25

States with more than one legal system

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of non-contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

2. A Member State within which different territorial units have their own rules of law in respect of non-contractual obligations shall not be required to apply this Regulation to conflicts solely between the laws of such units.

Article 26

Public policy of the forum

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 27

Relationship with other provisions of Community law

This Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

Article 28

Relationship with existing international conventions

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to non-contractual obligations.

2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

CHAPTER VII

FINAL PROVISIONS

Article 29

List of conventions

1. By 11 July 2008, Member States shall notify the Commission of the conventions referred to in Article 28(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. The Commission shall publish in the *Official Journal of the European Union* within six months of receipt:

- (i) a list of the conventions referred to in paragraph 1;
- (ii) the denunciations referred to in paragraph 1.

Article 30

Review clause

1. Not later than 20 August 2011, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation. The report shall include:

- (i) a study on the effects of the way in which foreign law is treated in the different jurisdictions and on the extent to

which courts in the Member States apply foreign law in practice pursuant to this Regulation;

- (ii) a study on the effects of Article 28 of this Regulation with respect to the Hague Convention of 4 May 1971 on the law applicable to traffic accidents.

2. Not later than 31 December 2008, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the situation in the field of the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality, taking into account rules relating to freedom of the press and freedom of expression in the media, and conflict-of-law issues related to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.

Article 31

Application in time

This Regulation shall apply to events giving rise to damage which occur after its entry into force.

Article 32

Date of application

This Regulation shall apply from 11 January 2009, except for Article 29, which shall apply from 11 July 2008.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 11 July 2007.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
M. LOBO ANTUNES

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

Commission Statement on the review clause (Article 30)

The Commission, following the invitation by the European Parliament and the Council in the frame of Article 30 of the 'Rome II' Regulation, will submit, not later than December 2008, a study on the situation in the field of the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality. The Commission will take into consideration all aspects of the situation and take appropriate measures if necessary.

Commission Statement on road accidents

The Commission, being aware of the different practices followed in the Member States as regards the level of compensation awarded to victims of road traffic accidents, is prepared to examine the specific problems resulting for EU residents involved in road traffic accidents in a Member State other than the Member State of their habitual residence. To that end the Commission will make available to the European Parliament and to the Council, before the end of 2008, a study on all options, including insurance aspects, for improving the position of cross-border victims, which would pave the way for a Green Paper.

Commission Statement on the treatment of foreign law

The Commission, being aware of the different practices followed in the Member States as regards the treatment of foreign law, will publish at the latest four years after the entry into force of the 'Rome II' Regulation and in any event as soon as it is available a horizontal study on the application of foreign law in civil and commercial matters by the courts of the Member States, having regard to the aims of the Hague Programme. It is also prepared to take appropriate measures if necessary.

11d

Council Regulation (EU) No 1259/2010
of 20 December 2010 implementing
enhanced cooperation in the area of the law
applicable to divorce and legal separation



COUNCIL REGULATION (EU) No 1259/2010

of 20 December 2010

implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to Council Decision 2010/405/EU of 12 July 2010 authorising enhanced cooperation in the area of the law applicable to divorce and legal separation ⁽¹⁾,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. For the gradual establishment of such an area, the Union must adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) Pursuant to Article 81 of the Treaty on the Functioning of the European Union, those measures are to include measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws.
- (3) On 14 March 2005 the Commission adopted a Green Paper on applicable law and jurisdiction in divorce matters. The Green Paper launched a wide-ranging public consultation on possible solutions to the problems that may arise under the current situation.
- (4) On 17 July 2006 the Commission proposed a Regulation amending Council Regulation (EC) No 2201/2003 ⁽²⁾ as

regards jurisdiction and introducing rules concerning applicable law in matrimonial matters.

- (5) At its meeting in Luxembourg on 5 and 6 June 2008, the Council concluded that there was a lack of unanimity on the proposal and that there were insurmountable difficulties that made unanimity impossible both then and in the near future. It established that the proposal's objectives could not be attained within a reasonable period by applying the relevant provisions of the Treaties.
- (6) Belgium, Bulgaria, Germany, Greece, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia subsequently addressed a request to the Commission indicating that they intended to establish enhanced cooperation between themselves in the area of applicable law in matrimonial matters. On 3 March 2010, Greece withdrew its request.
- (7) On 12 July 2010 the Council adopted Decision 2010/405/EU authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.
- (8) According to Article 328(1) of the Treaty on the Functioning of the European Union, when enhanced cooperation is being established, it is to be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It is also to be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions. The Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible. This Regulation should be binding in its entirety and directly applicable only in the participating Member States in accordance with the Treaties.
- (9) This Regulation should create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal separation in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.

⁽¹⁾ OJ L 189, 22.7.2010, p. 12.

⁽²⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (OJ L 338, 23.12.2003, p. 1).

- (10) The substantive scope and enacting terms of this Regulation should be consistent with Regulation (EC) No 2201/2003. However, it should not apply to marriage annulment.

This Regulation should apply only to the dissolution or loosening of marriage ties. The law determined by the conflict-of-laws rules of this Regulation should apply to the grounds for divorce and legal separation.

Preliminary questions such as legal capacity and the validity of the marriage, and matters such as the effects of divorce or legal separation on property, name, parental responsibility, maintenance obligations or any other ancillary measures should be determined by the conflict-of-laws rules applicable in the participating Member State concerned.

- (11) In order to clearly delimit the territorial scope of this Regulation, the Member States participating in the enhanced cooperation should be specified.
- (12) This Regulation should be universal, i.e. it should be possible for its uniform conflict-of-laws rules to designate the law of a participating Member State, the law of a non-participating Member State or the law of a State which is not a member of the European Union.
- (13) This Regulation should apply irrespective of the nature of the court or tribunal seized. Where applicable, a court should be deemed to be seized in accordance with Regulation (EC) No 2201/2003.
- (14) In order to allow the spouses to choose an applicable law with which they have a close connection or, in the absence of such choice, in order that that law might apply to their divorce or legal separation, the law in question should apply even if it is not that of a participating Member State. Where the law of another Member State is designated, the network created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters⁽¹⁾, could play a part in assisting the courts with regard to the content of foreign law.
- (15) Increasing the mobility of citizens calls for more flexibility and greater legal certainty. In order to achieve that objective, this Regulation should enhance the parties' autonomy in the areas of divorce and legal separation by giving them a limited possibility to choose the law applicable to their divorce or legal separation.
- (16) Spouses should be able to choose the law of a country with which they have a special connection or the law of the *forum* as the law applicable to divorce and legal

separation. The law chosen by the spouses must be consonant with the fundamental rights recognised by the Treaties and the Charter of Fundamental Rights of the European Union.

- (17) Before designating the applicable law, it is important for spouses to have access to up-to-date information concerning the essential aspects of national and Union law and of the procedures governing divorce and legal separation. To guarantee such access to appropriate, good-quality information, the Commission regularly updates it in the Internet-based public information system set up by Council Decision 2001/470/EC.
- (18) The informed choice of both spouses is a basic principle of this Regulation. Each spouse should know exactly what are the legal and social implications of the choice of applicable law. The possibility of choosing the applicable law by common agreement should be without prejudice to the rights of, and equal opportunities for, the two spouses. Hence judges in the participating Member States should be aware of the importance of an informed choice on the part of the two spouses concerning the legal implications of the choice-of-law agreement concluded.
- (19) Rules on material and formal validity should be defined so that the informed choice of the spouses is facilitated and that their consent is respected with a view to ensuring legal certainty as well as better access to justice. As far as formal validity is concerned, certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the participating Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal rules, those rules should be complied with. For example, such additional formal rules may exist in a participating Member State where the agreement is inserted in a marriage contract. If, at the time the agreement is concluded, the spouses are habitually resident in different participating Member States which lay down different formal rules, compliance with the formal rules of one of these States would suffice. If, at the time the agreement is concluded, only one of the spouses is habitually resident in a participating Member State which lays down additional formal rules, these rules should be complied with.
- (20) An agreement designating the applicable law should be able to be concluded and modified at the latest at the time the court is seized, and even during the course of the proceeding if the law of the *forum* so provides. In that event, it should be sufficient for such designation to be recorded in court in accordance with the law of the *forum*.

⁽¹⁾ OJ L 174, 27.6.2001, p. 25.

- (21) Where no applicable law is chosen, and with a view to guaranteeing legal certainty and predictability and preventing a situation from arising in which one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he considers more favourable to his own interests, this Regulation should introduce harmonised conflict-of-laws rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses and the law concerned. Such connecting factors should be chosen so as to ensure that proceedings relating to divorce or legal separation are governed by a law with which the spouses have a close connection.
- (22) Where this Regulation refers to nationality as a connecting factor for the application of the law of a State, the question of how to deal with cases of multiple nationality should be left to national law, in full observance of the general principles of the European Union.
- (23) If the court is seized in order to convert a legal separation into divorce, and where the parties have not made any choice as to the law applicable, the law which applied to the legal separation should also apply to the divorce. Such continuity would promote predictability for the parties and increase legal certainty. If the law applied to the legal separation does not provide for the conversion of legal separation into divorce, the divorce should be governed by the conflict-of-laws rules which apply in the absence of a choice by the parties. This should not prevent the spouses from seeking divorce on the basis of other rules in this Regulation.
- (24) In certain situations, such as where the applicable law makes no provision for divorce or where it does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the court seized should nevertheless apply. This, however, should be without prejudice to the public policy clause.
- (25) Considerations of public interest should allow courts in the Member States the opportunity in exceptional circumstances to disregard the application of a provision of foreign law in a given case where it would be manifestly contrary to the public policy of the forum. However, the courts should not be able to apply the public policy exception in order to disregard a provision of the law of another State when to do so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.
- (26) Where this Regulation refers to the fact that the law of the participating Member State whose court is seized does not provide for divorce, this should be interpreted to mean that the law of this Member State does not have the institute of divorce. In such a case, the court should not be obliged to pronounce a divorce by virtue of this Regulation.
- Where this Regulation refers to the fact that the law of the participating Member State whose court is seized does not deem the marriage in question valid for the purposes of divorce proceedings, this should be interpreted to mean, *inter alia*, that such a marriage does not exist in the law of that Member State. In such a case, the court should not be obliged to pronounce a divorce or a legal separation by virtue of this Regulation.
- (27) Since there are States and participating Member States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States and participating Member States or to different categories of persons of those States and participating Member States.
- (28) In the absence of rules designating the applicable law, parties choosing the law of the State of the nationality of one of them should at the same time indicate which territorial unit's law they have agreed upon in case the State whose law is chosen comprises several territorial units each of which has its own system of law or a set of rules in respect of divorce.
- (29) Since the objectives of this Regulation, namely the enhancement of legal certainty, predictability and flexibility in international matrimonial proceedings and hence the facilitation of the free movement of persons within the Union, cannot be sufficiently achieved by the Member States and can therefore, by reasons of the scale and effects of this Regulation be better achieved at Union level, the Union may adopt measures, by means of enhanced cooperation where appropriate, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (30) This Regulation respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, and in particular by Article 21 thereof, which states that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. This Regulation should be applied by the courts of the participating Member States in observance of those rights and principles,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE, RELATION WITH REGULATION (EC) No 2201/2003, DEFINITIONS AND UNIVERSAL APPLICATION

Article 1

Scope

1. This Regulation shall apply, in situations involving a conflict of laws, to divorce and legal separation.

2. This Regulation shall not apply to the following matters, even if they arise merely as a preliminary question within the context of divorce or legal separation proceedings:

- (a) the legal capacity of natural persons;
- (b) the existence, validity or recognition of a marriage;
- (c) the annulment of a marriage;
- (d) the name of the spouses;
- (e) the property consequences of the marriage;
- (f) parental responsibility;
- (g) maintenance obligations;
- (h) trusts or successions.

Article 2

Relation with Regulation (EC) No 2201/2003

This Regulation shall not affect the application of Regulation (EC) No 2201/2003.

Article 3

Definitions

For the purposes of this Regulation:

1. 'participating Member State' means a Member State which participates in enhanced cooperation on the law applicable to divorce and legal separation by virtue of Decision 2010/405/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union;

2. the term 'court' shall cover all the authorities in the participating Member States with jurisdiction in the matters falling within the scope of this Regulation.

Article 4

Universal application

The law designated by this Regulation shall apply whether or not it is the law of a participating Member State.

CHAPTER II

UNIFORM RULES ON THE LAW APPLICABLE TO DIVORCE AND LEGAL SEPARATION

Article 5

Choice of applicable law by the parties

1. The spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws:

- (a) the law of the State where the spouses are habitually resident at the time the agreement is concluded; or
- (b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or
- (c) the law of the State of nationality of either spouse at the time the agreement is concluded; or
- (d) the law of the *forum*.

2. Without prejudice to paragraph 3, an agreement designating the applicable law may be concluded and modified at any time, but at the latest at the time the court is seized.

3. If the law of the *forum* so provides, the spouses may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the law of the *forum*.

Article 6

Consent and material validity

1. The existence and validity of an agreement on choice of law or of any term thereof, shall be determined by the law which would govern it under this Regulation if the agreement or term were valid.

2. Nevertheless, a spouse, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence at the time the court is seized if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Article 7

Formal validity

1. The agreement referred to in Article 5(1) and (2), shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

2. However, if the law of the participating Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for this type of agreement, those requirements shall apply.

3. If the spouses are habitually resident in different participating Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

4. If only one of the spouses is habitually resident in a participating Member State at the time the agreement is concluded and that State lays down additional formal requirements for this type of agreement, those requirements shall apply.

Article 8

Applicable law in the absence of a choice by the parties

In the absence of a choice pursuant to Article 5, divorce and legal separation shall be subject to the law of the State:

- (a) where the spouses are habitually resident at the time the court is seized; or, failing that
- (b) where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seized, in so far as one of the spouses still resides in that State at the time the court is seized; or, failing that
- (c) of which both spouses are nationals at the time the court is seized; or, failing that
- (d) where the court is seized.

Article 9

Conversion of legal separation into divorce

1. Where legal separation is converted into divorce, the law applicable to divorce shall be the law applied to the legal separation, unless the parties have agreed otherwise in accordance with Article 5.

2. However, if the law applied to the legal separation does not provide for the conversion of legal separation into divorce, Article 8 shall apply, unless the parties have agreed otherwise in accordance with Article 5.

Article 10

Application of the law of the forum

Where the law applicable pursuant to Article 5 or Article 8 makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the *forum* shall apply.

Article 11

Exclusion of renvoi

Where this Regulation provides for the application of the law of a State, it refers to the rules of law in force in that State other than its rules of private international law.

Article 12

Public policy

Application of a provision of the law designated by virtue of this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

Article 13

Differences in national law

Nothing in this Regulation shall oblige the courts of a participating Member State whose law does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings to pronounce a divorce by virtue of the application of this Regulation.

Article 14

States with two or more legal systems — territorial conflicts of laws

Where a State comprises several territorial units each of which has its own system of law or a set of rules concerning matters governed by this Regulation:

- (a) any reference to the law of such State shall be construed, for the purposes of determining the law applicable under this Regulation, as referring to the law in force in the relevant territorial unit;
- (b) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;
- (c) any reference to nationality shall refer to the territorial unit designated by the law of that State, or, in the absence of relevant rules, to the territorial unit chosen by the parties or, in absence of choice, to the territorial unit with which the spouse or spouses has or have the closest connection.

Article 15

States with two or more legal systems — inter-personal conflicts of laws

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons concerning matters governed by this Regulation, any reference to the law of such a State shall be construed as referring to the legal system determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the spouse or spouses has or have the closest connection applies.

Article 16

Non-application of this Regulation to internal conflicts of laws

A participating Member State in which different systems of law or sets of rules apply to matters governed by this Regulation shall not be required to apply this Regulation to conflicts of laws arising solely between such different systems of law or sets of rules.

CHAPTER III

OTHER PROVISIONS

Article 17

Information to be provided by participating Member States

1. By 21 September 2011 the participating Member States shall communicate to the Commission their national provisions, if any, concerning:

- (a) the formal requirements applicable to agreements on the choice of applicable law pursuant to Article 7(2) to (4); and
- (b) the possibility of designating the applicable law in accordance with Article 5(3).

The participating Member States shall inform the Commission of any subsequent changes to these provisions.

2. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through appropriate means, in particular through the website of the European Judicial Network in civil and commercial matters.

Article 18

Transitional provisions

1. This Regulation shall apply only to legal proceedings instituted and to agreements of the kind referred to in Article 5 concluded as from 21 June 2012.

However, effect shall also be given to an agreement on the choice of the applicable law concluded before 21 June 2012, provided that it complies with Articles 6 and 7.

2. This Regulation shall be without prejudice to agreements on the choice of applicable law concluded in accordance with the law of a participating Member State whose court is seized before 21 June 2012.

Article 19

Relationship with existing international conventions

1. Without prejudice to the obligations of the participating Member States pursuant to Article 351 of the Treaty on the Functioning of the European Union, this Regulation shall not affect the application of international conventions to which one or more participating Member States are party at the time when this Regulation is adopted or when the decision pursuant to the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union is adopted and which lay down conflict-of-laws rules relating to divorce or separation.

2. However, this Regulation shall, as between participating Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

Article 20

Review clause

1. By 31 December 2015, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, where appropriate, by proposals to adapt this Regulation.

2. To that end, the participating Member States shall communicate to the Commission the relevant information on the application of this Regulation by their courts.

It shall apply from 21 June 2012, with the exception of Article 17, which shall apply from 21 June 2011.

CHAPTER IV

FINAL PROVISIONS

Article 21

Entry into force and date of application

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

For those participating Member States which participate in enhanced cooperation by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union, this Regulation shall apply as from the date indicated in the decision concerned.

This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.

Done at Brussels, 20 December 2010.

For the Council

The President

J. SCHAUVLIEGE

European Commission

**Compendium of European Union Legislation on Judicial Cooperation
in Civil and Commercial Matters**

Luxembourg: Publications Office of the European Union, 2013

2013 — 539pp. — 16.8x24.5 cm

ISBN 978-92-79-29634-5

doi:10.2838/98345

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