

Proposed amendment of Chapter II of Regulation 44/2001 in order to apply it to external situations

At its meeting in Bergen, on 19–21 September 2008, the European Group for Private International Law, giving effect to the conclusions of its meeting in Hamburg in 2007, which took into account the growth of the external powers of the Union in civil and commercial matters, considered the question of enlarging the scope of Regulation 44/2002 (Brussels I) to cover cases having links to third countries, cases to which the common rules on jurisdiction do not apply. On this basis, it proposes, as its initial suggestion, and as one possibility among others, the amendment of the Regulation for the purpose of applying its rules of jurisdiction to all external situations. These proposals are without prejudice to the examination of other possible solutions – in particular, conventions adopted by the Hague Conference on Private International Law – or a similar analysis of other instruments, such as Regulation 2201/2003 (Brussels IIbis) or the new Lugano Convention of 30 October 2007. Other questions still remain to be considered – in particular, the adaptation of Article 6 of Brussels I and the extension of Brussels I to cover the recognition and enforcement of judgments given in a third country.

Article 4:

Delete

Article 5:

Replace the first sentence with:

“A person, whether or not domiciled in a Member State, may be sued in a Member State other than the State of his domicile.”

Article 8:

Delete the words “Article 4 and”.

Article 9:

Replace the words “An insurer domiciled in a Member State may be sued” with the words “An insurer, whether or not domiciled in a Member State, may be sued”.

Article 15:

Delete the words “Article 4 and”.

Article 18:

Delete the words “Article 4 and”.

Article 19:

Replace the words “An employer domiciled in a Member State may be sued” with the words “An employer, whether or not domiciled in a Member State, may be sued”.

Article 22bis:

Add a new Article drafted as follows:

“1. Where no court of a Member State has jurisdiction under Article 22, a court of a Member State before which proceedings are brought concerning a matter to which that Article applies and which has jurisdiction under another provision of this Regulation shall stay its proceedings if it is established that the courts of a non-Member State have exclusive jurisdiction under the law of that State on the basis of provisions analogous to those in Article 22 other than those concerning tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, and those concerning the enforcement of judgments.

It shall decline jurisdiction once the court of the non-Member State has given a judgment that is entitled to recognition under the law of the Member State of the court seised. It may hear the proceedings before it, if it appears that the court of the non-Member State will not give judgment within a reasonable time.

2. By way of exception to paragraph 1, when the validity of the rights referred to in paragraph 4 of Article 22 is raised as an incidental question in proceedings brought before the courts of a Member State, those courts shall have jurisdiction to decide that question even if, according to the law of a non-Member State, it falls within the exclusive jurisdiction of the courts of that State. Such a decision shall have no effect with regard to the rights of third parties.”

Article 23:

In the first paragraph, delete the words “one or more of whom is domiciled in a Member State”.

Delete paragraph 3.

Amend paragraph 5 as follows:

“5. Agreements, or provisions of a trust instrument, conferring jurisdiction shall have no legal force:

(a) if they are contrary to Articles 13, 17 and 21, or

(b) if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22 or Article 22bis .”(1)

Article 23bis

Add a new Article drafted as follows:

“1. A court of a Member State seised of proceedings over which it has jurisdiction under this Regulation, and with regard to which the parties have given exclusive jurisdiction to a court or the courts of a non-Member State under an agreement complying with the conditions laid down by Article 23, shall not hear the proceedings unless and until the chosen court has declined jurisdiction.

It shall stay the proceedings as long as the chosen court has not been seised or, if it has been seised, has not declined jurisdiction. It shall decline jurisdiction once the chosen court has given a judgment entitled to recognition under the law of the State of the court seised.

Nevertheless, it may hear the proceedings if it appears that:

(a) the chosen court will not give judgment within a reasonable time;

(b) the chosen court will give a judgment which will not be entitled to recognition under the law of the State of the court seised.

[2. The choice by the parties of a court of a non-Member State shall have no effect if all other elements relevant to the situation at the time of the choice are located in the same Member State.]”

Article 24:

Replace the words “by virtue of Article 22” with the words “by virtue of Article 22 or Article 22bis”.

Article 24bis:

Add a new Article drafted as follows:

“Where no court of a Member State has jurisdiction under this Regulation, a person may be sued before the courts of a Member State with which the claim has a sufficient connection, especially by reason of the presence of property in the territory of that State, if the right to a fair trial so requires, in particular:

(a) if proceedings in a non-Member State are shown to be impossible; or

(b) if it could not reasonably be required that the claim should be brought before a court of a non-Member State; or

(c) if a judgment given on the claim in a non-Member State would not be entitled to recognition in the State of the court seised under the law of that State and such recognition is necessary to ensure that the rights of the claimant are satisfied.”

Article 30bis:

Add a new Article drafted as follows:

“In the case of lis pendens or related actions as understood in Articles 27 and 28, when the claim is pending before the courts of a non-Member State, the court of a Member State seised second may stay the proceedings before it until the court seised first gives judgment, if it appears that judgment will be given within a reasonable time and that it will be subject to recognition under the law of the Member State in question. It shall decline jurisdiction once the court seised first has given a judgment entitled to recognition under the law of that Member State.”

Article 31:

Delete the words “under this Regulation”.

Replace the words “another Member State” with the words “another State”.

1. The commas after “agreements” and “instrument” are not in the original text of Brussels I, but are desirable in order to make the meaning clearer.

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Dernière mise à jour le 3-04-2012