

WORKING-GROUP ON EXTERNAL RELATIONS

Application of the “Brussels I” Regulation to judgments given in a State which is not a member of the European Union

Proposed Position of the Group

(Barcelona, 28/03/2009)

Following proposals adopted in Bergen in 2008, which considered the possibility of including in the Brussels I Regulation direct jurisdictional rules for proceedings concerning a defendant domiciled in a State which is not a member of the European Union, or property within the terms of Article 22 situated in such a State, or a choice-of-court agreement not covered by Article 23, the European Group for Private International Law examined the related question of extending the Regulation to cover judgments given in a State which is not a member of the European Union.

The desirability, political as well as legal, of adopting Community rules covering all cross-border litigation, including that involving a court of a third country, which affects the functioning of the internal market and the exercise of free movement within the area of freedom, security and justice established by the EC Treaty, has not been the subject of a detailed analysis. The following comments are based on the working hypothesis that such effect is established by reason of the diversity of the national rules of the Member States concerning the recognition of foreign judgments.

The purpose of such an extension of the scope of application of the Regulation would be primarily to ensure the international circulation of judgments, as already occurs in the case of Member-State judgments, but also to harmonize national legislation to the extent necessary for the functioning of the internal market, without denying the two-fold difficulty of reconciling the often important differences between some national laws and of taking account of the great variety of legal institutions found in third countries.

CHAPTER III. — RECOGNITION AND ENFORCEMENT

A new Section, to read as follows, is proposed:

SECTION 4. — JUDGMENTS GIVEN IN A NON-MEMBER STATE

Article 56-1

1. For the purposes of this Section, ‘judgment’ means any judgment given by a court or tribunal of a non-member State, whatever the judgment may be called, including a decree, order or decision as well as the determination of costs or expenses by an officer of the court.

2. Nevertheless, the above paragraph shall not apply to:

- (a) a writ of execution;
- [(b) a judgment against which an ordinary appeal could be, or has been, lodged, without prejudice to Article 56-7(2).]

Article 56-2

1. A judgment shall be recognised in a Member State 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 by the law of the Member State addressed, apply for a decision that the judgment be recognised.

Article 56-3

1. A judgment shall not be recognised if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought, in particular if:

(1) it was given as the result of a [grave] infringement of the principles governing the [fundamental] right to a fair trial [laid down in Article 47 of the Charter of Fundamental Rights of the European Union], in particular if:

– it was given without the defendant having been able to exercise the right to be heard in sufficient time; or

– the party against whom it was granted was not able effectively to exercise a right of appeal because of the failure to inform him in sufficient time of the reasons for the judgment;

(2) it was obtained by fraud in connection with a matter of procedure;

(3) it grants an injunction prohibiting a party from bringing proceedings before a court of a Member State the jurisdiction of which is derived from this Regulation; or

(4) it was granted in contravention:

– of a mandatory provision the respect for which is regarded as crucial by the State in which recognition is sought for safeguarding its public interests to such an extent that it is applicable to any situation falling within its scope, irrespective of the law otherwise applicable to the legal relationship; or

– of a mandatory rule of Community law from which the parties could not derogate and which applies to any situation falling within its scope, irrespective of the law otherwise applicable to the legal relationship.

2. The judgment may be refused recognition to the extent that it awards non-compensatory damages, including exemplary or punitive damages.

3. Subject to the provisions of the previous paragraphs, the judgment may not be reviewed as to its substance.

Article 56-4

A judgment shall not be recognized if the court assumed jurisdiction:

(a) when a court of a Member State would have had jurisdiction under the provisions of Sections 3 to 7 of Chapter II, unless the defendant in the court of origin pleaded to the merits without raising an objection; or

(b) in the absence of a sufficient connection between the State of origin and the claim, in particular if the jurisdiction of the foreign court could have been based only on one of the following grounds:

– the nationality of one of the parties;

– the document instituting the proceedings having been served on the defendant during his temporary presence in the State of origin;

– the presence within that State of property belonging to the defendant which has no direct connection with the claim;

– the seizure by the plaintiff of property situated in that State which has no direct connection with the claim;

– the exercise in that State by the defendant of commercial or professional activities which have no direct connection with the claim.

Article 56-5

A judgment shall not be recognized:

(a) 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;

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

(c) if it is irreconcilable with an earlier judgment given in another 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

(d) the proceedings were brought in the State of origin after proceedings involving the same cause of action and between the same parties had been commenced before the courts of [the Member State addressed] [another Member State], provided that those latter proceedings are still pending.

Article 56-6

1. A judgment given in a non-member State and enforceable in that State shall be enforced in a 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 56-7

1. Subject to Article 49, the procedure for making an application for obtaining a declaration of enforceability of a foreign judgment shall be governed by the law of the Member State in which enforcement is sought.

[2. A judgment which could be, or is, the subject of an ordinary appeal in the State of origin may form the basis of protective measures. The court may make these conditional on the provision of security.]

Article 56-8

Where a foreign judgment has been given in respect of several matters, it may be recognized or declared enforceable, for all of them, or for one or more of them, either of its own motion or on the application of a party.

Article 56-9

1. A party seeking recognition of a judgment given in a non-member State or applying for a declaration of its enforceability shall produce:

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

(b) in the case of a default judgment, the original or a certified copy of a document certifying that the defendant was served with the document which instituted the proceedings or with an equivalent document;

(c) all documents necessary to establish that the judgment [is not subject to an ordinary appeal in the State of origin, that it] was served on the defendant and that it is enforceable in that State.

2. A certified translation of these documents shall be produced if the court or competent authority so requires.

Article 56-10

If the existence has been established in a non-member State of serious violations or the imminent risk of serious violations [of the principles governing the sound administration of justice] [of the principle of the rule of law] [of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the principle of the rule of law such as to affect the administration of justice in civil matters], in particular, the right to a fair trial, the Commission may temporarily suspend the

application of this Chapter to judgments given in that State. These safeguard measures shall be maintained no longer than strictly necessary and, in any event, shall be lifted when the violations have ceased.

The Commission shall inform the Council in good time of the adoption and the rescinding of safeguard measures. It shall give due consideration to any observations by the Council.

CHAPTER VII. — RELATIONS WITH OTHER INSTRUMENTS

A new Article is proposed, to read as follows:

Article 72-1

This Regulation shall not affect the application of international conventions to which one or more Member States are parties when Section 4 of Chapter III of this Regulation is adopted and which govern the recognition or enforcement of judgments given in non-member States which are parties to such conventions, subject to the obligations of Member States under Article 307 of the Treaty establishing the European Community.

In addition, in view of the Bergen document, Article 72 should be deleted.

[Page d'accueil](#)

Responsable de la page: [Bernadette Martin-Bosly](#)
Dernière mise à jour le 6-07-2009