

**Consolidated version of a proposal to amend Regulation 44/2001 in  
order to apply it to external situations (Bergen 2008, Padua 2009,  
Copenhagen 2010)**

**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 exclusive 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.

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 seized 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 seized second may stay the proceedings before it until the court seized 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 seized 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”.

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### The Brussels I Regulation and judgments given in a State which is not a member of the European Union

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 including in the Regulation provisions on the recognition and enforcement of judgments given in a State which is not a member of the European Union.

The Group does not, however, take a position on the desirability, political as well as legal, of adopting EU rules covering all cross-border litigation, including that involving a court of a third country, which affects the operation of the internal market and the exercise of free movement within the area of freedom, security and justice established by the Treaty on the Functioning of the European Union.

It is also possible that such rules might be adopted either within the framework of the Hague Conference on Private International Law or on the basis of other international agreements concluded by the Union. In such a case, the present rules could serve as a model, subject to such modifications as may be necessary in the relevant context.

## 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 it may be called, including a decree, order or decision as well as a determination of the costs of the proceedings.
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;
  - (c) provisional or protective measures.

#### Article 6-2

1. A judgment shall be recognised in a Member State without any special procedure being required.
2. Any interested party 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

or not recognised.

#### Article 56-3

1. A judgment shall not be recognised if the court of the State of origin took jurisdiction when the court of a Member State would have had jurisdiction by reason of the provisions of Sections 6 and 7 of Chapter II.

2. A judgment shall not be recognised if the court of the State of origin took jurisdiction on the basis of rules contrary to those of Sections 3 to 5 of Chapter II.

3. A judgment shall not be recognised if the court of the State of origin took jurisdiction in the absence of a sufficient connection between the State of origin and the dispute, in particular when the jurisdiction of the court of that State could have been based only on:

- the nationality of one of the parties; or
- the service on the defendant, or the notification to him, of the document by which the proceedings were commenced when the defendant is temporarily present in the territory of that State; or
- the presence within that State of property belonging to the defendant which is not connected with the dispute; or
- the seizure of property situated within that State which is not connected with the dispute; or
- the carrying on of commercial or professional activities by the defendant in that State which are not connected with the dispute.

4. The provisions of the preceding paragraphs shall not apply when the party opposing the recognition accepted the jurisdiction of the court of origin, except where a court of a Member State has exclusive jurisdiction under Article 22.

#### Article 56-4

1. A judgment shall not be recognised if:

- (a) the document instituting the proceedings or an equivalent document was not served on, or notified to, the unsuccessful defendant in sufficient time and in such a way as to enable him to arrange for his defence; or
- (b) it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought; or
- (c) 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.

2. A judgment may not be recognised if the claim was brought in the State of origin after a claim, which is still pending, was brought in a Member State involving the same cause of action and between the same parties.

#### Article 56-5

A judgment shall not be recognised to the extent that:

(a) it was granted in contravention:

- of a mandatory provision respect for which is regarded as crucial by the State addressed 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
- a mandatory rule of European Union law respect for which is regarded as crucial by the Union 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

(b) it awards excessive non-compensatory damages, including exemplary or punitive damages.

#### Article 56-6

A judgment shall not be recognised if such recognition is manifestly contrary to the substantive or procedural public policy (“ordre public”) of the State addressed or of the European Union, in particular if the judgment is the result of an infringement of the principles governing the right to a fair trial or of fraud regarding a matter of procedure.

#### Article 56-7

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

#### Article 56-8

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 in that Member State.

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 the part of the United Kingdom in question.

#### Article 56-9

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 addressed.

#### Article 56-10

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 State of origin.

#### Article 56-11

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

#### Article 56-12

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 judgment debtor 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, or notified to, the party against whom it was given 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 ex officio or if a party so requests.

### 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 bilateral or multilateral conventions and agreements 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 351 of the Treaty on the Functioning of the European Union.

The above paragraph is without prejudice to the application of Regulation 0000 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

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

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