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*Committee on Legal Affairs*

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**2010/0383(COD)**

28.6.2011

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)  
(COM(2010)0748 – C7-0433/2010 – 2010/0383(COD))

Committee on Legal Affairs

Rapporteur: Tadeusz Zwiefka

(Recast – Rule 87 of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)**

**(COM(2010)0748 – C7-0433/2010 – 2010/0383(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0748) and to the impact assessment carried out by the Commission (SEC(2010)1547),
  - having regard to Article 294(2) and Articles 67(4) and 81(2)(a), (c) and (e) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0433/2010),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions sent to its President by national parliaments on the compliance of the draft act with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 5 May 2011<sup>1</sup>,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>2</sup>,
  - having regard to Rules 87 and 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A7-0000/2011),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the

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<sup>1</sup> Not yet published in the Official Journal.

<sup>2</sup> OJ C 77, 28.3.2002, p. 1.

proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a regulation

#### Recital 11

##### *Text proposed by the Commission*

(11) This Regulation does not apply to arbitration, ***save in the limited case provided for therein***. In particular, it does not apply to the form, existence, validity or effects of arbitration agreements, the powers of the arbitrators, the procedure before arbitral tribunals, and the validity, annulment, and recognition and enforcement of arbitral awards.

##### *Amendment*

(11) This Regulation does not apply to arbitration. In particular, it does not apply to the form, existence, validity or effects of arbitration agreements, the powers of the arbitrators, the procedure before arbitral tribunals, and the validity, annulment, and recognition and enforcement of arbitral awards. ***The whole matter of arbitration should be excluded from the scope of this Regulation. Consequently, this Regulation does not apply to any dispute, litigation or application which the parties have subjected to an arbitration agreement or settlement or which relates to arbitration by virtue of an international treaty. Likewise, this Regulation does not apply to any dispute or decision concerning the existence or validity of an arbitration agreement or settlement, or to any provisional or preventive measure adopted in the context of a dispute, litigation or application which the parties have subjected to an arbitration agreement or settlement or which relates to arbitration by virtue of an international treaty.***

Or. en

##### *Justification*

*For the reasons set out in Parliament's resolution of 7 September 2010 on the implementation and review of the Brussels Regulation, all aspects of arbitration must be clearly and unambiguously excluded from the scope of the Regulation.*

## Amendment 2

### Proposal for a regulation Recital 13

*Text proposed by the Commission*

(13) 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. The existence of a close **link** should ensure legal certainty avoiding that the defendant is sued before a court of a Member State which was not reasonably foreseeable for him. ***This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.***

*Amendment*

(13) 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 avoiding that the defendant is sued before a court of a Member State which was not reasonably foreseeable for him.

Or. en

*Justification*

*This reference to a particular species of dispute is gratuitous and unnecessary.*

## Amendment 3

### Proposal for a regulation Recital 16

*Text proposed by the Commission*

***(16) In order to promote the interests of claimants and defendants and promote the proper administration of justice within the Union, the circumstance that the defendant is domiciled in a third State should no longer entail the non-application of certain Union rules on jurisdiction, and there should no longer be any referral to national law.***

*Amendment*

*deleted*

Or. en

### *Justification*

*It is considered at this stage that Recitals 16 and 17 and the corresponding articles of the proposal should be deleted because the Commission has no mandate from this House for this step. Although the Commission retains its monopoly power of initiative post-Lisbon, it cannot simply ignore the sentiments of the democratically-elected Parliament, which took the view that it would be premature to take this step without wide-ranging consultations and political debate. The rapporteur will utilise the workshop to be held in September in order to examine this question more closely.*

#### **Amendment 4**

#### **Proposal for a regulation**

#### **Recital 17**

*Text proposed by the Commission*

*Amendment*

**(17) This Regulation should therefore establish a complete set of rules on international jurisdiction of the courts in the Member States. The existing rules on jurisdiction ensure a close link between proceedings to which this Regulation applies and the territory of the Member States which justifies their extension to defendants wherever they are domiciled. In addition, this Regulation should determine the cases in which a court in a Member State may exercise subsidiary jurisdiction.** *deleted*

Or. en

### *Justification*

*The proposal does nothing to improve the position of non-EU defendants. According to the impact assessment, the negative economic impact on companies is “difficult to quantify” and “there is little quantitative evidence that the existing divergences between the national laws ... lead to distortions of competition and that the absence of access to EU courts entails significant losses for consumers and other weaker parties”. A unilateral move by the EU would not necessarily improve the EU’s bargaining position in future negotiations for a worldwide judgments convention.*



## Amendment 5

### Proposal for a regulation Recital 20

*Text proposed by the Commission*

*Amendment*

***(20) The effectiveness of arbitration agreements should also be improved in order to give full effect to the will of the parties. This should be the case, in particular, where the agreed or designated seat of an arbitration is in a Member State. This Regulation should therefore contain special rules aimed at avoiding parallel proceedings and abusive litigation tactics in those circumstances. The seat of the arbitration should refer to the seat selected by the parties or the seat designated by an arbitral tribunal, by an arbitral institution or by any other authority directly or indirectly chosen by the parties.***

*deleted*

Or. en

*Justification*

*See the justification to the amendment to recital 11.*

## Amendment 6

### Proposal for a regulation Recital 23

*Text proposed by the Commission*

*Amendment*

(23) Mutual trust in the administration of justice in the Union and the aim of making cross-border litigation less time consuming and costly justify the abolition of the existing intermediate measures to be taken prior to enforcement in the Member State in which enforcement is sought. As a result, a judgment given by the courts of a Member State should, for enforcement purposes, be treated as if it had been

(23) Mutual trust in the administration of justice in the Union and the aim of making cross-border litigation less time consuming and costly justify the abolition of the existing intermediate measures to be taken prior to enforcement in the Member State in which enforcement is sought. As a result, ***subject to certain safeguards***, a judgment given by the courts of a Member State should, for enforcement purposes, be

delivered in the Member State in which enforcement is sought. *However, in the light of the divergences between Member States' systems and the particular sensitivity of matters relating to defamation and compensation obtained in collective proceedings, the current procedure for recognition and enforcement should be maintained for the time being for judgments given on such matters, pending further developments of the law in this area. The scope of the specific provision relating to defamation should correspond to the scope of the exclusion of this matter in 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) and should be interpreted in the same way. The provisions abolishing intermediate enforcement measures should be extended to judgments ordering compensation in collective proceedings in the event of adoption of measures for the harmonisation or approximation of the procedural rules applicable to such proceedings. Such an extension should be without prejudice to the possibility for the Commission to propose the abolition of intermediate measures for collective damages proceedings even in the absence of such harmonisation or approximation measures, in the light of evidence regarding the efficiency and acceptability of such a development in the European judicial order.*

treated as if it had been delivered in the Member State in which enforcement is sought.

Or. en

*Justification*

*See the explanatory statement.*

## Amendment 7

### Proposal for a regulation Recital 24

*Text proposed by the Commission*

(24) The abolition of intermediate measures should be accompanied by necessary safeguards aimed in particular at ensuring ***full respect of the rights of the defence and fair trial, as established in Article 47 of the Charter of Fundamental Rights of the European Union. This requires putting in place, at the stage of enforcement, extraordinary remedies for the benefit of defendants who did not enter an appearance as a result of a lack of notice or who otherwise suffered procedural defects in the proceedings before the court of origin which may amount to an infringement of Article 47 of the Charter.***

*Amendment*

(24) The abolition of intermediate measures should be accompanied by necessary safeguards aimed in particular at ensuring ***that recognition or enforcement is not contrary to the procedural or substantive public policy of the Member State in which enforcement is sought.***

Or. en

## Amendment 8

### Proposal for a regulation Recital 27

*Text proposed by the Commission*

(27) This Regulation should ensure full respect for fundamental rights as set out in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and the right to a fair trial guaranteed in Article 47 of the Charter. ***Nothing in this Regulation should affect the freedom of expression and information (Article 11), the right to private and family life (Article 7), nor the right of workers and employers, or their respective organisations, in accordance with Union law and national law and***

*Amendment*

(27) This Regulation should ensure full respect for fundamental rights as set out in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and the right to a fair trial guaranteed in Article 47 of the Charter.

*practices, to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action (Article 28).*

Or. en

## **Amendment 9**

### **Proposal for a regulation**

#### **Recital 28**

##### *Text proposed by the Commission*

(28) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, took part in the adoption and application of Regulation (EC) No 44/2001. 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 the Treaty on the Functioning of the European Union, ~~the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Regulation~~ ***without prejudice to Article 4 of the Protocol, the United Kingdom and Ireland will not participate in the adoption of this Regulation and will not be bound by it or be subject to its application***.

##### *Amendment*

(28) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, took part in the adoption and application of Regulation (EC) No 44/2001. 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 the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Regulation.

Or. en

##### *Justification*

*Ireland and the United Kingdom have notified their intention to participate in the adoption of*

*this Regulation.*

## **Amendment 10**

### **Proposal for a regulation**

#### **Article 1 – paragraph 2 – point d**

*Text proposed by the Commission*

(d) arbitration, *save as provided for in Articles 29, paragraph 4 and 33, paragraph 3.*

*Amendment*

(d) arbitration, ***including judicial procedures ruling on the validity or extent of arbitral competence as a principal issue or as an incidental or preliminary question;***

Or. en

*Justification*

*See the justification to the amendment to recital 11.*

## **Amendment 11**

### **Proposal for a regulation**

#### **Article 4 – paragraph 2**

*Text proposed by the Commission*

***2. Persons not domiciled in any of the Member States may be sued in the courts of a Member State only by virtue of the rules set out in Sections 2 to 8 of this Chapter.***

*Amendment*

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

Or. en

*Justification*

*See the justification to the amendments to recitals 16 and 17.*

## Amendment 12

### Proposal for a regulation Article 4 a (new)

*Text proposed by the Commission*

*Amendment*

***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.***

Or. en

*Justification*

*This amendment reinstates the original Article 4 of Regulation No 44/2001. See the justification to the amendments to recitals 16 and 17.*

## Amendment 13

### Proposal for a regulation Article 5 – introductory wording

*Text proposed by the Commission*

*Amendment*

***The following courts shall have jurisdiction:***

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

Or. en

*Justification*

*This amendment reinstates the original opening words of Article 5 of Regulation No 44/2001. See the justification to the amendments to recitals 16 and 17.*

## Amendment 14

### Proposal for a regulation Article 6 – introductory wording

*Text proposed by the Commission*

*Amendment*

***A person may also be sued:***

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

Or. en

#### *Justification*

*This amendment reinstates the original opening words of Article 6 of Regulation No 44/2001. See the justification to the amendments to recitals 16 and 17.*

## Amendment 15

### Proposal for a regulation Article 6 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. where he is ***domiciled in a Member State and 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;

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;

Or. en

#### *Justification*

*This amendment reinstates the original first paragraph of Article 6 of Regulation No 44/2001. See the justification to the amendments to recitals 16 and 17.*

## Amendment 16

### Proposal for a regulation Article 8

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

#### *Justification*

*This amendment reinstates the original Article 8 of Regulation No 44/2001. See the justification to the amendments to recitals 16 and 17.*

## Amendment 17

### Proposal for a regulation Article 9 – introductory wording

#### *Text proposed by the Commission*

1. An insurer may be sued:

#### *Amendment*

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

Or. en

#### *Justification*

*This amendment reinstates the original opening words of Article 9 of Regulation No 44/2001. See the justification to the amendments to recitals 16 and 17.*

## Amendment 18

### Proposal for a regulation Article 15 – paragraph 1 – introductory wording

#### *Text proposed by the Commission*

1. In matters relating to a contract concluded by a person, the consumer, for a

#### *Amendment*

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 point 5 of Article 5, if:

purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to **Article 4a and** point 5 of Article 5, if:

Or. en

#### *Justification*

*This amendment reinstates the original opening words of Article 15(1) of Regulation No 44/2001. See the justification to the amendments to recitals 16 and 17.*

### **Amendment 19**

#### **Proposal for a regulation**

#### **Article 23 – paragraph 1 – introductory wording**

##### *Text proposed by the Commission*

1. If the parties 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 substance ***under the law of that Member State***. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

##### *Amendment*

1. If the parties 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, ***provided that*** the agreement is ***valid*** as to its substance. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

Or. en

#### *Justification*

*See the new Article 23a.*

**Amendment 20**

**Proposal for a regulation  
Article 23 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 23a**

***1. An agreement conferring jurisdiction shall be valid as to its substance if it is regarded as being such by:***

***(a) the law of the Member State of the court or courts designated by the agreement, or***

***(b) the law chosen by the parties to govern the agreement, or***

***(c) in the absence of such choice, the law applicable to the contract of which the agreement forms a part, or***

***(d) in all other cases, the law applicable to the particular legal relationship from which the dispute between the parties arose.***

***2. The law designated by points (b) to (d) of paragraph 1 shall apply even if that law is not the law of a Member State.***

***3. The law of any State designated by paragraph 1 means the rules of substantive law in force in that State with the exception of its rules of private international law.***

***4. The law designated by paragraph 1 shall not govern legal capacity. The reality of the consent of the parties to the agreement shall be governed by Article 23(1).***

***5. Where a State consists of several territorial units each with its own rules as to the substantive validity of agreements conferring jurisdiction, each territorial unit shall be regarded as a State for the purposes of this Article.***

***6. A Member State in which various territorial units have their own rules as to***

*the substantive validity of agreements conferring jurisdiction shall not be bound to apply this Article to conflicts concerning solely the laws of those units.*

Or. en

## **Amendment 21**

### **Proposal for a regulation Article 23 b (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 23b*

*An agreement conferring jurisdiction which forms part of a contract shall be regarded as being an agreement distinct from the other clauses of the contract. It shall not be affected by the nullity, the non-existence, the lapsing, the termination or the determination or any other cause of ineffectiveness of the contract.*

Or. en

## **Amendment 22**

### **Proposal for a regulation Article 25**

*Text proposed by the Commission*

*Amendment*

#### *Article 25*

*deleted*

*Where no court of a Member State has jurisdiction in accordance with Articles 2 to 24, jurisdiction shall lie with the courts of the Member State where property belonging to the defendant is located, provided that*

*(a) the value of the property is not disproportionate to the value of the claim;*

*and*

*(b) the dispute has a sufficient connection with the Member State of the court seised.*

Or. en

*Justification*

*See the justification to the amendments to recitals 16 and 17.*

**Amendment 23**

**Proposal for a regulation  
Article 26**

*Text proposed by the Commission*

*Amendment*

**Article 26**

***deleted***

*Where no court of a Member State has jurisdiction under this Regulation, the courts of a Member State may, on an exceptional basis, hear the case if the right to a fair trial or the right to access to justice so requires, in particular:*

*(a) if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the dispute is closely connected; or*

*(b) if a judgment given on the claim in a third State would not be entitled to recognition and enforcement in the Member State of the court seised under the law of that State and such recognition and enforcement is necessary to ensure that the rights of the claimant are satisfied;*

*and the dispute has a sufficient connection with the Member State of the court seised.*

Or. en

*Justification*

*See the justification to the amendments to recitals 16 and 17.*

**Amendment 24**

**Proposal for a regulation  
Article 29 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Where the agreed or designated seat of an arbitration is in a Member State, the courts of another Member State whose jurisdiction is contested on the basis of an arbitration agreement shall stay proceedings once the courts of the Member State where the seat of the arbitration is located or the arbitral tribunal have been seised of proceedings to determine, as their main object or as an incidental question, the existence, validity or effects of that arbitration agreement.** *deleted*

*This paragraph does not prevent the court whose jurisdiction is contested from declining jurisdiction in the situation referred to above if its national law so prescribes.*

*Where the existence, validity or effects of the arbitration agreement are established, the court seised shall decline jurisdiction.*

*This paragraph does not apply in disputes concerning matters referred to in Sections 3, 4, and 5 of Chapter II.*

Or. en

*Justification*

*See the justification to the amendment to recital 11.*

## Amendment 25

### Proposal for a regulation Article 33 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. For the purposes of this Section, an  
arbitral tribunal is deemed to be seised  
when a party has nominated an arbitrator  
or when a party has requested the support  
of an institution, authority or a court for  
the tribunal's constitution.** *deleted*

Or. en

*Justification*

*See the justification to the amendment to recital 11.*

## Amendment 26

### Proposal for a regulation Article 37 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. Section 1 shall apply to all judgments  
with the exception of those referred to in  
paragraph 3.** *deleted*

Or. en

## Amendment 27

### Proposal for a regulation Article 37 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. Section 2 shall apply to judgments  
given in another Member State  
(a) concerning non-contractual  
obligations arising out of violations of** *deleted*

*privacy and rights relating to personality, including defamation, and*

*b) in proceedings which concern the compensation of harm caused by unlawful business practices to a multitude of injured parties and which are brought by*

*i. a state body,*

*ii. a non-profit making organisation whose main purpose and activity is to represent and defend the interests of groups of natural or legal persons, other than by, on a commercial basis, providing them with legal advice or representing them in court, or*

*iii. a group of more than twelve claimants.*

Or. en

## **Amendment 28**

### **Proposal for a regulation Article 37 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

*4. Without prejudice to the competence of the Commission to propose at any time the extension of the rules of Section 1 to judgments falling within the scope of paragraph 3(b) in view of the state of convergence of national laws and of the development of Union law, three years after the entry into force of this Regulation, or earlier in case the Commission proposes further harmonisation, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report reviewing the continuing need to maintain the procedure for recognition and enforcement for judgments given in matters referred to in paragraph 3(b).*

*deleted*

**Amendment 29**

**Proposal for a regulation  
Chapter III – section 1 – heading**

*Text proposed by the Commission*

*Amendment*

***JUDGMENTS FOR WHICH NO  
DECLARATION OF  
ENFORCEABILITY IS REQUIRED***

ABOLITION OF EXEQUATUR

***SUBSECTION 1***

ABOLITION OF EXEQUATUR

**Amendment 30**

**Proposal for a regulation  
Chapter III – section 1 – subsection 2 – heading**

*Text proposed by the Commission*

*Amendment*

***SUBSECTION 2***

***SECTION 2***

**Amendment 31**

**Proposal for a regulation  
Article 43**

*Text proposed by the Commission*

*Amendment*

***Article 43***

***deleted***

***The competent authority in the Member  
State of enforcement shall, on application  
by the defendant, refuse, either wholly or  
in part, the enforcement of the judgment  
if***



*(a) it is irreconcilable with a judgment given in a dispute between the same parties in the Member State of enforcement;*  
*(b) 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 of enforcement.*

Or. en

#### **Amendment 32**

#### **Proposal for a regulation Chapter III – section 1 – subsection 3 – heading**

*Text proposed by the Commission*

*Amendment*

***SUBSECTION 3***

***SECTION 3***

Or. en

#### **Amendment 33**

#### **Proposal for a regulation Article 45**

*Text proposed by the Commission*

*Amendment*

***Article 45***

***deleted***

***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 judgment 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 claim by reason of force majeure or due to extraordinary circumstances without any fault on his part;*

*unless he failed to challenge the judgment when it was possible for him to do so.*

*2. The application shall be submitted using the form set out in Annex II.*

*3. The application may be submitted directly to the court in the Member State of origin which is competent for the review pursuant to this Article. The application may also be submitted to the competent court of the Member State of enforcement which will without undue delay transfer the application to the competent court in the Member State of origin using the means of communication as notified pursuant to Article 87 point b.*

*4. The application for a review shall be made promptly, in any event within 45 days from the day the defendant was effectively acquainted with the contents of the judgment and was able to react. Where the defendant applies for a review in the context of enforcement proceedings, the time period shall run 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 application shall be deemed to be made when it is received by either of the courts referred to in paragraph 3.*

*5. If the application for a review is manifestly unfounded, the court shall dismiss the application immediately and in any event within 30 days from the receipt of the application. In such case, the judgment shall remain in force. If the court decides that a review is justified on one of the grounds laid down in paragraph 1, the judgment shall be null*

*and void. However, the party who obtained the judgment before the court of origin shall not lose the benefits of the interruption of prescription or limitation periods acquired in the initial proceedings.*

**6. This provision shall apply instead of Article 19, paragraph 4 of Regulation (EC) No 1393/2007, if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.**

Or. en

#### *Justification*

*It goes without saying that a defendant should have a right of review in the Member State of origin where he was not served with process in time for him to arrange for his defence or he or she was prevented from contesting the claim for reasons of force majeure.*

#### **Amendment 34**

##### **Proposal for a regulation Article 46 – paragraph 1**

###### *Text proposed by the Commission*

**1. In cases other than those covered by Article 45, a party shall have the right to apply for a refusal of recognition or enforcement of a judgment where *such recognition or enforcement would not be permitted by the fundamental principles underlying the right to a fair trial.***

###### *Amendment*

1. A party shall have the right to apply for a refusal of recognition or enforcement of a judgment where:

**(a) such recognition or enforcement would be manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought; or**

**(b) 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; or*

*(c) the judgment is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought; or*

*(d) 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 in which recognition is sought; or*

*(e) the judgment was given in breach of the requirements of Section 4 of Chapter I concerning jurisdiction over consumer contracts.*

Or. en

#### *Justification*

*Exequatur should be abolished, but (a) a party should be able to challenge a decision in the Member State of recognition/enforcement, not only on fair trial grounds, but also on the ground that recognition/enforcement would be manifestly incompatible with the public policy of that Member State and (b) consumers should be able to challenge enforcement in the country of enforcement because the court of origin breached the requirements of Ch.1/Section 4 regarding jurisdiction over consumer contracts.*

#### **Amendment 35**

#### **Proposal for a regulation Chapter III – section 2 – heading**

*Text proposed by the Commission*

*Amendment*

#### **SECTION 2**

*deleted*

**JUDGMENTS FOR WHICH A  
DECLARATION OF  
ENFORCEABILITY IS REQUIRED ON**

*A TRANSITIONAL BASIS*

Or. en

**Amendment 36**

**Proposal for a regulation  
Article 47**

*Text proposed by the Commission*

*Amendment*

*Article 47*

*deleted*

- 1. A judgment given in a Member State concerning matters referred to in Article 37(3) 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 Articles 50 to 63, 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.*

Or. en

**Amendment 37**

**Proposal for a regulation  
Article 48**

*Text proposed by the Commission*

*Amendment*

*Article 48*

*deleted*

*A judgment shall not be recognised:*

- 1. if such recognition is manifestly contrary to public policy (ordre public) 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 in which recognition is sought.*

Or. en

## **Amendment 38**

### **Proposal for a regulation Article 49**

*Text proposed by the Commission*

*Amendment*

#### *Article 49*

*deleted*

*A court of a Member State in which recognition is sought of a judgment given in another Member State shall stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.*

Or. en

## **Amendment 39**

### **Proposal for a regulation Article 50**

*Text proposed by the Commission*

*Amendment*

#### *Article 50*

*deleted*

*A judgment given in a Member State and enforceable in that State shall be enforceable in the other Member States when, on the application of any interested party, it has been declared enforceable there in accordance with the procedure provided for in Articles 51 to 63.*

Or. en

## **Amendment 40**

### **Proposal for a regulation Article 51**

*Text proposed by the Commission*

*Amendment*

#### *Article 51*

*deleted*

*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 87 point d.*

*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.*

Or. en

**Amendment 41**

**Proposal for a regulation  
Article 52**

*Text proposed by the Commission*

*Amendment*

**Article 52**

**deleted**

- 1. The procedure for making the application for a declaration of enforceability shall be governed by the law of the Member State of enforcement.**
- 2. The application shall be accompanied by the following documents:**
  - (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity**
  - (b) the certificate issued by the court or competent authority of the Member State of origin using the form set out in Annex VI, without prejudice to Article 53.**

Or. en

**Amendment 42**

**Proposal for a regulation  
Article 53**

*Text proposed by the Commission*

*Amendment*

**Article 53**

**deleted**

- 1. If the certificate referred to in Article 52(2)(b) 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. In the situation referred to in paragraph 1, if the court or competent authority so requires, a translation of the documents shall be produced.**



**Amendment 43**

**Proposal for a regulation  
Article 54**

*Text proposed by the Commission*

*Amendment*

**Article 54**

*deleted*

*The judgment shall be declared enforceable without any review under Article 48 immediately on completion of the formalities in Article 52 . The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.*

**Amendment 44**

**Proposal for a regulation  
Article 55**

*Text proposed by the Commission*

*Amendment*

**Article 55**

*deleted*

- 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 judgment, if not already served on that party.*

## Amendment 45

### Proposal for a regulation Article 56

*Text proposed by the Commission*

*Amendment*

#### *Article 56*

*deleted*

- 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 of the Member State of enforcement notified by that Member State to the Commission in accordance with Article 87 point e.*
- 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 28 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 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 45 days 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.*

Or. en

## Amendment 46

### Proposal for a regulation Article 57

*Text proposed by the Commission*

*Amendment*

#### *Article 57*

*deleted*

*The judgment given on the appeal may be contested only by the procedure notified by the Member State concerned to the Commission in accordance with Article 87 point f.*

Or. en

## Amendment 47

### Proposal for a regulation Article 58

*Text proposed by the Commission*

*Amendment*

#### *Article 58*

*deleted*

*1. The court with which an appeal is lodged under Article 56 or Article 57 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 48.*

*2. Subject to Article 56 (4), the court seised of an appeal under Article 56 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 57 shall give its decision without delay.*

Or. en

**Amendment 48**

**Proposal for a regulation  
Article 59**

*Text proposed by the Commission*

*Amendment*

**Article 59**

*deleted*

**1. The court with which an appeal is lodged under Article 56 or Article 57 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.**

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

Or. en

**Amendment 49**

**Proposal for a regulation  
Article 60**

*Text proposed by the Commission*

*Amendment*

**Article 60**

*deleted*

**1. When a judgment 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 54 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 56(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.*

Or. en

## **Amendment 50**

### **Proposal for a regulation Article 61**

*Text proposed by the Commission*

*Amendment*

#### *Article 61*

*deleted*

*1. Where a 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.*

Or. en

## **Amendment 51**

### **Proposal for a regulation Article 62**

*Text proposed by the Commission*

*Amendment*

#### *Article 62*

*deleted*

*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 .*

Or. en

**Amendment 52**

**Proposal for a regulation  
Article 63**

*Text proposed by the Commission*

*Amendment*

**Article 63**

*deleted*

*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.*

Or. en

**Amendment 53**

**Proposal for a regulation  
Chapter III – section 3 – heading**

*Text proposed by the Commission*

*Amendment*

**SECTION 3**

**SECTION 4**

Or. en

## Amendment 54

### Proposal for a regulation Article 66 – paragraph 2 (new)

*Text proposed by the Commission*

*Amendment*

***The competent authority or either or both of the parties may apply to the court of the Member State of enforcement listed in Annex III to clarify how to adapt the measure or order in question.***

Or. en

*Justification*

*This task may exceed the competence of the authority responsible for enforcement in the Member State of enforcement.*

## Amendment 55

### Proposal for a regulation Article 84 a (new)

*Text proposed by the Commission*

*Amendment*

***Article 84a***

***This Regulation shall not prejudice the application of international conventions laying down rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to which one or more Member States and one or more third States are parties on the date of adoption of this Regulation.***

Or. en

## Amendment 56

### Proposal for a regulation Article 85

*Text proposed by the Commission*

#### *Article 85*

*This Regulation shall not affect the right of workers and employers, or their respective organisations, to engage in collective action to protect their interests, in particular the right or freedom to strike or to take other actions, in accordance with Union law and national law and practices.*

*Amendment*

*deleted*

Or. en

## Amendment 57

### Proposal for a regulation Annex -I (new)

*Text proposed by the Commission*

*Amendment*

#### *ANNEX -I*

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

*– in Belgium: Articles 5 to 14 of the Law of 16 July 2004 on private international law;*

*– in Bulgaria: Article 4(1)(2) of the International Private Law Code,*

*– in the Czech Republic: Article 86 of Act No 99/1963 Coll., the Code of Civil Procedure (občanský soudní řád), as amended,*

*– in Germany: Article 23 of the Code of Civil Procedure (Zivilprozeßordnung),*

*– in Estonia: Article 86 of the Code of Civil Procedure (tsiviilkohtumenetluse*



*seadustik),*

*– 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 Law 218 of 31 May 1995,*

*– in Cyprus: section 21(2) of the Courts of Justice Law No 14 of 1960, as amended,*

*– in Latvia: section 27 and paragraphs 3, 5, 6 and 9 of section 28 of the Civil Procedure Law (Civilprocesa likums),*

*– in Lithuania: Article 31 of the Code of Civil Procedure (Civilinio proceso kodeksas),*

*– in Luxembourg: Articles 14 and 15 of the Civil Code (Code civil),*

*– in Hungary: Article 57 of Law Decree No 13 of 1979 on International Private Law (a nemzetközi magánjogról szóló 1979. évi 13. törvényerejű rendelet),*

*– in Malta: Articles 742, 743 and 744 of the Code of Organisation and Civil Procedure - Cap. 12 (Kodiċi ta' Organizzazzjoni u Proċedura Ċivili - Kap. 12) and Article 549 of the Commercial Code - Cap. 13 (Kodiċi tal-kummerċ - Kap. 13),*

*– in Austria: Article 99 of the Law on Court Jurisdiction (Jurisdiktionsnorm),*

*– in Poland: Article 1103 paragraph 4 of the Code of Civil Procedure (Kodeksu postępowania cywilnego),*

*– in Portugal: Article 65(1a) of the Code of Civil Procedure (Código de Processo Civil), in so far as it may encompass*

*exorbitant grounds of jurisdiction, such as the courts of the place in which the branch, agency or other establishment (if located in Portugal) when the central administration (if located in a foreign State) is the party served, and Article 10 of the Code of Labour Procedure (Código de Processo do Trabalho), in so far as it may encompass exorbitant grounds of jurisdiction, such as the courts of the place where the plaintiff is domiciled in proceedings relating to individual contracts of employment brought by the employee against the employer,*

*– in Romania: Articles 148-157 of Law No 105/1992 on Private International Law Relations,*

*– in Slovenia: Article 48(2) of the Private International Law and Procedure Act (Zakon o mednarodnem zasebnem pravu in postopku) in relation to Article 47(2) of the Civil Procedure Act (Zakon o pravdnem postopku) and Article 58 of the Private International Law and Procedure Act (Zakon o mednarodnem zasebnem pravu in postopku) in relation to Article 59 of the Civil Procedure Act (Zakon o pravdnem postopku),*

*– in Slovakia: Articles 37 to 37e of Act No 97/1963 on Private International Law and the Rules of Procedure relating thereto,*

*– in Finland: paragraphs 1 and 2 of Section 18(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: the 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.*

Or. en

## **Amendment 58**

### **Proposal for a regulation Annex II**

*Text proposed by the Commission*

*Amendment*

#### **ANNEX II**

*deleted*

#### **APPLICATION FOR A REVIEW**

*Article 45(2) of Regulation \_\_\_ of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters)*

#### **1. APPLICANT**

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

**1.2. Address:**

**1.2.1. Street and number/PO box:**

**1.2.2. Place and postal code:**

**1.2.3. Country:**

#### **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**

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

**2.3. Telephone/Fax/E-mail:**

**3. THE JUDGMENT**

**3.1. Date and reference number of the judgment:**

**4. CLAIMANT(S) IN THE PROCEEDINGS IN THE COURT OF ORIGIN**

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

**4.2. Address:**

**4.2.1. Street and number/PO box:**

**4.2.2. Place and postal code:**

**4.2.3. Country:**

**5. DEFENDANT(S) IN THE PROCEEDINGS IN THE COURT OF ORIGIN OTHER THAN THE APPLICANT**

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

**5.2. Address:**

**5.2.1. Street and number/PO box:**

**5.2.2. Place and postal code:**

**5.2.3. Country:**

**6. REQUEST FOR THE REVIEW OF THE JUDGMENT**

**6.1. I hereby lodge application for the review of the judgment because it was given in default of my appearance and (please tick the appropriate box)**

**I was not served with the document instituting the proceedings or an equivalent document; or**

**I was served with any of the above documents but not in sufficient time and in such a way to enable me to prepare for my defence (please specify); or**

**I was prevented from contesting the claim by reason of force majeure or extraordinary circumstances without any fault on my part (please specify):**

**6.2. I did not have the possibility to challenge the judgment**

*Yes*

**Done at: ...**

**Date (dd/mm/yy):**

**Name of the applicant or authorised representative**

**Signature:**

Or. en

## EXPLANATORY STATEMENT

Regulation No 44/2001, with its predecessor the Brussels Convention, is one of the most successful pieces of EU legislation; it laid the foundations for a European judicial area, has served citizens and businesses well by promoting legal certainty and predictability of decisions and is used as a reference and a tool by other instruments. Your rapporteur therefore takes his responsibility very seriously. This draft represents his first thoughts; he will be refining them in subsequent amendments also in the light of the workshop to be held in September.

### 1. Abolition of exequatur

In place of exequatur, the Commission proposes that a judgment enforceable in the Member State of origin is to be enforceable and enforced elsewhere in the EU upon production of an authentic copy and a certificate in the prescribed form issued by the court of origin, without any intermediate procedure. Thereafter, enforcement is to proceed as if the judgment were given by the courts of the Member State of enforcement.

If the party against whom enforcement is sought did not enter an appearance in the proceedings leading to judgment, it may apply to the courts of the Member State of origin to review the judgment on the ground that either (a) it was not served with the document instituting the proceedings in sufficient time and in such a way as to enable it to arrange for its defence, or (b) it was prevented from contesting the claim owing to “force majeure or extraordinary circumstances without any fault on his part”, unless it failed to challenge the judgment when it was possible for it to do so.

In addition, the party against whom enforcement is sought may apply to the courts of the Member State of enforcement for a refusal of enforcement if enforcement would not be permitted by the fundamental principles underlying the right to a fair trial.

The Commission is proposing to abolish the present right to challenge recognition or enforcement of a Member State judgment on the ground of manifest incompatibility with the enforcing/recognising Member State's public policy and replace it by the limited “fair trial” ground. Furthermore, with one very narrow exception, no review of the jurisdiction of the court of origin would be permitted, even in the limited circumstances currently envisioned by the Brussels I Regulation (non-compliance with consumer, insurance or exclusive jurisdiction requirements).

Your rapporteur is of the view that a substantive or procedural public policy exception seems to be still necessary. Excluding substantive policy is incompatible with Member States' international obligations and indeed at odds with the fact that both the Rome I and Rome II Regulations contain exceptions for public policy and overriding mandatory provisions. A Member State before which proceedings are brought is entitled to preserve its fundamental values; therefore, equally, it must be the case for a Member State in which the enforcement of

a judgment is sought.

However, the Commission proposes that there should be two categories of judgment in which a declaration of enforceability must still be obtained by the enforcing party and served on the opposing party, subject to the latter's right of appeal on limited grounds identical to those to currently be found in Article 34 of the current Brussels I Regulation, namely judgments concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation, and judgments in collective redress proceedings concerning compensation for harm caused by unlawful business practices which meet certain conditions.

For his part, your rapporteur considers that for reasons of legal certainty it would be better to have no exemptions.

## **2. Extension of the jurisdiction rules to disputes involving defendants domiciled outside the EU**

The Commission is proposing that the Regulation's jurisdictional rules be applied with mandatory effect to third-country defendants, thereby displacing the Member States' existing grounds of jurisdiction in such cases. In order to compensate for the resulting reduced access to the courts in many Member States and for the non-availability of the general domicile-based ground of jurisdiction, the Commission is also proposing that the courts of a Member State where moveable assets belonging to the defendant are located are to have jurisdiction, provided that (1) no other Member State court has jurisdiction under the preceding rules of the Regulation, (2) "the value of the property is not disproportionate to the value of the claim", and (3) the dispute has a "sufficient connection" with the Member State of the court seised.

On an exceptional basis, it is proposed that there should be a *forum necessitatis*, i.e. the right to bring proceedings before a Member State court with which the dispute has a "substantial connection", if "the right to a fair trial or the right of access to justice so requires" and if no other Member State court has jurisdiction under the preceding rules in the Regulation. In particular, proceedings may be brought under these circumstances (a) if proceedings would be impossible or cannot reasonably be brought or conducted in a third State with which the dispute is closely connected, or (b) if a judgment given in a third State would not be entitled to recognition and enforcement in the Member State of the court seised and such recognition and enforcement is necessary for the claimant's rights to be satisfied.

Your rapporteur adheres to the position expressed in Parliament's resolution on the Green Paper that the question whether the rules of the Regulation should be extended in this way requires wide-ranging consultation and political debate. At this juncture, it seems premature to introduce this concept into this Regulation.

## **3. Choice-of-court agreements**

The enhancement of the effectiveness of choice-of-court agreements by stipulating that the court chosen by the parties to resolve their dispute should always have priority, regardless of whether it was first or second seised seems to be a viable solution. Article 32(2) provides that

where an agreement referred to in Article 23 confers exclusive jurisdiction on a court or the courts of a Member State, the courts of other Member States shall have no jurisdiction over the dispute until such time as the court or courts designated in the agreement decline jurisdiction. Moreover, the *lis pendens* provision set out in Article 29 of the proposed Regulation is expressed to be without prejudice to Article 32(2). Recital (19) refers to the need to improve the effectiveness of choice of court agreements "in order to give effect to the will of the parties and avoid abusive litigation tactics", before going on to say that "This Regulation should therefore grant priority to the court designated in the agreement to decide on its jurisdiction, regardless of whether it is first or second seised." In addition, Article 23(1) now qualifies the conferral of jurisdiction upon the chosen court by words "unless the agreement is null and void as to its substance under the law of that Member State".

#### **4. Arbitration agreements**

The Commission is of the view that the effectiveness of arbitration agreements should be improved in order to give full effect to the will of the parties. In particular, it should be the case where the agreed or designated seat of arbitration is in a Member State. It recommends special rules aimed at avoiding parallel proceedings and abusive litigation tactics in those circumstances.

Regarding this point, your rapporteur adheres to the position taken by Parliament in its resolution on the Green Paper: arbitration is satisfactorily dealt with by the 1958 New York Convention and the 1961 Geneva Convention on International Commercial Arbitration. All Member States are parties to the above mentioned conventions; therefore the exclusion of arbitration from the scope of the Regulation should be preserved.

#### **5. Other questions**

Your rapporteur acknowledges that improvements seem to have been made with regard to preliminary measures.

The proposed new rule of special jurisdiction favouring the courts for the place where property is situated as regards rights *in rem* or possession in moveable property seems sensible.

Your rapporteur can support the proposal to enable Member State courts to stay proceedings in a *lis pendens* situation in which the court of a non-Member State is first seised of an action involving the same parties and the same cause of action.

Finally, the rapporteur questions the need for the new Article 85 it being not justified in the explanatory memorandum.



**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels, 8 March 2011

**OPINION**

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)  
COM(2010)0748 of 14.12.2010 – 2010/0383(COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 13 January and 11 February 2011 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings<sup>1</sup>, an examination of the proposal for a regulation of the European Parliament and of the Council recasting Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) As regards the explanatory memorandum, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.

2) The following parts of the recast text should have been identified by using the grey-shaded

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<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

type generally used for marking substantive changes:

- in the first citation, the words "*and (e)*";
- the second sentence of Recital 10;
- in Article 47(1), the words "*concerning matters referred to in Article 37(3)*".

3) In Article 28(2), the reference made to "*the provisions of paragraph 2*" should be adapted so as to read as a reference made to "*the provisions of paragraph 1*".

4) In Article 47(2), the words "*Articles 50 to 63*" should be adapted so as to read "*Articles 50 to 65, 67, 68 and 72*".

5) In Article 64, the words "*given in a Member State*" and the words "*in the Member State in which recognition, enforceability or enforcement is sought*" should have been identified with adaptation arrows.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing texts, without any change in their substance.

C. PENNERA  
Jurisconsult

H. LEGAL  
Jurisconsult

L. ROMERO REQUENA  
Director General