Judicial cooperation in civil matters in the European Union

A guide for legal practitioners

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I. INTRODUCTION

An important development has taken place in the field of European law and yet remains unnoticed by most legal practitioners. Private international law is on the verge of developing into an independent and separate European field of law, over and above the domestic laws of the Member States. The Treaty of Amsterdam conferred upon the EU the competence to legislate in the area of private international law and since then a multitude of European legislative acts have already been passed in the area of “judicial cooperation in civil matters”.

This new area covers a field of law that extends into the practice of every European civil law practitioner – Judge, Lawyer or other legal professional. The principle of free movement of goods, services and persons has encouraged mobility among European citizens and in commercial activities. Legal practitioners find themselves increasingly faced with cross-border cases, where problems arise with, for example, cross-border deliveries, the legal aspects relative to the movement of tourists and to traffic accidents abroad, or questions related to the ownership of property and real estate in other Member States of the European Union. In the area of family law, multi-national personal relationships and the legal questions arising from cross-border family and parental responsibility cases have become almost daily occurrences. Nowadays, even small and medium enterprises – SME’s – are active in the European domestic market almost as a matter of course, and are therefore recurringly faced with problems and legal questions that are governed by European law. No practitioner, practising within a Europe of open borders and a multiplicity of cross-border legal relationships, can afford to ignore these developments.
“Judicial Cooperation in Civil Matters”

The term judicial cooperation in civil matters originates from the Maastricht Treaty, the Treaty of the European Union – TEU, which in Title VI, “Provisions on Cooperation in Fields of Justice and Home Affairs”, Article K.1, defined the judicial cooperation in civil matters, as a subject of common interest to the Member States.

With the Treaty of Amsterdam, this policy of cooperation, which had hitherto been solely directed at the Member States, was raised to a special legislative competence of the European Community: Article 61(c) EC Treaty recognises the legislative competence of the Community to take measures in this area, which include according to Article 65 EC Treaty:

- improving and simplifying:
  - the system for cross-border service of judicial and extrajudicial documents;
  - cooperation in the taking of evidence;
  - the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;
- promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;
- eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

The term that retains the concept of cooperation between Member States (at a government level) remained part of a field that has now developed into an independent area of European law, with its own concepts and principles. Title IV of the EC Treaty, including Articles 61 and 65, is applicable to all European Member States with the exception of Denmark.

Towards a genuine area of justice

The rules of judicial cooperation in civil matters are based on the principle of the equal value and standing of the court systems of the individual Member States and of their judgements. At its centre also lies cross-border collaboration between individual courts and court authorities. The importance of the existence of uniform rules in this field is clear: if each Member State were to individually establish which law should apply to each cross-border legal relationship and which judgements of which other Member States were to be recognised, the result would be a lack of legal certainty for citizens and enterprises both in respect to jurisdiction and the applicable law.

For the European Internal Market to be successful, European certainty in law is a pre-requisite. At the Tampere European Council on 15 and 16 October 1999 the Council formulated the aim of the creation of a “genuine European area of Justice”, based on the principle that individuals and companies should not be prevented or discouraged from exercising their rights by incompatibilities between or complexity of judicial and administrative systems in the Member States. There needed to be a Community-wide improvement in the access to justice of all citizens. The Tampere European Council established three priorities for action: mutual
recognition of judicial decisions, better crime victims compensation and increased convergence in the field of civil law.

Among these priorities, the principle of mutual recognition is the cornerstone of judicial cooperation in civil matters. The Justice and Home affairs Council adopted on 30 November 2000, a programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters. The final goal is that judicial decisions should be recognised and enforced in another Member State without any additional intermediate step, in other words, suppression of exequatur.

In this genuine European area of justice, it is expected that the further development of judicial cooperation in civil matters will facilitate the movement of these citizens and commercial activities.

3 The “acquis” in civil justice

In the area of judicial cooperation in civil matters, the so called “acquis communautaire” is already rather significant and relates to all fields included in Article 65 of the EC Treaty, as the field of jurisdiction, mutual recognition and enforcement of judgments, the field of cooperation between the Member States and the field of access to justice. Therefore a number of legislative instruments have already been adopted – they apply to all Member States with the exception of Denmark – while several other instruments are discussed or planned:

Jurisdiction, mutual recognition and enforcement of judgments:
- Brussels I Regulation concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- Brussels II Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters, and a new Council Regulation concerning the same subject matter, Brussels II bis which will replace the Brussels II Regulation;
- a Regulation relating to insolvency proceedings.

Cooperation between the Member States (These instruments aim to improve the judicial cooperation in practice):
- a Regulation relating to the service of documents in cross-border cases;
- a Regulation concerning the taking of evidence in civil and commercial matters;
- the Council adopted a decision establishing a European judicial network in civil and commercial matters.

In the field of access to justice:
- directive on legal aid for cross-borders litigants.

At present, the following draft instruments have been presented:
- compensation for crime victims (green paper and proposed directive);
- alternative dispute resolution (green paper);
- proposal for a Council Regulation creating a European enforcement order for uncontested claims, which aims to make judgments on uncontested claims given in a Member State enforceable throughout the Community with no need for intermediate measures in the Member State where enforcement is to be sought;
- injunctions for payment and procedures related to small claims (green paper);
- law applicable to contractual obligations (green paper);
- proposal for a "Rome II" Regulation on the law applicable to non-contractual obligations.
II. JUDICIAL COOPERATION IN THE FIELD OF CIVIL AND COMMERCIAL MATTERS

Conflicts of jurisdiction and conflict of law rules in the area of civil and commercial matters are the heart of judicial cooperation in civil matters. In the field of international civil procedure, certain differences between national rules governing jurisdiction and recognition of judgements hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with the view to a rapid and simple recognition and enforcement of judgements from other Member States are essential. Such provisions need to be complemented by corresponding conflict of law rules.

Company A from Member State 1 has booked with trade fair organiser Company B, whose central administration lies in Member State 2, 500 square meters of exposition space and corresponding services at a three day trade fair in Member State 2, in which it planned to participate as an exhibitor. Five days before the start of the fair, Company A’s main client informs, that it cannot participate in this fair. Company A therefore cancels its reservation. Due to the late notice, Company B does not succeed in renting the 500 square meters to another exhibitor. When asked to pay the outstanding rent, Company A refuses to do so. Company B wishes to proceed against Company A and asks how it should best do so.

The European civil procedure system in the field of civil and commercial matters, which is today based on Regulation 44/2001 “Brussels I”, has brought greater certainty to situations such as this. It provides rules of conflict of jurisdiction which are the same in all Member States that participate in this system. Each judgement rendered in one Member State receives equal recognition and enforcement in all other Member States concerned. Moreover, provisions in all Member States establishing equal conflict of law rules ensure that in the whole Community, Courts decide the same subject matters according to the same rules.

Under Regulation Brussels I Company B can choose between two alternative ways of proceeding: Firstly it can take legal action before the court which has jurisdiction over Company A’s place of business in Member State 1: According to the general rule of Article 2 action can be brought before the court of the defendant’s place of business. Alternatively Company B may prefer to proceed before the court in its own Member State 2, which has jurisdiction under Article 5(1)(b) of Regulation Brussels I being the place where the contractual services were to be performed. A favourable judgement obtained from the court in Member State 2, would be recognised and could in simple proceedings be made enforceable in any Member State where Company A holds assets. Company B has no cause to worry that these courts may decide the case according to different rules of law: Under the 1980 Rome Convention, which applies for all EU Member States, the same rules govern which law is applicable. (cf. further below in chapter II 2. Rome Convention)
**The Brussels I Regulation**

Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters of 22 December 2000, the Brussels I Regulation, entered into force on 1 March 2002. It has substituted the Brussels Convention from 1968 which has the same subject matter and continues to apply vis-à-vis Denmark and some overseas territories of certain Member States. The Lugano Convention, which largely corresponds to the Brussels Convention in terms of its content, applies in proceedings vis-à-vis Iceland, Norway, Poland and Switzerland.

The Regulation applies in civil and commercial matters, excluding revenue, customs or administrative matters. It does not apply to certain areas of civil law, such as the status or legal capacity of natural persons, matrimonial matters, wills and succession or bankruptcy.

**1.1 The jurisdictional system of the Brussels I Regulation**

The Brussels I Regulation lays out a closed jurisdictional system, assigning jurisdiction to decide cross-border disputes between Member State courts. The competent court within the judicial system of the Member State with jurisdiction under the regulation is then designated by the domestic rules of civil procedure of the Member State concerned.

Company A from Member State 1 has sold a machine to Company B from Member State 2. Company B had submitted an offer to purchase which stated, inter alia, that purchase was subject to Company B’s general sales conditions printed on the reverse side of the offer.

These conditions contain a choice of forum clause establishing the jurisdiction of Court C in Member State 2. Company A accepted the offer in a confirmation letter. After delivery, Company B has claimed malfunctioning of the machine and has brought an action for damages against Company A before Court C. In the proceedings, Company A claims that Court C has no jurisdiction. It has pointed out that under the laws of Member State 1, a choice of forum clause contained in one party’s general sales conditions is valid only if expressly signed for acceptance by the other party.

According to Article 23(1) Brussels I Regulation parties, of whom one or more are domiciled in a Member State, can agree that a court or the courts of a Member State shall have jurisdiction to settle any dispute which has arisen or may arise in connection with a particular legal relationship.

Such jurisdiction is exclusive, unless the parties have agreed otherwise. In the field of the Brussels I Regulation the formal validity of a choice of forum clauses must be derived exclusively from the Regulation, which provides an autonomous set of rules. These rules have preference over the corresponding rules in the Member States’ national civil procedure laws. (cf. further below)
The basic rule: jurisdiction of the court at the defendant's domicile

The basic principle according to Article 2 of the Brussels I Regulations, for persons domiciled in the territory of a Member State, that jurisdiction is exercised by the courts of the Member State in which the defendant is domiciled, regardless of his or her nationality. Domicile is determined in accordance with the domestic law of the Member State where the court has been seized. In the case of legal persons or firms, their domicile is determined by the country where they have their statutory seat, central administration or principal place of business. If the defendant is not domiciled in a Member State, Article 4 of the Regulation states that the jurisdiction of the courts of each Member State, subject to exclusive jurisdiction and prorogation of jurisdiction, be determined by national Law.

Alternative and special rules of jurisdiction

In Articles 5 to 7 the Regulation proposes alternative rules of special jurisdiction to the above mentioned general rule of jurisdiction. The plaintiff can choose whether to launch proceedings in the courts of the defendant’s domicile or in courts of another Member State having a special jurisdictional basis. In practice, the most important special jurisdiction is contained in Article 5(1), which involves matters relating to contracts, excluding contracts of employment. International jurisdiction over the cause of action lies with the courts of the place of performance of the obligation in question. In the case of the two contract types that prevail in European cross-border practice, the place of performance covers all obligations arising out of the same contract. Unless otherwise agreed, in the case of the sale of goods the place of performance of the obligation is the place in a Member State where, under the contract, the goods were delivered or should have been delivered, and in the case of the provision of services, the place where, under the contract, the services were provided or should have been provided.

Article 5 provides furthermore for special rules of jurisdiction for several special matters, like for example, matters relating to maintenance, civil claims for damages or restitution or as regards disputes arising out of the operations of a branch, agency or other establishment. Article 5(3) which covers jurisdiction over matters relating to tort has assumed increasing importance. Claims in matters relating to tort, delict or quasi-delict may be raised in the courts of the place where the harmful event occurred or may occur. The Court of Justice has established that this is the place where the damage occurs or, alternatively, the place where the damaging action was produced.

Prorogation of jurisdiction and defendant's appearance

The rule regarding choice of forum agreements is set out in Article 23. It is one of the most important and frequently used rules of the Brussels I Regulation. Prorogation of jurisdiction is generally allowed. However, limitations exist in favour of parties secured by the rules of matters concerning insurance, consumers, and labour. Furthermore, the exclusive jurisdiction of Article 22 cannot be undermined by a prorogation of jurisdiction.
In the case above, the two Companies from different Member States argue about the validity of a choice of forum clause contained in the general sales conditions of one of them, Company B. The solution can be derived from Article 23 Brussels I Regulation.

With regard to the form requirements, Article 23 of the Brussels I Regulation contains a set of differentiated rules. The basic rule is that a choice of forum clause must be agreed to by the parties in writing, although a written document signed by both parties is not required. Exchange of written statements or oral agreements confirmed in writing also meet the requirements. The same is the case with a form which accords with practices which the parties have established between them and in international commerce, a form which accords with a usage which is widely known and regularly observed in the particular commerce concerned, and which the parties are or ought to have been aware of.

In the above example, Company B submitted a written purchase offer which Company A confirmed in writing. In this purchase offer Company B made explicit reference to its general sales conditions, which it made available to Company A, and in a language used by the parties. The jurisdiction clause established in Company B’s sales conditions therefore meets the requirements set out in Article 23 (1) Brussels I Regulation. It consequently gives Court C exclusive jurisdiction to hear the case.

Apart from jurisdiction derived from other provisions of the Brussels I Regulation, a court of a Member State before which a defendant enters an appearance will be regarded as having jurisdiction, as per Article 24. This does not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22. This rule is important in practice as it forces the defendant to be sure of the jurisdiction of the court before entering an appearance. Once accepted, the jurisdiction cannot be rescinded and the courts’ jurisdiction is conclusively established.

Special rules regarding matters relating to insurance, consumer contracts and individual contracts of employment

Special rules are laid down regarding matters relating to insurance, consumer contracts and individual contracts of employment. These contracts are distinguished by the need to protect the weak party. The Brussels I Regulation provides special rules in these sections with the intent of making a convenient forum available to the weaker party deemed worthy of protection – i.e. the insured, the consumer or the employee.

Mrs A, a resident in Member State 1, has ordered a book from an internet bookseller and has paid the price of €26,80 in advance. The book never arrived. Mrs A has found out that the internet book-seller is a company domiciled in Member State 2. She is decided to take legal action and asks where this must be brought. The bookseller claims that his general sales conditions establish jurisdiction of the courts of Member State 2.
Under Article 16 (1) Brussels I Regulation a consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled. Article 15(1)(c) provides that this choice is open to the consumer if the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer’s domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and that the contract falls within the scope of such activities. As this rule cannot be departed from by an agreement made previously to the arising of the dispute according to Article 17, Ms A therefore can sue the bookseller before the court which is competent in her own place of residence.

Exclusive jurisdiction

Article 22 of the Brussels I Regulation lists circumstances that warrant exclusive jurisdiction, where there is a presumption of a particularly close connection to the courts of a particular Member State or where there is special need for legal certainty. These include, *inter alia*, proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property or proceedings concerned with the registration or validity of patents or other industrial property rights. In all cases listed in Article 22, actions are barred from being brought before other courts, such as the court of the defendant’s domicile or any other court, which the parties may have agreed on in a choice of forum clause.

Measures for interim relief and provisional protection

With regard to provisional measures, Article 31 of the Brussels I Regulation also provides for an application to be made to the courts of a Member State, when such measures are available under the law of that State. This applies even if the courts of another Member State have jurisdiction as to the substance of the matter.

1.2 European *lis pendens*

The European *lis pendens* rule prevents courts of several Member States arriving at conflicting decisions on the same cause of action. Where proceedings involving the same cause of action and between the same parties are brought before courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the court first seised has established whether it has jurisdiction. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court. This rule has great importance in cross-border legal practice.

1.3 Recognition and enforcement of decisions issued by courts of other Member States

The Brussels I Regulation has simplified the formalities for recognition and swift enforcement of any judgement delivered by a court in another Member State by having introduced a simple and uniform procedure.
Recognition

According to Article 33, a judgement given in a Member State shall be automatically recognised in the other Member States without the requirement of any special procedure. Recognition can only be refused in very few exceptional cases. The most important case in legal practice is the one regulated by Article 34(2), with regard to judgements given in default of appearance, where the defendant was either 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. A judgement will not be recognised (Article 35(1)) if it conflicts with the Regulation’s rules of exclusive jurisdiction or the special rules on matters relating to insurance, or consumer contracts. In all other cases, Article 35(3) expressly forbids any review of the jurisdiction of the court of the Member State of origin. Article 36 states that under no circumstances may a foreign judgement be reviewed as to its substance.

Enforceability

Enforceable decisions in the Member State where they are handed down can be declared enforceable and executed in any other Member State. The party who wishes to enforce a judgement in another Member State, requests that the court that has given the judgement issues a certificate (standard form, Annex V), confirming the enforceability. The court or competent authority designated by each Member State to examine applications simply makes a formal check of the documents accompanying the application. An appeal may be lodged by one of the parties before one of the courts listed in the annex. It relates solely to enforcement of the judgement. The Brussels I Regulation clearly states that the sole ground for non-enforcement is where this is manifestly contrary to public policy.

The decision on the application for a declaration of enforceability may be appealed by the parties in a special procedure described in Articles 43 to 46. When a judgement must be recognised, the applicant can avail himself of provisional, including protective, measures in accordance with the law of the Member State requested without a declaration of enforceability being required. However, the declaration of enforceability carries with it the power to proceed to any protective measures.

Conflict laws — instruments and drafts

The harmonisation of conflict rules, which must be distinguished from the harmonisation of substantive law, seeks to harmonise the rules whereby the law applicable to an obligation is determined.

2.1 The 1980 Rome Convention and proposals for a Rome I Regulation

The Rome Convention

The Rome Convention on the law applicable to contractual obligations, which is in force since April 1991, is now effective for all Member States, although substantive differences remain with
regard to certain points, due to the variety of forms of implementa-
tion and the reservations made to the Convention’s provisions.

The Convention applies to contractual obligations in situations invol-
voking a choice of laws – even where the law it designates is that of a
non-contracting State – with the exception of certain matters, such
as contractual obligations relating to the law of succession or to
property rights arising out of a matrimonial relationship. The rules of
the Rome Convention are therefore the only rules of private interna-
tional law applicable in the Member States in this field.

The signatories to a contract may choose the law applicable to the
whole or a part only of the contract. If the parties have not made an
explicit choice of applicable law, the contract is governed by the law of
the country with which it is most closely connected, which is in
general the place of habitual residence of the party whose perfor-
mance is characteristic of the contract and in the case of a body
corporate or unincorporate, the place of its central administration. (For
instance, in a sale contract, the performance which is characteristic is
the one of the vendor). For contracts concerning rights in immovable
property, a presumption exists that the closest connection is that with
the country in which the immovable property is located.

However, for all contracts, if circumstances indicate that the
contract exhibits a closer connection with another country, it is sub-
ject to the applicable law of that country.

Special and protective rules for the weaker party cover consumer
contracts and individual employment contracts. In the case of
consumer contracts, unless the parties decide otherwise, such contracts
are governed by the law of the country in which the consumer has
his habitual residence, if there is some connection with that country
as defined in Article 3 and 5(2). As regards employment contracts,
these shall in the absence of a choice be governed by the law of the
country, where the employee habitually carries out his work in perfor-
mance of the contract. Where the employee does not habitually carry
out his work in any one country, the contract is governed by the law of
the country in which the place of business through which he was
engaged is situated. However, if from the circumstances as a whole
it appears that the contract is more closely connected with another
country, then the law of that country governs the contract, Article
6(2). In the case of consumer contracts, and as a general rule, in no
circumstances may the choice of law work to the disadvantage of the
consumer or deprive him of the protection afforded by the law of his
country of residence where it is more favourable. In the case of indi-
vidual employment contracts, an employee cannot be stripped of
protections arising from mandatory labour law rules in the country in
which he or she habitually works in their performance of the contract.

Mrs A, a resident in Member State 1, has ordered a book
from an internet book-seller and has paid the price of €26,80
in advance. The book never arrived. Mrs A has found out
that the internet book-seller is a company domiciled in
Member State 2. She is decided to take legal action and
asks where this must be brought. The book-seller claims
that his general sales conditions establish jurisdiction of
the courts of Member State 2.
Trade fair organisers usually stipulate in their general trade fair conditions that contracts with the exhibitors are governed by the laws of the State where the organiser itself has its own place of business. The Rome Convention establishes the principle of freedom of choice of the parties to a contract: Article 3(1). Should Company B have provided for a choice of law provision, the chosen law would apply to the contract.

Otherwise, the applicable law would have to be established in accordance with the rule of the country to which the contract is most closely connected. In the contract, rent of exhibition space and related trade fair services that were to be provided by Company B were characteristic of the contract. This is obviously different from Company A’s obligation to pay, which is an obligation of a most general kind. Therefore, the law applicable to the contract is the law of Member State 2, where Company B has its central administration.

Proposals to replace the Rome Convention with a Rome I Regulation

The European Commission has issued a green paper on the law applicable to contractual obligations, using “Rome I Regulation” as a working title, on 14 January 2003. Indeed, replacing the Convention with an EC instrument would overcome the limitations inherent in the Rome Convention as an international Treaty. It would also establish – in the same way as for judicial cooperation in civil matters in general – the European Court of Justice as the final arbiter of the rule’s interpretation, a competence that for the Rome Convention has not yet been achieved. Finally, the updating of certain provisions of the Rome Convention is also being discussed, in particular to adapt Article 5 on law applicable to consumers in electronic transactions.

2.2 The proposal for a Rome II Regulation

Although the Brussels I Regulation covers both contractual and non-contractual obligations, until now only the rules on laws applicable to contractual obligations have been harmonised within the European Community. Therefore, on 22 July 2003, the European Commission submitted a proposal for a “Rome II” Regulation on the law applicable to non-contractual obligations.

Some areas of non-contractual obligations are excluded from the scope of the proposed Regulation, such as non-contractual obligations arising out of family or similar relationships, matrimonial property regimes and successions. The proposed Regulation distinguishes rules of conflict of laws for two major categories of non-contractual obligations: those that arise out of a tort or delict and those that do not.

The proposed default rule with regard to non-contractual obligations arising out of a tort or delict is that the law of the place where the direct damage arises or is likely to arise applies. The objective of confirming the lex loci delicti commissi rule is to guarantee certainty in the law and to seek to strike a reasonable balance between the
person claimed to be liable and the person sustaining the damage. However, where the person claimed to be liable and the person who has allegedly sustained damage are habitually resident in the same country, the law of that country shall be applicable. The proposed Regulation provides a general exception clause which aims to bring a degree of flexibility, enabling the court to adapt the rigid rule to an individual case so as to apply the law that reflects the centre of gravity of the situation, whenever the obligation is manifestly more closely connected with another country. The planned Regulation additionally provides special rules that apply to some areas of law such as product liability, unfair competition or intellectual property law.

With regard to non-contractual obligations arising out of an act other than a tort or delict – such as unjust enrichment and agency without authority – the proposed Regulation provides several rules, in order to ensure that the obligation be governed by the law of the State most closely connected to its subject, while leaving the courts with sufficient flexibility to adapt the rule to their national systems.

Provision is made for the parties to choose the applicable law to the non-contractual obligation after the dispute has arisen (no ex ante choice is allowed). The choice must either be explicit or emerge clearly from the circumstances of the case. Freedom of choice is, however, restricted where all the elements of the situation are located in a country other than the one whose law is chosen, and excluded for intellectual property. Moreover, the application of a foreign law must not be manifestly incompatible with the public policy of the forum State.

The further development of judicial cooperation in civil and commercial matters

The Community endeavours to increase the permeability of the still remaining barriers between the judicial systems of the Member States. The Tampere European Council urged a “further reduction of the intermediate measures, which are still required to enable the recognition and enforcement of a decision or judgement in the requested State”, the ultimate goal being the automatic recognition and enforcement of judicial decisions in civil matters and the complete abolition of the exequatur procedure.

3.1 The Commission proposal for a Regulation creating an European enforcement order for uncontested claims

The proposal for a Council Regulation (COM/2002/0159 final) creating a European enforcement order for uncontested claims creates a system that permits the free circulation of judgements, court settlements and authentic instruments throughout all Member States by laying down minimum standards whose observance renders unnecessary any intermediate proceedings to be taken in the Member State of enforcement prior to recognition and enforcement. This Regulation applies in civil and commercial matters, whatever the nature of the court or tribunal.

The concept of 'uncontested claims' covers all situations in which a creditor, given the verifiable absence of any dispute by the debtor over the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that
requires the debtor’s express consent, be it a settlement approved by a court or an authentic instrument.

If a judgement on an uncontested claim has been delivered in a Member State, the creditor may choose between the application for certification as a European Enforcement Order for uncontested claims and the system of recognition and enforcement under Regulation (EC) No 44/2001. A judgement on an uncontested claim which has been certified as a European Enforcement Order in the Member State of origin is recognised and enforced in the other Member States without any special procedure being required in the Member State of enforcement.

Mr A has launched a pecuniary claim against Mr B by legal action in Member State 1, where both of them are domiciled. The court has ordered Mr B, who has not contested the claim during the legal proceedings, to pay 10,000 Euro to Mr A. As Mr B has recently transferred all his assets to a bank in Member State 2, Mr A asks how he can enforce the judgment in Member State 2.

At present, Mr A must apply in Member State 2, where enforcement is sought, for a declaration of enforceability of the judgment. The procedure of ‘exequatur’ ruled by Regulation 44/2001 ("Brussels I"), involves proceedings in a Member State different from that one, where the judgment has been rendered. This causes further costs and a certain delay.

Under the future Regulation creating a European enforcement order Mr A will have a second option at his disposal: He can apply for certification as a European enforcement order for uncontested claims to the court of origin, which would be recognised and enforced in Member State 2 without any further special procedure required.

This Regulation will provide a tangible benefit for creditors who gain access to speedy and efficient enforcement abroad without the involvement of the judiciary of the Member State where enforcement is sought nor the ensuing delays and expenses. It is part of the group of measures intended to further implement the principle of mutual recognition of judgements and other decisions of judicial authorities.

In fact, there is no more need for the involvement of the judiciary in a second Member State and it also generally dispenses with the need for translation since multilingual standard forms are to be used for certification. The court of origin issues the European Enforcement Order certificate using the standard form in Annex I, in the language of the judgement.

The Regulation establishes minimum standards for the proceedings leading to the judgement in order to ensure that the debtor is informed about the court action against him, the requirements for his active participation in the proceedings to contest the claim at stake and about the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defence. The courts of the Member State of origin are entrusted with the task of scrutinizing full compliance with the minimum
procedural standards before delivering a standardised European Enforcement Order certificate that makes this examination and its result transparent. The Council has adopted a common position in February 2004 with a view to the adoption of this regulation and transferred it to the European Parliament for a second reading.

3.2 The proposal for a European payment order and a new instrument creating a European small claims procedure

The European Commission presented on 20 December 2002 a “Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation”.

As regards the European payment order it includes a comprehensive list of relevant questions intended to stimulate public discussion on the creation of a rapid and efficient procedure for the recovery of claims that are presumed to remain uncontested. A legislative proposal for a Regulation on this topic was adopted in March 2004 by the Commission.

3.3 Settling out of court – developing alternative methods to resolve civil and commercial disputes in the European Union

On 19 April, 2002, the European Commission published a Green Paper on alternative dispute resolution in civil and commercial law (ADR). Its aim was to take stock of national, European and international developments and to consult with Member States and interested parties on possible ways forward. ADR methods are extra-judicial procedures used for resolving civil or commercial disputes. They usually involve the collaboration of disputing parties in finding a solution to their dispute with the help of a neutral third-party. ADRs are regarded as an important element in the attempt to provide fair and efficient dispute-resolution mechanisms at EU level.
III. FAMILY LAW

The Brussels II Regulation


The Regulation is confined to civil proceedings relating to divorce, legal separation or marriage annulment, as well as to decisions covering parental responsibility when these are issued in the context of a matrimonial proceeding and concern children common to both spouses. For these proceedings the Regulation provides rules for establishing:

- the jurisdiction among the courts of the Member States,
- the recognition and enforcement of judgments rendered by the courts of other Member States.

Ms A is a citizen of Member State 1. She is married to Mr B with whom she has lived for three years in his home Member State 2. Ms A has taken the decision to file for divorce and to return to her home country, where her family lives. She would like to leave as soon as possible and file the divorce suit in her country of origin. She has not spoken to Mr B for two weeks, and is concerned that the divorce might turn into a serious problem.

Article 2(1) of the Brussels II Regulation establishes jurisdiction in accordance with the spouses’ habitual residence or last habitual residence if one of the spouses still resides there or with the common nationality of the spouses (in the case of the United Kingdom and Ireland, the ‘domicile’ of each of the spouses). After Ms A has returned to her country of origin, she will only be able to file for divorce before a court of Member State 1, if one of the following conditions is met:

- If she can convince Mr B to present a joint application for divorce, the courts of both Member States where either of the spouses is habitually resident, have jurisdiction. After her return to her home country, she could file for divorce before a court in this Member State (provided she has acquired habitual residence there) or before a court in Member State 2 where Mr B is habitually resident.

- Should Mr B instead refuse a joint application, she may only file before a court of her home State after she resided there for at least six months. Should Ms A decide to move to a third Member State of which she is not a citizen, she would be allowed to file for a divorce there only after she resided there for at least one year.

Ms A should be aware that Mr B, whose intention seems to be to remain at the spouses’ present common place of living, finds himself in a more favourable position in the sense that he can file for divorce before a court of that Member State immediately, whereas she would have to...
wait for six months. Should he decide to do so, his action would prevent her subsequent action. Article 11(1) of the Brussels II Regulation establishes that where proceedings involving the same cause of action and between the same parties are brought before courts of different Member States, the court first seised is competent, (so-called lis pendens), and the court second seised shall stay its proceedings.

The Brussels II Regulation applies only to the dissolution of matrimonial ties, but does not affect issues such as the fault of the spouses, property consequences of the marriage, maintenance obligation or any other measure that may be ancillary to the divorce.

The grounds of jurisdiction of the Brussels II Regulation are based on the rule that there must be a real link between the party concerned and the Member State exercising jurisdiction. It allows the parties to choose between seven alternative grounds.

The court exercising jurisdiction in a matrimonial matter also has jurisdiction in issues of parental responsibility concerning children common to both spouses, where the child is habitually resident in the Member State of the matrimonial court. Where the child resides in another Member State, the matrimonial court may still have jurisdiction over the issue of parental responsibility, provided that at least one of the parents has custody of the child, if the jurisdiction of the courts has been accepted by both spouses, and if this is in the best interests of the child.

Based on the principle of mutual trust, a judgment given in one Member State shall be recognised in all other Member States. The grounds for non-recognition are kept to the minimum required. In the case of judgements regarding separation, divorce or annulment of a marriage, no special procedure is required for updating of civil-status records of a Member State. It is also a basic principle under the Brussels II Regulation, as well as under Brussels I Regulation, that the State addressed should review neither the jurisdiction of the State of origin nor the findings of fact. Judgments related to parental responsibility, can be recognised and enforced in other Member States once they have been declared enforceable by the relevant court in the Member State of enforcement (“exequatur”). The decision to grant an exequatur can be reviewed upon appeal.

The new Regulation replacing the Brussels II Regulation

The scope of the Brussels II Regulation has shown itself to be too narrow as far as parental responsibility matters are concerned. For this reason, the Commission proposed in 2002 a draft Regulation intended to replace the Brussels II Regulation that would cover all decisions on parental responsibility, regardless of the marital status of the parents and regardless of whether there is a pending matrimonial case existing between the parents. The new Regulation was adopted on 27 November 2003 and will enter into application on 1 March 2005.

The new Regulation contains special rules for parental child abduction within the European Union. This is the case where a child
is either removed or retained in breach of custody rights. The aim of the new Regulation is to dissuade child abduction within the EU and when an abduction takes place to ensure the immediate return of the child. Its rules complement and reinforce the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, which is in force in all Member States.

The general rule on jurisdiction, which is that jurisdiction lies with the courts in the Member State of the child’s habitual residence, may present a risk that children are abducted by parents who want to bring the case before a judge of their own nationality in the hope of receiving a more favourable treatment. To prevent this from happening, the Regulation states that the courts of the Member State of the child’s habitual residence before the abduction keep jurisdiction, also after the abduction and have the final say. A decision not to return the child may be issued by the courts in the Member State to which the child has been abducted. This decision may, however, be set aside by a later judgment on custody issued by the competent courts in the Member State where the child resided before the abduction.

Unless this is not appropriate, the child shall be heard during proceedings. If a judgment dictates that the child shall be returned, it shall be recognised and enforced without any special procedure (exequatur), provided that certain procedural safeguards are met (e.g. that the child was heard). The abolition of the exequatur serves to ensure the child’s quick return. Exequatur proceedings may be time consuming, especially where the other party objects. The judge of the habitual residence shall cooperate with the judge of origin who took the decision on non-return, and e.g. received the transcripts of the hearing of the child.
IV. THE INSOLVENCY REGULATION

There has been a great need for a European insolvency law order, which is not restricted in application by Member States’ domestic borders. The activities of undertakings have more and more cross-border effects, and it is necessary to avoid incentives for the parties to transfer assets from one Member State to another, seeking to obtain a more favourable legal position. The proper functioning of the internal market requires that cross-border insolvency proceedings operate efficiently and effectively. These objectives cannot be achieved to a sufficient degree at national level, which made it necessary that the provisions on jurisdiction, recognition and applicable law in this area be contained in a Community law measure.

Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings embodies, for the first time, a compulsory framework for the interaction of insolvency proceedings between Member States of the EU. The Insolvency Regulation entered into force on 31 May 2002 and applies to all proceedings opened after this date.

The Insolvency Regulation applies to insolvency proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. The proceedings concerned are those defined by Article 1(1) of the Regulation and listed in Annexes A and B to the Regulation. In order for the Insolvency Regulation to apply, proceedings must be officially introduced and legally effective in the Member State where opened and structured as collective insolvency proceedings which entail the partial or total divestment of the debtor and the appointment of a liquidator.

The Regulation contains rules of jurisdiction which establish which court in which Member State is competent to open and conduct insolvency proceedings. It is based on the principle that there is only one universal insolvency procedure, which consists of the main proceedings with universal scope and eventual further secondary proceedings. The competence for the opening of the main proceedings lies with the courts in the Member State, within the territory of which the centre of the debtor’s main interests is situated, Article 3. National proceedings covering only assets situated in the State of opening – “secondary proceedings” – are allowed alongside the main proceedings, Article 3(2) and Chapter III. In the case where national proceedings are opened before the main proceedings, they are called “territorial proceedings” until the main proceedings are opened.

Main insolvency proceedings and secondary proceedings are conducted separately and usually by different liquidators. They can, however, contribute to the effective realisation of the total assets only if all the concurrent proceedings pending are coordinated. The main condition here is that the various liquidators cooperate closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the liquidator in such proceedings is given several possibilities for intervening in secondary proceedings which are pending at the same time. Every creditor who has his habitual residence, domicile or registered office in the Community, has the right to lodge his claims in each of the insolvency proceedings pending in the Community relating to the debtor’s assets.
However, in order to ensure equal treatment of creditors, the distribution of proceeds must be coordinated. Every creditor can keep what he has received in the course of insolvency proceedings but is entitled only to participate in distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims, Article 20(2). Whether and on what conditions a creditor is admitted to request the opening of secondary proceedings is determined by the law of the Member State within the territory of which these proceedings are opened, Article 29. Similarly, the effects of such proceeding are restricted to the assets of the debtor situated within the territory of Member State S2, Article 3(2) and 27.

Company A is established under the laws of Member State 1 where it has its place of business and where its main interests are located. It has filed for insolvency before the competent Court in Member State 1 which has opened insolvency proceedings and appointed a liquidator. Company B, whose domicile is in Member State 2, holds substantive claims against Company A. It recalls that Company A maintains an establishment in Member State 2, including a large warehouse and real estate. Company B asks how it can best safeguard its interests during the insolvency proceedings.

Before the Insolvency Regulation entered into force, Company B could have tried to obtain a Court order allowing for the enforcement against Company A's assets in Member State 2. The effect of judicial decisions relating to insolvency proceedings was restricted to the Member State where these decisions were made and often did not prevent acts of individual enforcement in other Member States. Due to the provisions of the Regulation, this has changed substantially. Today, as from the date of opening of insolvency proceedings in one Member State, individual enforcement is excluded in all other Member States. Today, based on the rules of the Insolvency Regulation, Company B must therefore lodge its claim in the proceedings that were opened in Member State 1.

For a case like that of Company A, which holds substantive assets in another Member State than the one where the main insolvency proceedings are held, the Insolvency Regulation provides the possibility of opening so-called “secondary proceedings”. Such proceedings can be instituted under certain conditions. The effects of the proceedings are restricted to the assets of the debtor situated within the territory of that Member State. It is therefore advised that Company B determine whether such secondary proceedings are instituted in Member State 2, or whether the special conditions are met, under which a creditor may apply for their institution.

According to the principle contained in Article 4(1) Insolvency Regulation, the law applicable to insolvency proceedings and their effects is that of the Member State within the territory of which such
The lex concursus determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. The Regulation furthermore sets out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Provision is made for special rules on applicable law in the case of particularly significant rights and legal relationships (e.g. rights in rem, set-off, reservation of title and contracts of employment) (Article 5 to 10). These exceptions to the general rule are provided to protect the legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened.

The Regulation provides for immediate recognition of judgements concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings.

As a rule, the judgement opening insolvency proceedings shall be recognised in all Member States from the time that it becomes effective in the State of opening, Article 16. It will produce, with no further formalities, the same effects as under the law of the State of opening, Article 17, unless the recognition would be manifestly contrary to the State’s public policy, Article 26. Furthermore, the appointment of the liquidator and his power conferred by the law of the State of the opening will be fully recognised in other Member States, Article 18.
V. JUDICIAL COOPERATION IN PRACTICE

The Regulation on the service of documents

In order to make the co-operation between the judicial authorities of the Member States of the European Union work properly, the transmission of documents between judicial authorities must be fast and secure. Regulation (EC) No. 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extra-judicial documents in civil or commercial matters concerns the transmission of documents from one Member State to another for service there. This Regulation entered into force on 31 May 2001 for all Member States except Denmark. Between Denmark and the other Member States the 1965 Hague Convention on the service of documents applies.

Company A from Member State 1 sued Company B from Member State 2, in Member State 1 for a substantial amount. After proceedings of 14 months the court rendered a default judgement in which it adjudicated the amount to Company A. Company A submitted an application for a declaration of enforceability to the competent court in Member State 2, where Company B owns real estate. However, upon thorough examination, that court established that notice of the legal proceedings had not been correctly served upon Company B. As a consequence, the exequatur is denied. Some months later Company B files for insolvency and Company A has to write off the claim.

Correct service of documents is of fundamental importance in judicial proceedings. Failure of service can seriously jeopardize the parties' legal interest. Service of documents on parties in other States has in the past been the cause of many difficulties in cross-border litigation cases. Simple and practical cross-border service rules are among the most important conditions for a well functioning European civil procedural system.

This Regulation on the service of documents has simplified the service of documents in cross-border cases. All Member States have designated local bodies, “transmitting agencies” and “receiving agencies”, responsible respectively for the transmission and receipt of documents. The document to be transmitted is to be accompanied by a request drawn up using a standard form. The transmitting agency sends the document with the request to the designated receiving agency in the State where the documents are to be served. This agency itself serves the document or has it served, either in accordance with the law of the Member State addressed or by a particular form requested by the transmitting agency, unless such a method is incompatible with the law of that Member State. The addressee may refuse to accept the document to be served if it is in a language other than the official language of the Member State addressed or a language of the Member State of transmission which the addressee understands. When the formalities concerning the service of the document have been completed, the receiving agency will confirm this by drawing up a certificate of completion, which it addresses to the transmitting
agency. Both the transmitting and the receiving agency use the prescribed document form as specified and attached in the annex of the Regulation. The European Commission has published a manual containing information concerning the receiving agencies of the Member States. Each Member State has designated a “central body” that supplies information to the transmitting agencies and seeks solutions to any difficulties which may arise during transmission of documents for service.

The Regulation also provides for other means of transmission and service of judicial documents: transmission by consular or diplomatic channels, service by diplomatic or consular agents or service of judicial documents directly by post. Persons interested in a judicial proceeding can also effect service of judicial documents directly through judicial officers, officials or other competent authorities of the Member State addressed, unless that Member State has communicated that it opposes the “direct service” of documents in its territory.

The Regulation on the taking of evidence

In cross-border proceedings, it is often essential for a decision in a civil or commercial matter pending before a court in a Member State to take evidence in another Member State. Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of Member States in the taking of evidence in civil or commercial matters, has created a Community-wide system of direct and rapid transmission and execution of requests for the performance of taking of evidence between courts and laying down precise criteria regarding the form and content of the request. The Regulation is applicable in all Member States except Denmark since 1 January 2004. With respect to Denmark, the Hague Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters is applicable. However, not all Member States have acceded to this Convention.

The Regulation provides for two means of taking of evidence in another Member State. The court before which a case is heard in one Member State can request the competent court of another Member State to take the necessary evidence or, it can instead, take evidence directly in another Member State. The Regulation is based on the principle of direct transmission between the courts, in which the requests for the taking of evidence are conveyed directly from the ‘requesting court’ to the ‘requested court’. Each Member State has drawn up a list of the courts competent to perform the taking of evidence according to the Regulation. This list indicates also the territorial jurisdiction of those courts. In addition, each Member State has designated a central body responsible for supplying information to the courts and seeking solutions to any difficulties arising in respect of a request.

The Regulation lays down precise criteria regarding the form and content of the request, and provides specific forms in the annex. The requested court shall execute the performance of the taking of evidence expeditiously and, at the latest within 90 days of receipt.
of the request. Where this is not possible, the requested court must inform the requesting court accordingly and state the reasons.

A request for the hearing of a person shall not be executed when the person concerned claims the right to refuse to give evidence or is prohibited from giving it, either under the law of the Member State of the requested court or under the law of the Member State of the requesting court. Otherwise, a request for the taking of evidence may only be refused in few exceptional circumstances.

In its request for the taking of evidence, the requesting court has to state whether the parties to the proceedings and/or their representatives will be present or are requested to be present. The requested court shall execute the request in accordance with the law of its Member State. The taking of evidence can also be executed in accordance with a special procedure provided for by the law of the Member State of the requesting court, if the latter calls for this procedure. The receiving court has to comply with such a requirement unless this procedure is incompatible with the law of its Member State. The Regulation lays down that taking evidence may be done by making use of modern communications technology, and in particular by using of teleconference and video-conference.

A request for a direct taking of evidence must be submitted to the central body or competent authority of the other Member State. It can be refused only in exceptional circumstances. Direct taking of evidence may only take place where this can be performed on a voluntary basis without the need for coercive measures. It is performed by a member of the judicial personnel or by any other person such as an expert who has been designated in accordance with the law of the Member State of the requesting court.

3 The European judicial network in civil and commercial matters

A European judicial network for civil and commercial matters was created on 1 December 2002 to facilitate judicial cooperation between the Member States and to provide information to the public to facilitate their access to the national judicial systems. Its aim was also to implement and update, step by step, an information system directed at the public in order to facilitate their access to the national judicial systems, particularly through a website. This information system that is to be edited in all official languages of the EU is currently being created through the following website: http://europa.eu.int/comm/justice_home/ejn/

In every Member State, one or several Contact points are available for judicial and administrative authorities to resolve cross-border issues with which they are confronted and to provide them with full and updated information on the Law of the other Member States.
VI. ACCESS TO JUSTICE

The directive on legal aid

In a Europe of open borders, there are many occasions that may lead to citizens finding themselves engaged in litigation before a Court of another Member State. Cross-border disputes are not always necessarily between large companies; they may affect small business or individuals, who may have only modest means. Cross-border disputes can be costly, especially where large claims are at stake. Most often, cross-border litigation requires legal representation in the Member State where the case is heard, but also legal advice from a lawyer in the party’s home State, it may often further require translations, travel and other extra costs.

Council Directive 2003/8/EC was adopted by the Council in January 2003. It aims to overcome the existing obstacles with regard to access to legal aid and to allow everyone to get legal aid in another Member State in the same way as in their own country. The purpose of this Directive is to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. Transposition of the directive into national law is in its greatest part to take effect before 30 November 2004. For those sections regarding pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings, the deadline for implementation is 30 May 2006.

Mr A, citizen of Member State 1, receives notice that he is being sued in Member State 2 to the value of approximately 235,000 € for damages allegedly caused by his 12 year old son during a holiday spent with the family in Member State 2. Mr A, who has two daughters but no son, was informed that a law firm in Member State 2 would require a minimum of 8,000 Euro, of which only a small part may be recovered from the plaintiff should the action be dismissed. Mr A and his family live on a monthly income of 1,850 € net. They are concerned about the costs of the proceedings and do not know how to contact a local lawyer in Member State 2. The date set by the Court in Member State 2 presenting Mr A’s defence is about to expire.

Mr A’s difficult situation is an example of the many obstacles that citizens from different Member States involved in cross-border disputes often encounter. This applies especially when having to defend against a legal action which is brought before a court of another Member State, as this usually requires legal consultation and representation in two different Member States. There may be a barrage of difficulties, not least with regard to language and cost. Not only can there be language barriers requiring the costly translation of documents, there can also be ancillary costs such as in the event of a party having to appear personally before the court of another Member State.

The directive applies to cases of a cross-border dispute of a civil or commercial nature, but only if the party applying for legal aid is domiciled or habitually resident in a Member State other than the
Member State where the court is sitting or where the decision is to be enforced. It seeks to promote the application of legal aid in cross-border disputes for persons who lack sufficient resources where aid is necessary to secure effective access to justice. Furthermore, the Directive contains provisions designed to simplify and accelerate the transmission of legal aid applications by coordinating judicial cooperation between the Member States.

Legal aid is to be granted or refused by the competent authority of the Member State where the proceedings are being heard or where the decision is to be enforced. The aid should not only cover the proceedings before a court, but should extend to cover expenses incurred in the enforcement of authentic instruments in another Member State, as well as in extrajudicial procedures, if the parties are required to use them. Legal aid shall guarantee legal assistance and representation in court and the cost of proceedings of the recipient, as well as costs directly related to the cross-border nature of the dispute, such as interpretation, translation of the documents required or travel costs.

The State of domicile of the beneficiary should provide such services as necessary for the preparation of the application for legal aid and its transmission to the State where proceedings are held. Member States shall designate authorities competent to send (transmitting authorities) and receive (receiving authorities) the application for legal aid. To facilitate transmission, a standard form for legal aid applications and for the transmission of such applications shall be established.

Proposal for a directive on compensation to crime victims

On 16 October 2002 the EC Commission proposed a directive on compensation to crime victims, with the objective of establishing minimum standards of State compensation for victims of crime committed in the Member States and to facilitate access to compensation in cross-border cases. The proposed directive aims at making it compulsory for all Member States to provide an adequate level of State compensation for victims and to ensure that compensation is easily accessible in practice regardless of where in the EU a person becomes the victim of a crime. Closer cooperation between national authorities will facilitate accessibility to State compensation in cross-border situations.