

ROADMAP

Title of the initiative: **Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters ("Brussels I")**

Lead DG/contact person: DG JLS/E2

Expected date of adoption of the initiative (month/year): December 2010

Date of modification: 24.3.2010

Version no: 3

Initial IA screening & planning of further work

A. Context and problem definition

What is the political context of the initiative? How does this initiative relate to past and possible future initiatives, and to other EU policies?

Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provides the legal framework at EU level for cross-border litigation by businesses and citizens in all civil and commercial cases. It sets out which courts should hear a case, and how a judgment given in one Member State can be recognised and enforced in another Member State. Art. 73 of the Regulation provides that the Commission shall present a report on the application of the Regulation within five years after its entry into force and, if need be, present proposals for adaptations to the Regulation. The Commission presented its report on the Brussels I Regulation in April 2009 (COM (2009) 174), evaluating the application of the Regulation, highlighting certain problems in its application and looking at ways in which the operation of the Regulation might be further improved. The report was accompanied by a Green Paper (COM (2009) 175) setting out possible ways forward to deal the problems raised in the report. Some 130 contributions were received to this public consultation. In terms of policy aims, the 1999 European Council of Tampere set the goal of creating a real European Area of Justice with a free circulation of judgments, an aim repeated by the 2004 European Council of The Hague, and most recently in the Communication from the Commission to the European Parliament and the Council "An area of freedom, security and justice serving the citizen" (COM (2009) 262, the "Stockholm Programme").

What are the main problems identified?

Despite substantial progress achieved during the past few years, there is currently still not a free circulation of all judgments in civil and commercial matters, as requested on several occasions by the European Council. This is primarily because of the "exequatur" procedure set out in the Brussels I Regulation, under which a person must apply for a certificate of enforceability before a judgment can be enforced in another Member State. This is a lengthy and costly process for litigants. In addition, developments on the international level have an impact on the operation of a number of the rules of Regulation 44/2001, which therefore need to be adapted in order to ensure a coherent legal framework both at Community and international level. A number of problems of technical nature have been detected which also need to be addressed to improve the efficiency of cross-border civil litigation. In addressing these problems, it will probably be necessary to strengthen cooperation between courts.

Is EU action justified on grounds of subsidiarity?

The abolition of exequatur cannot be realised at Member State level and requires the amendment of existing Union law. In order to be effective, the abolition of the exequatur procedure needs to be achieved in all Member States at the same time. Also, the technical amendments to the existing Regulation can only be realised at Union level.

B. Objectives of EU initiative

What are the main policy objectives?

The amendment of the Regulation will pursue the following objectives:

- move toward the abolition of exequatur in civil and commercial matters, as prescribed by the conclusions of the 1999 Tampere, 2004 Hague and the 2009 Stockholm European Councils;
- extend the scope of the Regulation to situations involving relations with third States; in particular, adapt the provisions of the Regulation to new international instruments in the area concerned, such as the Hague Convention on exclusive choice of court agreements;
- improve the operation of those provisions of the Regulation where problems have been detected in their application, for example in relation to litigants using the Regulation's rules to deliberately escape a choice of court they have agreed to and, if this proves necessary and opportune in relation to consumer contracts and arbitration.
- strengthen effective cooperation between courts.

Does the objective imply developing EU policy in new areas or of strategic importance?

No

C. Options

What are the policy options? What legislative or 'soft law' instruments could be considered? Would any legislative initiatives go beyond routine up-date of existing legislation?

Regulation (EC) 44/2001 can only be amended by way of a regulation to be adopted by the European Parliament and the Council in the ordinary legislative procedure. The amendment will go beyond routine up-dating as it will move a step forward toward the realisation of the policy objective consisting of the abolition of exequatur in Europe. The main objectives for the forthcoming Commission proposal are to:

- i. ensure a genuine free circulation of judgments in all civil and commercial matters;
- ii. improve the protection of EU citizens in disputes connected with third States; and
- iii. address the main difficulties reported in the operation of the Regulation, including the interface between the Regulation and arbitration.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

Even though the rules laid down in Regulation 44/2001 concern the private international law aspects of a large scope of policy areas and therefore marginally touch other policy areas such as consumer matters, transport, media, company law, insurance, employment law, and intellectual property, the amendments foreseen so far are not expected to impact on existing Community policies in this area nor on action taken/planned by other Commission departments. There is one exception, however. The amendment of Regulation 44/2001 may take into account the need, if any, to adapt the jurisdiction rules for purposes of collective redress, on which projects are currently pending in DGs COMP and SANCO.

Do the options respect the proportionality principle?

The amendment of the Regulation is necessary and proportionate in order to achieve the policy objectives set out above. Only a regulation can achieve the necessary identical results in all the Member States. In addition, only a regulation can amend a regulation.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the impact assessment guidelines), even if these impacts would materialise only after subsequent Commission initiatives?

The Commission is currently assessing the impacts of amending the Brussels I Regulation following the publication of the report and the green paper on its application (COM (2009) 174 and 175 final), taking into account the contributions to the public consultation on the green paper as well as the information provided by the study commissioned for the impact assessment report. If the objectives

set out above are achieved, this will have beneficial effects for litigants (enterprises and individuals) as well as for the courts, as cross-border litigation will be more efficient in terms of time and costs.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No

Could the options have significant impacts on simplification/administrative burden or on relations with third countries?

The amendment of the Regulation will abolish intermediary steps which citizens have to go through in order to have a judicial decision recognised and enforced abroad. It may also establish a coherent approach within the Community for disputes between EU citizens and citizens from third States.

Who is affected?

Courts and citizens in the EU, parties in third countries. Abolishing the exequatur will make cross-border litigation more efficient, to the benefit of businesses.

E. Planning of further impact assessment work

When will the impact assessment work start?

The impact assessment work started in 2005

What information and data is already available? Will this impact assessment build on already existing impact assessment work or evaluations carried out? What further information needs to be gathered? How will this be done (e.g. internally or by an external contractor) and by when? What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The following information is available:

- report on the application of Regulation 44/2001 (September 2007);
- study on residual jurisdiction (September 2007);
- impact assessment on the conclusion by the EC of the 2005 Hague Convention on exclusive choice of court agreements (Spring 2008, [SEC\(2008\)2389](#));
- contributions to the Green Paper on the review of Regulation 44/2001 (COM(2009)175final)

An impact assessment study is currently ongoing, covering the following points of the envisaged review:

- the abolition of intermediary proceedings for recognition and enforcement;
- the operation of Regulation 44/2001 in the international legal order;
- the interface between the Regulation and arbitration;
- gathering of further data on consumer contracts.

The results of the impact assessment study are expected by summer 2010.

Which stakeholders & experts have been/will be consulted, how and at what stage?

A consultation of the general public/stakeholders was organised in spring 2009, after the publication of the report and the green paper on the application of the Regulation. A meeting of experts of the Member States will be convoked in order to discuss a preliminary draft of the amendments.