



EUROPEAN COMMISSION
Impact Assessment Board

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Opinion

Title

Impact Assessment accompanying the legislative proposal amending Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (Brussels I)

(draft version of 10 September 2010)

(A) Context

The European Council in its 2009 Stockholm Programme called for the further development of the European area of justice by removing the remaining restrictions on the exercise of rights of citizens and companies. The Commission has recently reviewed the operation of the regulation Brussels I (2002) and considered necessary amendments to the instrument. While the Regulation is in general considered to work successfully, the consultation of stakeholders and different studies conducted by the Commission revealed the need for reform. This impact assessment accompanies the legislative proposal amending the regulation.

(B) Overall assessment

While the IA report is generally of good quality, it should improve the analysis on a number of issues. First, it should explain more fully why the problem of unequal access to justice for EU companies or citizens in cases when the defendant is domiciled in a third country needs to be addressed at EU level. Second, it should strengthen the justification for the proposed degree of harmonisation of the rules of jurisdiction. Third, it should provide a more realistic assessment of the benefits of abolishing the exequatur procedure. Finally, the report should present more fully the views of stakeholders and discuss the scale of necessary adjustments in the legal systems of Member States.

(C) Main recommendations for improvements

(1) Explain more fully why the problem of unequal access to justice for EU companies or citizens in cases when the defendant is domiciled in a third country need to be addressed at EU level. For each of the problems, the report should provide a

justification of EU action on grounds of subsidiarity and proportionality. In particular, the report should explain why the Member States themselves cannot sufficiently address the problem of their citizens or businesses not being able to litigate at home when involved in a dispute with defendants outside the EU. On the basis of this explanation, the report should substantiate the claim that appreciable distortions of competition result from the fact that some Member States grant more "generous" access to their courts (this could be done by including examples). The report should explain to what extent such distortions are between EU companies and to what extent between the EU and third country companies and what is the overall magnitude of the problem. The report should also clarify whether weaknesses in the protection of fundamental rights is a problem which this initiative aims to address and thus could serve as justification for EU action.

(2) Strengthen the justification for the proposed degree of harmonisation of the rules of jurisdiction. The report should be clearer about the difference between option 3A (minimum harmonisation of the rules on jurisdiction) and option 4A (full harmonisation of the rules on jurisdiction), particularly in terms of their scope. It should strengthen the justification for selecting option 4A and not option 3A by including additional examples or revising existing examples of the underlying problems. The report should in particular justify why there is a need to introduce a "mildly exorbitant" rule of jurisdiction, namely creating a forum which grants jurisdiction to the court of the Member State where assets of the defendant are situated, and explain its link to enforcement aspects. The report should also explain whether/to what extent the proposed measures have already been agreed at international level (e.g. with the US) or among the Member States, for example in the context of negotiations on the 'judgement convention' undertaken by the Hague Conference.

(3) Provide a more realistic assessment of the benefits of abolishing the exequatur procedure. The estimates of the overall benefits of abolishing the exequatur procedure should be revised. These estimates should indicate the overall net savings or avoided costs for the relevant option, having allowed for continued/new costs. They should also rely on assumptions which have been checked for plausibility using multiple data sources as far as possible. Second, the report should highlight the uncertainty in such estimates and should present them with caution, given that the largest estimate (€616m - 3bn) represents avoided future transfers from one group to another rather than tangible savings in existing budgets. They should be supported by qualitative evidence and more certain quantitative estimates, such as those for the unit costs involved.

(4) Present more fully the views of stakeholders and discuss the scale of necessary adjustments in the legal systems of Member States. Drawing on the information on the current provisions in the Member States (Annexes VII, VIII) the report should explain how the legal systems in various Member States would be affected by the measures and how the scale of necessary adjustments would differ by Member State. If there are cases where the protection of citizens might be lowered, these should be highlighted. The report should present more systematically the views of the stakeholders (such as the Member States and social partners) on the proposed options, and clarify what the view of third countries is regarding the proposed harmonisation of jurisdiction rules. Regarding the latter issue, the report should discuss possible impacts on the main EU trading partners such as the US.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should follow more closely the format provided in the IA Guidelines. For example, section 1.7 on subsidiarity should follow and not precede the problem definition (p.12), information given in section 1.6 "Respect of fundamental rights" should be integrated in the problem definition and the assessment of options. A hyperlink or publisher reference to the external study should be added to allow readers to trace it.

(E) IAB scrutiny process

Reference number	2009/JUST/013
External expertise used	No
Date of IAB meeting	6 October 2010