COMPARATIVE STUDY OF “RESIDUAL JURISDICTION”
IN CIVIL AND COMMERCIAL DISPUTES IN THE EU
NATIONAL REPORT FOR:

DENMARK

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Due to the general Danish opt-out of all measures in the area of justice, Denmark is not bound by Council Regulation 44/2001. Denmark and the EC have entered into an agreement on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and the agreement enters into force on July 1, 2007. Hence, for the time being Denmark remains a contracting party to the 1968 Brussels Convention.

In view of this, I have replaced "the Brussels I regulation" with "the 1968 Brussels Convention" in the questionnaire.

Please note that as regards references to Danish case law I refer to the Danish Journal for legal decisions (Ufr.).

The last digits after the year refers to the page number in the relevant issue of the journal, and the last letter after the page number refers to the court in which the case was tried. "H" stands for the Supreme Court, "Ø" stands for the eastern High Court and "V" stands for the western High Court of Denmark.

(A) General Structure of National Jurisdictional Rules for Cross-Border Disputes

1. Main legal Sources

The main legal source of the rules of jurisdiction in Denmark in civil and commercial matters is The Danish Administration of Justice Act (retsplejeloven). The relevant articles are to be found mainly in Part 22 of the Act, sections 235 to 248.

2. Specific Rules (or Not) for Transnational Disputes

The Danish jurisdictional rules are not specific to transnational disputes, but are derived from the rules applied in internal disputes. The same set of rules, as mentioned above in question 1), is applicable to both the internal and the transnational disputes. According to s.246 of the Administration of Justice Act, disputes against foreign persons, companies, etc., can be brought before a Danish court if the person, etc. fulfils the traditional requirements concerning jurisdiction, as mentioned in ss.237, 238(2), 241, 242, 243 and 245 in the Administration of Justice Act. These requirements also apply to Danish companies or individuals.

3. Specific Rules (or Not) for Article 4(1) Jurisdiction

The traditional rules governing cross-border disputes also govern the jurisdiction of courts pursuant to art. 4(1) of the 1968 Brussels Convention.

4. Influence of EU Law

Some of the Danish rules governing cross-border jurisdiction outside the scope of the 1968 Brussels Convention seem to have been affected by this convention. S.241 of the Administration of Justice Act (claims over real property) is in general very similar to art. 16 of the 1968 Brussels Convention. S.242 (contractual relationships) is practically a direct copy of art. 5 (1) of the 1968 Brussels Convention, although the Danish rule does not govern pecuniary claims. Finally,
s. 243 of the Administration of Justice Act (claims for compensation) outside of contractual relationships has most likely been affected by art. 5 (3) of the 1968 Brussels Convention.

5. Impact of Other Sources of Law

There is in general no such impact of other sources of law on the Danish jurisdictional rules.

6. Other Specific Features

Reference is made to the description of the Danish jurisdictional rules below in answers 10 and 11.

7. Reform

There are at this time no proposed changes concerning the Danish rules on cross-border jurisdiction. It should be noted that a new reform of the Danish judiciary system has taken effect on January 1st 2007, but this will not have any effect on the rules of jurisdiction in cross-border disputes.

(B) Bilateral and Multilateral Conventions

8. Conventions with Third States

Denmark is a party to the Nordic Convention on Execution and Recognition of Civil Claims from 1978. This convention exists between Denmark, Finland, Iceland, Norway and Sweden, and obligates the parties to recognize and execute judgments from the other member states. Furthermore, Denmark is a member to the Lugano Convention, which is parallel to the 1968 Brussels Convention, and therefore covers the same areas as this. Denmark is also a member to the Brussels Convention of May 10th, 1952, regarding arrest of property in ships, and the Hague Convention on Civil Procedure of March 1st, 1954.

Furthermore, Denmark is a party to the CMR-Convention of May 19th, 1956, governing international transportation of goods on land, the Hague Convention of April 15th 1958, concerning recognition and execution of judgments on maintenance obligations for children, the Paris Convention of October 29th, 1960, governing liability on the nuclear area, and the Brussels Convention of November 29th, 1969, concerning liability for damages caused by oil contamination under civil law.


Finally Denmark is a member to the Montreal Convention of 1999 concerning Carriage by air.
9. Practical Impact of international conventions with third states

The Nordic Convention has lost most of its practical relevance since the ratification of the Lugano Convention by all five member states. The Nordic Convention is now only applicable to those areas not covered by the Lugano Convention or the 1968 Brussels Convention.

The practical impact of the remaining conventions and treaties mentioned in the answer to question (B)(8) is limited to specific areas that the conventions and treaties are governing.

(C) Applicable National Rules Pursuant to Article 4 of the Brussels I Regulation

10. Structure

The Danish rules on jurisdiction in the Administration of Justice Act, Part 22, cover both national internal disputes, and cross-border disputes. Thus, the jurisdiction of the Danish courts in disputes against procedural foreigners will depend on the same criteria as in disputes between nationals.

Pursuant to s.245 of the Danish Administration of Justice Act, disputes against defendants not domiciled in a member state, can be brought before a Danish court if the parties have entered into a binding agreement on venue, which refers the dispute to the jurisdiction of the Danish courts. The following decisions are relevant to section 245: Ufr. 1973.824 H (Inspektøren ved stats- og ungdomsfængslet i Nyborg mod A m.fl.), Ufr.1982.1128 H (Den Czekoslovakiske Socialistiske Republiks Ambassade mod Jens Nielsen Bygge-Entrepriser A/S) and Ufr. 1988.829 H (Intercontainer Cooperative Company mod Oskar Schunck KG). It is worth noting that according to s.245 (2), agreements on venue between a consumer and a non-member state professional are not binding. Following this, the (Danish) consumer is not bound by an agreement, which allocates the jurisdiction to a foreign court. Case law on this section can be found in Ufr. 1991.733 V (Kalmar Huse af 1988 A/S, Bramming mod Sven dog Kaja Olesen)

If the parties have not entered into such an agreement, the possibilities for bringing an action against a non-member state resident before a Danish court are listed in s.246 of the Administration of justice Act (see below).

If none of the above mentioned rules on jurisdiction are applicable, disputes against non-member state residents can be brought before a Danish court in the district, where the defendant resided at the time of the service of the writ of summons, cf. s.246 (2). Finally,

11. General Jurisdiction

There are two examples of jurisdictional rules in the Danish legislation, which specifically cover disputes against non-member state defendants.

1) A dispute against a non-member state defendant can be brought before a Danish court in the district, where the defendant resided at the time of service of the writ of summons, cf. s.246 (2).

2) A Danish court will have jurisdiction in a case against a foreign defendant, if the person in question has property still located in Denmark, cf. s.246 (3). Relevant case law can be

12. Specific Rules of Jurisdiction

a) Contract

If the dispute concerns contractual relationships, the legal actions can be instituted in the judicial district, where the contractual obligation is to or was to be performed, cf. s.242. Please refer to Ufr. 1990.295 H (Spaan Verpackung GmbH mod Superfos Gødning A/S) and Ufr. 2003.755 Ø (A mod Alling-Gudhjem Kommune) for relevant case law.

b) Tort

Proceedings claiming sanctions, damages or redress due to a legal wrong may be brought in the courts for the place where the legal wrong was committed, cf. s.243. The following decisions are relevant to section 243: Ufr. 1983.1038 H (Forsikringsaktieselskabet Nye Danske Lloyd mod Stausberg Ingeniørurbau GmbH), Ufr. 1985.904 H (Coprosider Spa mod Vølund Energiteknik A/S), Ufr. 1985.1059 H (B.V. Madora II mod Dansk Søassurance A/S) and Ufr. 1996.1547 Ø (TopDanmark Forsikring A/S mod Rentokil Svenska AB).

c) Criminal Proceedings

If the dispute concerns legal offences, for which the offended is entitled to compensation, the action can also be initiated in the district where the offence was committed, cf. s.243.

d) Secondary Establishment

Disputes against non-member state residents can be brought before a Danish court in the judicial district where the business of the defendants is conducted, cf. s.237. Typically, this is the judicial district in which the company of the defendant is situated. Please refer to Ufr. 2002.1676 Ø (Lund-Hansen Advokatvirksomhed ApS mod Benedikte Moeskær) and Ufr. 1982.266 Ø (Bent Manholdt mod Andalucia International Real Estate) for relevant case law.

e) Trust

There are no specific rules on jurisdiction concerning trusts.
f) Arrest and/or location of Property

Disputes regarding real property can be brought before a court in the district, in which the property is situated, cf. s.241. For relevant case law, please refer to Ufr. 1961 361 H (Fru Helen Magnussen og tryllekunstner Edmund Renk mod fru Grethe Weis m.fl.) and Ufr. 1970 917 Ø (Fru Johanne Marie Nielsen mod gårdejer Karl Frederik Jørgensen m.fl.)

If the defendant still has property left in Denmark when the lawsuit is filed, the case can be brought before the court in the district where said goods are situated, cf. s.246 (3). Please refer to the answer to question 11, 2), for relevant case law.

13. Protective Rules of Jurisdiction

a) Consumer Contracts

Disputes regarding consumer agreements can be brought before a Danish court in the venue of the consumer, if the defendant, prior to the conclusion of the agreement, has put forth an offer or advertisement in Denmark. Furthermore, it is a requirement that the consumer gave his acceptance to the offer in Denmark, cf. s.246 (1) in the Administration of Justice Act. Also, in consumer contract disputes, a prior agreement on jurisdiction is not binding on the consumer, s.245(1).

It should be noted that claims against non-member state Consumers brought by Professionals domiciled in the EU, follow the same rules as all other claims against non-member state residents, as described above.

b) Individual Employment Contracts

The rules governing individual employment contracts are the same as the ordinary rules of jurisdiction as described above. To the extent that such cases fall within the jurisdiction of the ordinary courts, there is no specific rules governing the jurisdictional problems in disputes between employers and employees.

c) Insurance Contracts

The rules governing insurance contracts are the same as the ordinary rules of jurisdiction as described above. There is no specific rules governing the jurisdictional problems in disputes between an insured and the insurance company.
d) Distribution Contracts

The rules governing distribution contracts are the same as the ordinary rules of jurisdiction as described above. There is no specific rules governing the jurisdictional problems in disputes concerning distribution contracts.

e) Protective Rules in Other Matters

There is no other specific protective rules of jurisdiction.

14. Rules for the Consolidation of Claims

The Danish rules governing consolidation of claims are found in ss.249 to 254 in the Administration of Justice Act. It is a general requirement in these provisions that Denmark have jurisdiction over all the claims and that the court in question has jurisdiction over at least one of the claims.

For your information, a new set of rules concerning class actions will enter into force on January 1st 2008. Following this, it will be possible for a group of persons to bring a case before the court as a group, and not as individual parties.

a) Co-Defendants

Pursuant to s.249 of the Administration of Justice Act, a non-member state defendant can be sued as a co-defendant before a Danish court, if the general requirements as mentioned above are fulfilled.

b) Third Party Proceedings

A non-member state defendant can be brought before a Danish court as a third party, if the claim has connection with another case before the court, and none of the parties object to the introduction of the new claim, or alternately, the claim has such connection to the original dispute, that the claim should be processed in spite of the objections, cf. s.250 (2) of the Administration of Justice Act. The decisions Ufr. 1988.536 H (Helge Jørgensen mod Den Danske Bank A/S) and Ufr. 1999.229 H (Unibank A/S mod PQR 3 ApS under konkurs) are relevant to section 250 (2).

c) Counter-Claims

The defendant can bring a counterclaim against the claimant before a Danish court, if the Danish court has jurisdiction over the counterclaim according to the rules described in answers 10 and 11, or if the counterclaim originates from the same dispute as the claimant’s claim, cf. s.249 (2) of the Administration of Justice Act.
d) Related Claims

Please refer to answer 14, b).

e) Any Problems Pertaining to Lack of Harmonisation

No such problems have been reported.

15. Rules of Jurisdiction Pursuant to Annex I of Brussels I

Denmark is not for the being bound by the Brussels I regulation. Following this, the question will be interpreted as referring to article 3 of the Brussels Convention, which for Denmark mention section 246, par. 2 and 3 in the Danish Administration of Justice Act. For further information regarding these sections, please refer to the answers to questions 10 and 11.

16. Forum necessitatis

There is no such rule in the Danish legislation.

(D) National Jurisdiction & Enforcement of Non-EU Judgments

17. National rules of jurisdiction barring the enforcement of a non-EU judgment

The rules concerning recognition and enforcement of foreign judgments in Denmark are listed in ss.223 a and 479 of the Danish Administration of Justice Act. These rules empower the Danish Ministry of Justice to provide legislation on the matter of recognition of foreign judgments, but this empowerment has only been used a few times, none of which are relevant to this question. As a result, foreign judgments can only be recognized in Denmark if this obligation follows from a treaty between Denmark and the relevant country. Furthermore, ss.223 a and 479 of the Administration of Justice Act state that a foreign decision can never be recognized in Denmark, if it is contrary to the general laws of Denmark.

(E) Declining Jurisdiction

18. Forum Non Conveniens

The Danish courts do not have the possibility to decide their competence on the basis of an assessment of the suitability of the forum. If the Danish courts have jurisdiction according to Danish legislation, the courts cannot dismiss the proceedings of the dispute, even though another court in another country might be more expedient or convenient. Following this, the Danish courts do not benefit from the rules of forum non conveniens or forum conveniens as do the courts in other legal systems.

19. Declining Jurisdiction when the Defendant is Domiciled in a Third State

a) Non-EU Jurisdiction Agreements
According to Danish case law, a case brought before a Danish court will be rejected if a binding agreement on venue designating the courts of another country as competent exists between the parties to the dispute. This rule applies with regard to EU and non-EU state courts alike.

b) Parallel Proceedings in a non-EU court

As mentioned in connection with question 17, judgments from non-EU states are only recognized in Denmark if a treaty on the matter has been agreed to between Denmark and the relevant state. Following this, a parallel proceeding in a non-EU state court will not affect a proceeding on the same matter in a Danish court, unless there exists a treaty on the matter between the two states.

c) “Exclusive” Jurisdiction in a non-EU State

If the court in question has jurisdiction over the claim, according to the rules found in the Administration of Justice Act, it is not possible for the court to dismiss the proceedings of the claim.

20. Declining Jurisdiction When the Defendant is Domiciled in the EU

This question cannot be answered for Denmark.

(F) The Adequate Protection (or lack thereof) of EU Nationals and/or Domiciliaries through the Application of Domestic Jurisdictional Rules

21. Use of National Jurisdictional Rules to Avoid an Inadequate Protection in Non-EU Courts

To my knowledge there is no such case or practice.

22. Lack of Jurisdiction Under National Rules Having the Effect to Deprive EU Plaintiffs of an Adequate Protection

To my knowledge there is no such case or practice.

23. Lack of Adequate Protection as a Consequence of Transfer of Domicile to or from a Third State

To my knowledge there is no such case or practice.

To my knowledge, there is no known case or circumstance where the application of domestic jurisdictional rules have led in practice or are likely to lead to jeopardize the application of mandatory Community legislation etc.

(G) Residual Jurisdiction under the new Brussels II Regulation

25. Applicable National Rules Pursuant to article 14 of the New Brussels II Regulation (Parental Responsibility)

Due to the general Danish opt-out of all measures in the area of justice, the new Brussels II regulation does not apply to Denmark.

The Danish rules covering jurisdiction in matters of parental responsibility are given in s.448 (c) of the Danish Administration of Justice Act. According to this, a Danish court will have jurisdiction, if the defendant is domiciled in Denmark. Furthermore, the dispute can be brought before a Danish court if the claimant is domiciled in Denmark and has been domiciled in Denmark for the past two years or has lived here previously. For relevant case law, please refer to Ufr. 1983.416 H (M mod H), Ufr. 1995.789 V (M mod) and Ufr. 2005.2338 Ø (F mod M).

If the claimant is a Danish citizen, but lives in another country, the Danish courts will also have jurisdiction if the claimant cannot bring the case before the courts in that other country because of his or her Danish citizenship. Finally, if both parties to the dispute are Danish citizens, the case can also be brought before a Danish court if the defendant does not oppose to the choice of jurisdiction.
26. NA

27. Conventions with Third States in Matters of Parental Responsibility (and maintenance of children)

What are the international (and in particular bilateral) conventions concluded between your country and non-EU countries that include rules of jurisdiction in matters of parental responsibility (and maintenance of children)?

Denmark is a party to The Marital convention (convention of 6 February 1931 with amendments). The convention exists between the four other Nordic countries. This convention also includes rules of jurisdiction in matters of parental responsibility.

28. Jurisdiction as a Ground for Resisting the Enforcement of non-EU Judgment in Matters of Parental Responsibility

Can the judgment of a non-EU State relating to matters of parental responsibility (for instance, a judgment given the guardianship of a child to one of the parents) be denied recognition or enforcement in your country on the basis that the courts of your country are the only ones who have jurisdiction to entertain the matter? If so, what is (are) the ground(s) of these “exclusive” rules of jurisdiction (e.g., habitual residence of the child in your country, citizenship of one or several of the parties, etc.)

Recognition and enforcement of foreign decisions in matters of parental responsibility are governed by the Danish Administration of Justice Act.

According to art. 223 a in the Administration of Justice Act, non-EU judgments on the matter of parental responsibility are recognized in Denmark only when a convention exists between Denmark and the state in question, obligating Denmark to recognize such decisions. If no convention exists between the countries, Denmark will generally not recognize non-EU judgments concerning parental responsibility.
The Danish regulation on this matter is based on the principle, that parental responsibility concerning children living in Denmark should be governed by Danish regulation.

According to art. 479 of the Administration of Justice Act, non-EU decisions can only be executed in Denmark, if this has been agreed upon by the Danish Minister of Justice. This includes decisions concerning parental responsibility. The Danish Minister of Justice can only confer enforceability on a decision, if the decision was also enforceable in the country of origin, and if the execution of the decision in Denmark does not conflict with the Danish ordre public.

The Danish Minister of Justice has not yet used this authorization to make non-EU decisions regarding parental responsibility enforceable in Denmark, a such decisions will therefore not be enforceable in Denmark.


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