

Legal alert

Revised Brussels I Regulation Starts Applying

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For over a decade the rules governing the jurisdiction of courts and the recognition and enforcement of judgments in civil and commercial matters across the European Union (EU) have been laid down in Council Regulation (EC) NO 44/2001 (the “**Brussels I Regulation**”). The operation of the Brussels I Regulation is largely considered as satisfactory but the Commission has established that it is desirable to improve the application of certain of its provisions, to further facilitate the free circulation of judgments within the EU. Since multiple amendments to the Brussels I Regulation have had to be made, it has been decided, in the interests of clarity, the same to be recast.

Thus Regulation (Eu) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (or the “**Brussels I Regulation (recast)**” or the “**Revised Regulation**”) has been adopted. While the scope and the basic principles of Brussels I Regulation are substantially preserved under the Revised Regulation, the latter also introduces certain reforms, the major of which shall be discussed briefly hereinafter, as upon request we would be pleased to provide further details on all changes envisaged.

Key Reforms

Abolishment of exequatur procedure, while preserving limited right of defence against judgments made in another EU country

Brussels I Regulation (recast) re-confirms the principle that a judgment given in an EU country shall be recognised in all EU countries without any special procedure being required. However it also introduces a simplified mechanism for admission to enforcement of Member State judgments in other Member States, eliminating the need for the courts of the Member State addressed, to issue a declaration of enforceability. Thus, for the purposes of enforcement in a Member State of a judgment given in another Member State, the applicant shall provide the competent enforcement authority with: (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and (b) a certificate (after a standard form) issued by the court of origin, certifying that the judgment is enforceable. Upon meeting these formal standards, a judgment given by the courts of a Member State will legally be treated as if it had been given in the Member State addressed. Nonetheless, the person against whom enforcement is sought will be able to apply for refusal of the recognition or enforcement of a judgment, if he considers one or more of the grounds for refusal of recognition as set forth in the Revised Regulation to be present. This includes exhaustively listed grounds similar to the ones under the existing Brussels I Regulation albeit clarified in certain aspects such as: where the judgment was given in default of appearance in breach of right of defence; if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed; if such recognition/enforcement is manifestly contrary to public policy in the Member State where enforcement is sought, etc. As before, under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed.

The procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State addressed. As a result the grounds for refusal or of suspension of enforcement under the law of the Member State addressed (e.g. under Bulgarian law, if the judgment debt has been extinguished following the judgment's entry into force) shall also apply in so far as they are not incompatible with the grounds referred to in the Revised Regulation (see above).

Reinforcement of choice-of-court agreements

Brussels I Regulation (recast) also re-enforces choice-of-court agreements, as in the case where the parties (regardless of their domicile), have agreed that a court of a Member State is to have jurisdiction to settle any disputes between them, the "first-in-time" rule in the Brussels I Regulation shall not apply, to the benefit of the designated court. Thus, as general rule where a court of a Member State on which an agreement confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement (possibly) declares that it has no jurisdiction under the agreement. On its part, the designated court should be able to proceed irrespective of whether the non-designated court has already decided on the stay of proceedings. This is to ensure that, in such a situation, the designated court has priority to decide on the validity of the jurisdictional agreement and on the extent to which the agreement applies to the dispute pending before it. Furthermore, where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State (including court first seised) shall decline jurisdiction in favour of the designated court.

Elaboration on the arbitration exception

The Revised Regulation re-confirms that it does not apply to arbitration. It further clarifies that it should not apply to any action or ancillary proceedings relating to arbitration, including but not limited to judgments of state courts, concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.

The Revised Regulation also allows each court of a Member State to decide independently whether an arbitration agreement is null and void in accordance

with its national law. A ruling given by a court of a Member State as to validity and enforceability of an arbitration agreement shall not be subject to the rules of recognition and enforcement laid down in the Revised Regulation as well. On the other hand, where a court of a Member State has determined that an arbitration agreement is invalid, this should not preclude that court's judgment on the substance of the matter from being recognised or, as the case may be, enforced in accordance with the Revised Regulation.

The above rules are viewed as creating level of risk for having conflicting court judgments and arbitral awards on identical disputes and possible corresponding problems with the enforceability of the conflicting acts by third Member State courts. Generally, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 (the '**New York Convention**'), shall take precedence over the Brussels I Regulation (recast), as expressly emphasised by the latter. According to prominent EU legal practitioners in the context of this principle, the third Member State courts arguably should enforce the arbitral award (subject to the terms of the New York Convention) rather than the conflicting foreign judgment. However whether this interpretation would be accepted in practice by the national courts of the EU Member States remains to be seen.

Entry into Force

The Brussels I Regulation (recast) will apply to legal proceedings instituted on or after 10 January 2015. The effective Brussels I Regulation will be repealed, save that it will continue to apply to judgments given in legal proceedings instituted before 10 January 2015.