



Bird & Bird & First for Disputes

Knowhow briefs

The Brussels regulation at a glance

Executive Summary:

- A practical guide which addresses how and why the Brussels Regulation has been ratified and approved; which jurisdictional issues parties should consider when filing an international lawsuit; the practical steps that need to be taken prior to recognition and enforcement of judgments; and what types of documents need to be prepared by a party for the enforcement procedure.
- This guide also provides a short introduction of the new reform of the Brussels Regulation and points out the significant changes which will apply from 10 January 2015.

What is the Brussels Regulation?

1. Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“**Brussels Regulation**”), dated 22 December 2000.
2. The Brussels Regulation is mainly based on the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, dated 27 September 1968. In contrast to the Convention, the Brussels Regulation is mandatory for all members of the EU and need not be ratified.
3. If a person wins a lawsuit and is granted a judgment, they may want to enforce this judgment in order to receive whatever the court has granted. To be enforced, in which, the judgment has to be declared enforceable in the member state enforcement is sought. In general, each Member State has its own laws on enforcement. The Brussels Regulation regulates the enforcement a judgment handed down in another Member State, so that there is a uniform set of provisions which apply across the EU.
4. The Brussels Regulation applies to disputes between individuals from different Member States of the European Union (EU).
5. Questions of interpretation of the Brussels Regulation are subject to the jurisdiction of the European Court of Justice.
6. The Brussels Regulation applies exclusively to civil and commercial matters. In particular, it does not extend to:
 - matters of personal status, including matrimonial matters, wills and succession;
 - bankruptcy;
 - social security; and arbitration.

When does the Brussels Regulation apply?

1. General rules of jurisdiction

The Brussels Regulation provides general rules with respect to jurisdiction. The basic principle is that the courts of the EU Member State in which the defendant is domiciled will have jurisdiction to hear the dispute, regardless of the defendant's nationality. Domicile is determined in accordance with the domestic laws of the Member State in which the matter is brought. If a party is not domiciled in the EU Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State. Where legal entities or companies are involved in a lawsuit, domicile is determined in accordance with the laws of the country in which the legal entity or company has its statutory seat, central administration or principal place of business. In the case of trusts, domicile is determined by the court considering the case by applying its own rules of private international law.

2. Possibility of suing a defendant in another Member State

While the principle of domicile acts as the general rule for determining jurisdiction, a defendant may, under certain circumstances, be sued in the courts of a Member State other than the Member State in which he is domiciled. The Brussels Regulation lists the following areas of jurisdiction: special and exclusive jurisdiction; jurisdiction on matters relating to insurance; consumer contracts; and individual contracts of employment.

Under the Brussels Regulation, 'special jurisdiction' will include the following:

- matters relating to a **contract**: As a general rule, the courts of the Member State which is the place of performance of the obligation in question will have special jurisdiction;
- matters relating to **maintenance/financial support**: Questions can be brought before the courts of the Member State in which the maintenance creditor is a resident;
- matters relating to **tort, delict or quasi-delict**: The courts of the Member State in which the harmful event either occurred or may occur will have jurisdiction;
- matters relating to **insurance**: An insurer may be sued before the courts of the Member State in which he is domiciled. Alternatively, where the action is instigated by the insured or a beneficiary of the insured, the insurer may be sued in the courts of the Member State in which the plaintiff is domiciled. In respect of liability insurance or insurance of immovable property, the insurer may, in addition, be sued before the courts of the Member State in which the harmful event occurred.
- matters relating to contracts concluded by **consumers**: "Consumers" are defined as persons who conclude a contract with a professional for a purpose which is outside their own trade or profession. All contracts concluded with a person who pursues commercial or professional activities in the EU are covered. A consumer will be protected if a contract concluded for the sale of goods is financed on instalment credit terms, by a loan repayable in instalments, or by any other form of credit. Additionally, a consumer will be protected if a contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile, or directs such activities to that Member State. A consumer may commence proceedings either before the courts of the Member State in which the defendant is domiciled, or before the courts of the Member State in which the consumer is domiciled. Proceedings may be brought against a consumer by the other party to the contract only before the courts of a Member State in which the consumer is domiciled.
- matters relating to **individual contracts of employment**: employees may either sue their employer before the courts of the Member State of the employer's domicile or before the courts of a Member State in which the employee habitually works. An employee who does not habitually work in any Member State may sue his employer before the courts of the Member State in which the business that hired the employee has its seat. An employer who

is not domiciled in any Member State, but does have a branch, agency or other establishment in a Member State, is deemed to be domiciled in that State.

However, an employer can only bring proceedings against an employee in the courts of the Member State in which the employee is domiciled. Therefore this jurisdiction is exclusive.

3. The following courts will have exclusive jurisdiction irrespective of domicile:
 - where the subject of proceedings is rights *in rem* to immovable property or tenancies of immovable property: the courts of the Member State in which the property is situated;
 - where the subject of proceedings is the validity of the constitution, the nullity or dissolution of companies or other legal entities, or the validity of the decisions of their organs: the courts of the Member State in which the legal entity has its seat;
 - where the subject of proceedings is the validity of entries in public registers: the courts of the Member State in which the register is kept;
 - where the subject of proceedings is the registration or validity of patents, trademarks, designs or other similar rights: the courts of the Member State in which the deposit or registration has been applied for, has taken place, or is under the terms of a Community instrument or an international convention deemed to have taken place;
 - where the subject of proceedings is to enforce a judgment: the courts of the Member State in which the judgment has been, or is to be enforced.

If the parties, of whom one or more should be domiciled in the EU, have included a choice of jurisdiction clause in an agreement attributing jurisdiction to a Member State court, that court will have jurisdiction. According to the Brussels Regulation, a number of formalities must be observed for a valid jurisdiction agreement. The agreement must be in writing, or in a form that follows practices which parties have established between themselves, or, in international trade or commerce, the agreement must be in a form that complies with general trade practices of which the parties are, or ought to be aware.

When can the Brussels Regulation help for recognition and enforcement of your judgment?

A judgment in one Member State must be recognised in other Member States without having to resort to any special procedure. "Judgment" means any decision issued by a court or tribunal of a Member State, no matter what the decision may be called, including decrees, orders or a writ of execution. Under no circumstances may a foreign judgment be reviewed with respect to its substance.

First, a judgment must be recognised before it can be enforced in another Member State.

1. Despite the general rule, a judgment will not be **recognised** if:
 - recognition is manifestly contrary to public policy in the Member State in which recognition is sought;
 - it was given in default of appearance and the defendant was not served with the document that instituted the proceedings in sufficient time and in such a way as to enable the defendant to arrange for his/her defence;
 - it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;
 - it is irreconcilable with an earlier judgment given in another Member State or non-EU country involving the same cause of action and between the same parties.

2. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been filed.
3. A judgment can be **enforced** in another EU Member State when, on application by any interested party, it has been declared enforceable there. Either party may appeal against a decision by applying for a declaration of enforceability.
 - The courts or relevant authorities to which the application may be submitted are listed in Annex II of the Brussels Regulation.
 - The enforcement procedure itself is governed by the national law of the Member State in which enforcement is sought.
 - The judgment shall be declared enforceable immediately on completion of the formalities, without review.
 - A declaration of enforceability may only be refused on one of the grounds specified in the Brussels Regulation (Articles 34 and 35).

A decision on the application for a declaration of enforceability may be appealed against by either party.

What are the significant innovations and key changes of the revised Brussels Regulation?

- ◆ In December 2012 the European Economic and Monetary Affairs Council approved amendments to the Brussels Regulation, which will come into force on 10 January 2015.
- ◆ The key changes are designed to (a) streamline the process for enforcement of judgments across Member States, and to reduce time and costs for judgment creditors; (b) strengthen choice of court agreements by ending cross border “torpedo” litigation tactics; (c) extend the remit of the Brussels Regulation’s jurisdiction rules to non-EU Defendants in certain cases; and (d) protect arbitration clauses against abusive litigation.

1. Streamlining the enforcement of judgments across EU Member States

In order to enforce a civil or commercial judgment handed down in one Member State in another Member State, a judgment creditor is currently required to obtain a declaration of enforceability from the enforcing Member State court. Depending on the particular enforcing state, this process can add several months to the timeline for a claimant looking to enforce a judgment in another Member State, whilst giving the defendant the opportunity to raise meritless defences in order to delay enforcement.

The revised Brussels Regulation aims to abolish this procedural hurdle. It ensures that a Member State court judgment will be immediately enforceable in another Member State court without any further declaration of enforceability being required. Certain safeguards have been introduced to the revised Regulation. However, it is only in exceptional cases that recognition and enforcement will be refused, e.g. where it would be contrary to public policy.

2. Ending cross-border “torpedo” actions

The revised Brussels Regulation seeks to end the increasingly common tactic of “torpedo” proceedings. These occur when a party commences proceedings in a Member State other than the one chosen by the parties, with the aim of causing delays. This is made possible by the current wording of the Brussels Regulation, which provides that the Member State court in which proceedings are first commenced (the court first seised) determine whether it has jurisdiction. No other Member State can claim jurisdiction until the courts of the Member State first seised have

done so. This rule applies even if, for purely tactical reasons a party brings proceedings before a court other than the one specified in the jurisdiction clause.

The revised Brussels Regulation seeks to end this practice. It provides that, where parties have (conferred) exclusive jurisdiction on a Member State court, any other Member State court shall stay the proceedings brought before it until the court provided for in the jurisdiction agreement has ruled whether or not it has jurisdiction to determine the matter.

3. Extending the remit – application of the Brussels Regulation to non-EU parties

The Brussels Regulation does not currently apply to defendants domiciled outside the EU. In such cases Member State courts apply their own rules to decide whether they have jurisdiction. The revised Brussels Regulation will extend to and protect jurisdiction agreements by non-EU parties with a view to provide claimants with equal access to justice in the following circumstances:

- A consumer from a non-EU country will be able to bring proceedings either in the courts of that non-EU country or in the courts of the domicile or place of establishment of the trader;
- A lawsuit against a non-EU domiciled employer can be brought before the courts of the Member State in which the employer is established;
- None of the parties have to be domiciled in the EU if they have agreed that any disputes will be subject to the exclusive jurisdiction of the courts in one of the Member States.

4. Protecting arbitration clauses against abusive litigation

The revised Brussels Regulation is intended to address the concerns that arise if parties to an arbitration agreement choose the arbitral law of a Member State and its courts' supervisory jurisdiction for their arbitration, but the courts of another Member State are seised first. In such circumstances the court of the Member State agreed upon by the parties under the arbitration clause would have to stay any proceedings in favour of the Member State court that was seised first.

- The revised Brussels Regulation confirms that Member State courts retain the right to rule on the validity and scope of arbitration agreements in accordance with their national law, and that their decision should not be subjected to the rules of recognition and enforcement laid down in the Brussels Regulation.
- The New York Convention has precedence over the Brussels Regulation and therefore courts of Member States are permitted to recognise and enforce an arbitral award even if it is inconsistent with another Member State's judgment.

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