



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 14 December 2000 (18.12)
(OR. fr)**

14139/00

LIMITE

JUSTCIV 137

"I/A" ITEM NOTE

from : General Secretariat of the Council

to : Coreper/Council

No. Cion prop. : 10742/99 JUSTCIV 124

Subject : Proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I)

1. On 7 September 1999 the Commission forwarded to the Council a proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (10742/00 JUSTCIV 124).
2. A detailed examination of that proposal was conducted by Council bodies. In the course of these proceedings, the Opinions of the European Parliament and of the Economic and Social Committee were also considered.
3. At its meeting on 30 November and 1 December 2000, the Council noted that there was political agreement on all the provisions of the proposed Regulation and on the statements contained in the Annex to 13742/00 JUSTCIV 131. However, a parliamentary scrutiny reservation on the proposed Regulation was entered by the Netherlands delegation .

4. Subsequently,
- the text was finalised by the Legal/Linguistic Experts (see 14067/00 JUSTCIV 134);
 - the Netherlands delegation withdrew its parliamentary reservation.
5. The Council is accordingly requested to:
- adopt the draft Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as set out in 14067/00 JUSTCIV 134 ¹;
 - take note of the statements contained in Annexes I to IV, which will be entered in the minutes of the Council meeting which adopts the Regulation ²;
 - note that the Regulation will be published in the "L" series of the Official Journal.
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¹ Document finalised by the Legal/Linguistic Experts.

² The statement in Annex IV will be published in the "C" series of the Official Journal.

Joint Council and Commission statements

I. – Statement on Articles 71 and 72 and on the negotiations within the framework of the Hague Conference on Private International Law

1. – It follows from Article 4 in conjunction with Chapter III of the Regulation that, where a court in a Member State delivers a judgment which is founded on a ground of jurisdiction drawn from that Member State's national law, against a defendant who is not domiciled in the territory of a Member State, that judgment will be recognised and enforced in the other Member States, pursuant to the Regulation.

In some cases this rule may be disadvantageous to persons who are not domiciled in the territory of a Member State. In the Brussels Convention of 27 September 1968, this situation was mitigated by Article 59, which allowed Contracting States to conclude agreements with third States not to recognise judgments founded on certain grounds of jurisdiction drawn from national law.

The Council and the Commission will pay particular attention to the possibility of engaging in negotiations with a view to the conclusion of international agreements that would mitigate the consequences of Chapter III of the Regulation for persons domiciled in third States, in respect of judgments founded on certain national grounds of jurisdiction.

2. – Pursuant to Article 57 thereof, the Brussels Convention of 27 September 1968 did not affect conventions governing jurisdiction or the recognition or enforcement of judgments in relation to particular matters.

Since it may sometimes be useful to draw up specific rules on particular matters, the Council and the Commission will pay particular attention to the possibility of engaging in negotiations with a view to the conclusion of international agreements in some of these areas.

3. – The Regulation is a response to the objective of progressively establishing an area of freedom, security and justice, laid down in Title IV of Part Three of the Treaty establishing the European Community. The Council and the Commission hold that establishing this area within Europe should not rule out the possibility of concluding international agreements of broader geographical scope with third States or international organisations which might allow the creation of a global or regional legal environment conducive to the circulation of judgments in civil and commercial matters.

In this connection, the Council and the Commission consider it essential that special importance be accorded to the work of the Hague Conference on Private International Law. In particular, there is a need to pursue efforts within that framework to bring negotiations for a convention on jurisdiction and foreign judgments in civil and commercial matters to a conclusion within a reasonable period of time.

4. – Work on drawing up the Hague convention on jurisdiction and foreign judgments in civil and commercial matters began several years ago; it has so far been the Member States which have conducted the negotiations. In order that negotiation of this convention can continue after the Regulation has been adopted, the Council and the Commission have agreed on the following working method.

This method, which is quite without prejudice to the scope of the Community's external powers, is designed to ensure the continuity of the current negotiations, while making sure that Community positions are consistent and that Member States take an effective part in the negotiations.

That working method is as follows:

- The Community negotiating directives, laid down in advance by the Council, may be adjusted and added to in the course of negotiations, in the light of developments. To that end, coordination meetings will be held whenever necessary; they will be convened by the Presidency-in-Office of the Council, at the suggestion of a Member State or of the Commission.
- The Presidency-in-Office of the Council and the Commission will state the Community positions contained in the negotiating directives; to that end, they may submit drafting proposals. Member States may express their own views, as long as these are not incompatible with the negotiating directives laid down by the Council. They may make suggestions and reply to suggestions submitted by other States in the course of negotiation. Written suggestions from Member States will be forwarded to the Presidency-in-Office of the Council and to the Commission in advance.
- Should a serious difficulty arise, owing to a disagreement or to the need to take a new approach which departs from the Community negotiating directives, the matter will be referred to the Council.

The Council and the Commission will consider the results of this working method at the close of the negotiations.

5. – With reference to the case law of the Court of Justice of the European Communities, the Council and the Commission consider that the Regulation does not prevent a Member State from concluding agreements with third States on matters covered by the Regulation, where the latter is unaffected by those agreements.

II. – Statement on Articles 15 and 73

1. The Council and the Commission are aware that the development of electronic commerce in the information society facilitates the economic growth of undertakings. Community law is an essential if citizens, economic operators and consumers are to benefit from the possibilities afforded by electronic commerce.

They consider that the development of new distance marketing techniques based on the use of the Internet depends in part on the mutual confidence which may grow up between undertakings and consumers. One of the major elements in this confidence is the opportunity offered to consumers by Article 16 of the Regulation to bring possible disputes before the courts of the Member States in which they reside, where the contract concluded by the consumer is covered by Article 15 of the Regulation.

The Council and the Commission point out in this connection that for Article 15(1)(c) to be applicable it is not sufficient for an undertaking to target its activities at the Member State of the consumer's residence, or at a number of Member States including that Member State; a contract must also be concluded within the framework of its activities. This provision relates to a number of marketing methods, including contracts concluded at a distance through the Internet.

In this context, the Council and the Commission stress that the mere fact that an Internet site is accessible is not sufficient for Article 15 to be applicable, although a factor will be that this Internet site solicits the conclusion of distance contracts and that a contract has actually been concluded at a distance, by whatever means. In this respect, the language or currency which a website uses does not constitute a relevant factor.

2. The Council and the Commission take the view that in general it is in the interest of consumers and undertakings to try to settle their disputes amicably before resorting to the courts.

The Council and the Commission stress in this connection that the purpose of the Regulation, and in particular of Articles 15 and 17 thereof, is not to prohibit the parties from making use of alternative methods of dispute settlement.

The Council and the Commission accordingly wish to reiterate how important it is that work on alternative methods of dispute settlement in civil and commercial matters should continue at European Community level, in keeping with the Council's conclusions of 29 May 2000.

They are aware of the great significance of this work and stress the useful complementary role represented by alternative methods of dispute settlement in civil and commercial matters, in particular with regard to electronic commerce.

3. Pursuant to Article 73 of the Regulation, the Commission is to submit a report on the application of the Regulation, accompanied, if need be, by proposals for adaptations, to the European Parliament, the Council and the Economic and Social Committee.

The Council and the Commission consider that in preparing the report especial attention should be paid to the application of the provisions of the Regulation relating to consumers and small and medium-sized undertakings, in particular with respect to electronic commerce. For this purpose, the Commission will, where appropriate, propose amendments to the Regulation before the expiry of the period referred to in Article 73 of the Regulation.

Joint statement by the Grand Duchy of Luxembourg and the Commission

The Government of the Grand Duchy of Luxembourg undertakes to use its best endeavours, during the period provided for in Article 63(4), to prepare business circles in the Grand Duchy of Luxembourg to adjust to the new situation resulting from Article 5, point (1), and Article 23 of the Regulation.

The Commission undertakes to devote special attention to developments in Luxembourg in its report on application of the Regulation, provided for in Article 73. In the light of this report the Commission will take the necessary initiatives to enable the Council to take a decision within the time limit provided for in Article 63(4).

Statement by the United Kingdom¹

In accordance with arrangements notified in Council document 7998/00 of 19 April 2000, where decisions of a Gibraltar court are to be directly enforced by a court or other enforcement authority in another Member State under the relevant provisions of this Regulation, the documents containing such decisions of the Gibraltar court will be certified as authentic by the United Kingdom/Gibraltar Liaison Unit for EU Affairs of the Foreign and Commonwealth Office based in London ("the Unit"). To this effect the Gibraltar court will make the necessary request to the Unit. The certification will take the form of a note.

¹ This statement will be published in the "C" series of the Official Journal.