



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 April 2012

**Interinstitutional File:
2010/0383 (COD)**

8855/12

LIMITE

**JUSTCIV 142
CODEC 1011**

NOTE

from :	The Presidency
to :	Working Party on Civil Law Matters (Brussels I)
No. prev. doc.	8396/12 JUSTCIV 134 CODEC 885
No. Cion prop. :	18101/10 JUSTCIV 239 CODEC 1587
Subject :	Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast)

Delegations will find in the Annex a revised consolidated text of the above proposal in the light of the latest discussions in the Working Party on Civil Law Matters (Brussels I).

In this version of the text, the parts in *italic* are changes introduced by the Commission in the recast proposal. Substantive changes proposed by the Commission are in addition highlighted in **grey**. Deletions introduced by the recast proposal are marked in *italic* with double strikethrough (~~*double strikethrough*~~).

All changes compared to the text of the Commission recast proposal are marked in **bold**. Deleted text compared to the Commission proposal are marked by (...) or by a single strikethrough (~~single strikethrough~~).

2010/0383 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters****(Recast)***THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,**Having regard to the Treaty on the Functioning of the European Union, and in particular Article 67(4) and Article 81(2)(a), (c) and (e) thereof,**Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
(...)**Having regard to the opinion of the European Economic and Social Committee,
Acting in accordance with the ordinary legislative procedure,*

Whereas:

*(...)*¹

¹ The recitals will be examined at a later stage.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters **or the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii")**.
2. This Regulation shall not apply to:
 - (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, **or a relationship deemed by the law applicable to such relationship to have comparable effects to marriage (...)**;
 - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - (c) social security;

Option 1

- (d) arbitration, **[without prejudice to Article 29(4) and Article 33(3)]**¹;

Option 2

- (d) arbitration (...);

¹ Delegations are invited to discuss if it is necessary to keep the text in square brackets.

(e) *maintenance obligations arising from a family relationship, parentage, marriage or affinity;*

(f) **wills and succession, including maintenance obligations arising by reason of death.**

3. (...).

Article 2 (ex Article 32)

1. For the purposes of this Regulation:

(a) 'judgment' means any judgment given by a court **or tribunal** of a Member State, whatever the judgment may be called, including **a decree, order, decision or writ of execution, as well as a decision on** the determination of costs or expenses by an officer of the court.

*For the purposes of Chapter III, the term 'judgment' includes provisional, including protective, measures ordered by a court **or tribunal** which by virtue of this Regulation has jurisdiction as to the substance of the matter, **unless the measure was ordered without the defendant being summoned to appear and is intended to be enforced without prior service on the defendant;***

(b) (...);

(c) (...);

(d) *'court settlement' means a settlement which has been approved by a court **of a Member State** or concluded before a court **of a Member State** in the course of proceedings;*

(e) *'authentic instrument' means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:*

(i) *relates to the signature and the content of the instrument, and*

(ii) *has been established by a public authority or other authority empowered for that purpose;*

(f) *'Member State of origin' means the Member State in which, as the case may be, the judgment has been given, the court settlement has been approved or concluded, or the authentic instrument has been established;*

(g) *'Member State **addressed**' means the Member State in which the **recognition** of the judgment is invoked or, as the case may be, in which the enforcement of the judgment, the court settlement or the authentic instrument is sought;*

(h) *'court of origin' means the court which has given the judgment to be recognised and/or enforced.*

2. For the purpose of this Regulation, 'court' includes authorities designated by the Member States as having jurisdiction in matters falling within the scope of this Regulation provided that such authorities offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State by which they are established:

- (i) may be made the subject of an appeal to or review by a judicial authority; and
- (ii) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify such authorities to the Commission in accordance with Article 88-1¹.

¹ This provision has been inserted to cover the information contained in Article 75-1 in the former revised proposal (doc. 8396/12 JUSTCIV 134).

CHAPTER II

JURISDICTION

SECTION 1

GENERAL PROVISIONS

Article 3 (ex Article 2)

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.
2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 4 (ex Article 3)¹

1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.
2. **In particular, the rules of national jurisdiction notified by the Member States to the Commission in accordance with point (a) of Article 88(1) shall not be applicable as against them.**

¹ It is recalled that no decision has been taken concerning the three options contained in document 18922/11 JUSTCIV 363 CODEC 2511 and that option 3 (*status quo*) is only used as a basis for the revised draft but does not prejudice the solution which will be part of the final compromise.

Article 4a (ex Article 4)

1. **If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles [16(1), 19(2), 20(1a)] 22 and 23, be determined by the law of that Member State.**
2. **As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those notified by the Member States to the Commission in accordance with point (a) of Article 88(1), in the same way as the nationals of that State.**

SECTION 2

SPECIAL JURISDICTION

Article 5

A person domiciled in a Member State may be sued in another Member State:

1. (a) in matters relating to a contract, **in** the courts for the place of performance of the obligation in question;
- (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
 - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
 - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,
- (c) if *point* (b) does not apply then *point* (a) applies;

~~2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;~~

[2. *as regards a dispute concerning rights in rem in, or possession of, tangible moveable property, in the courts for the place where the property is situated at the time the court is seised.;*]

3. in matters relating to tort, *delict* or *quasi-delict*, **in** the courts for the place where the harmful event occurred or may occur;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, **in** the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
5. as regards a dispute arising out of the operations of a branch, agency or other establishment, **in** the courts for the place in which the branch, agency or other establishment is situated;
6. as **regards a dispute brought against a** settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, **in** the courts of the Member State in which the trust is domiciled;
7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, **in** the court under the authority of which the cargo or freight in question:
 - (a) has been arrested to secure such payment, or
 - (b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 6

A person **domiciled in a Member State** may also be sued:

1. where he (...) is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.

Article 7

Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

SECTION 3

JURISDICTION IN MATTERS RELATING TO INSURANCE

Article 8

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to ~~Article 4 and~~ (...) [Article 4a and] Article 5(5).

Article 9

1. An insurer **domiciled in a Member State** may be sued:
 - (a) in the courts of the Member State where he is domiciled, or
 - (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the **claimant** is domiciled,
 - (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer;
2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 10

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 11

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.
2. Articles 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.
3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 12

1. Without prejudice to Article 11(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 13

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen, or
2. which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or

3. which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or
4. which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State, or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 14.

Article 14

The following are the risks referred to in Article 13(5):

1. any loss of or damage to:
 - (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;
2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage:
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in **paragraph 1(a)** in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
 - (b) for loss or damage caused by goods in transit as described in **paragraph 1(b)**;

3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in **paragraph 1(a)**, in particular loss of freight or charter-hire;
4. any risk or interest connected with any of those referred to in **paragraphs 1 to 3**;
5. notwithstanding **paragraphs 1 to 4**, all ‘large risks’ as defined in (...) *Directive 2009/138/EC of the European Parliament and of the Council*¹, ~~as amended by Council Directives 88/357/EEC and 90/618/EEC, as they may be amended.~~

SECTION 4

JURISDICTION OVER CONSUMER CONTRACTS

Article 15

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section without prejudice to ~~Article 4 and~~ (...) **[Article 4a and]** Article 5(5), if:
 - (a) it is a contract for the sale of goods on instalment credit terms; or
 - (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
 - (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

¹ *OJ L 335, 17.12.2009, p. 1.*

2. Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that **Member State**.
3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 16

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or[, **regardless of the domicile of the other party,**] in the courts for the place where the consumer is domiciled.
2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.
3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 17

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

SECTION 5

JURISDICTION OVER INDIVIDUAL CONTRACTS OF EMPLOYMENT

Article 18

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section without prejudice to ~~Article 4 and~~ (...) **[Article 4a,]** Article 5(5) ~~and~~, **in case of proceedings brought against an employer, Article 6(1).**
2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 19

1. An employer **domiciled in a Member State** may be sued:
 - (a) in the courts of the Member State where he is domiciled; or
 - (b) in another Member State:
 - (i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so, or
 - (ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.
- [2. **An employer not domiciled in a Member State may be sued in a court of a Member State according to paragraph 1(b).]**

Article 20

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.
- [1a. Notwithstanding paragraph 1, the employer may bring proceedings in the courts of the Member State for the place where or from where the employee habitually carries out his work.]**
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 21

The provisions of this Section may be departed from only by an agreement ~~on jurisdiction~~:

1. which is entered into after the dispute has arisen; or
2. which allows the employee to bring proceedings in courts other than those indicated in this Section.

SECTION 6

EXCLUSIVE JURISDICTION

Article 22

The following courts **of a Member State** shall have exclusive jurisdiction, **regardless of domicile**:

1. in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

~~(a) — However,~~ **However**, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State (...);

(b) (...);

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;

4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, *irrespective of whether the issue is raised by way of an action or as a defence*, 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 (...) an instrument *of the Union* or an international convention deemed to have taken place.

Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction (...) in proceedings concerned with the registration or validity of any European patent granted for that State;

5. in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

SECTION 7

PROROGATION OF JURISDICTION

Article 23

1. If the parties, ~~one or more of whom is domiciled in a Member State~~, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, *unless the agreement is null and void as to its substantive validity under the law of that Member State*¹. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:
 - (a) in writing or evidenced in writing; or
 - (b) in a form which accords with practices which the parties have established between themselves; or
 - (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.
2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

(ex 3. deleted)

¹ A recital will clarify that the reference to the law of the Member State concerned includes conflict of laws rules.

3. **(ex 4.)** The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.
4. **(ex 5.)** Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.
5. **An agreement conferring jurisdiction that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.**

Article 24

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant **[domiciled in a Member State]** enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.
2. *In matters referred to in Sections 3, 4 and 5 (...), where the policyholder, the insured, the injured party or a beneficiary of the insurance contract, the consumer or the employee is the defendant, the court, before assuming jurisdiction under paragraph 1, shall ensure that the defendant is informed of his right to contest the jurisdiction and of the consequences of entering or not entering an appearance.*

SECTION 8

SUBSIDIARY JURISDICTION AND FORUM NECESSITATIS

Article 25

(deleted)

Article 26

(deleted)

SECTION 9 (*EX SECTION 8*)

EXAMINATION AS TO JURISDICTION AND ADMISSIBILITY

Article 27 (*ex Article 25*)

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which **the courts of another Member State have exclusive jurisdiction by virtue of Article 22**, it shall declare of its own motion that it has no jurisdiction.

Article 28 (*ex Article 26*)

1. Where a defendant **domiciled in one Member State** is sued in a court of **another** Member State and does not enter an appearance, the court **shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation**.
2. **The court** shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

3. Article 19 (...) of (...) Regulation (EC) No 1393/2007 of the European Parliament and of the Council shall apply instead of (...) paragraph 2 if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to **that** Regulation.
4. Where (...) Regulation (EC) No 1393/2007 **is** not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted **abroad** pursuant to that Convention.

SECTION 10 (EX SECTION 9)
LIS PENDENS — RELATED ACTIONS
Article 29 (*ex Article 27*)

1. *Without prejudice to Article 32(2),* where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established¹.
2. *In cases referred to in paragraph 1, ~~the court first seised shall establish its jurisdiction within six months except where exceptional circumstances make this impossible.~~ upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date (...) when it was seised according to Article 33(...).*
3. **(ex 2.)** Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

¹ **A recital will spell out that the term "established" may also include assuming jurisdiction.**

Option 1¹

4. *Where the agreed or designated seat of arbitration [or the seat of the agreed or designated arbitral institution] is in a Member State, the courts of another Member State whose jurisdiction is contested on the basis of the arbitration agreement no later than the party's statement of defence on the substance of the dispute,² shall stay proceedings once the courts of the Member State where the agreed or designated seat of arbitration [or the seat of the agreed or designated arbitral institution] is located or the arbitral tribunal have been seised of proceedings to determine, as their main object or as an incidental question, the existence, validity or effects of that arbitration agreement.*

¹ Option 1 will be accompanied by three recitals along the following lines:

- "(x) *This Regulation should not apply to arbitration. In particular, it should not apply to the form, existence, validity, or effects of arbitration agreements, the powers of the arbitrators, the procedure before arbitral tribunals and any ancillary proceedings before a court relating to the arbitral procedure, nor to the validity, annulment, recognition or enforcement of arbitral awards. [This Regulation should prescribe the procedural step that a court which is not a court of the State of the seat of arbitration [or of the seat of the agreed or designated arbitral institution] should take when presented with a defence based on an arbitration agreement. This should not affect, however, arbitration as such which remains outside the scope of this Regulation].*
- (y) *The rules of this Regulation on recognition and enforcement should apply also if the courts of a Member State have determined, as an incidental question, that the arbitration agreement, is null and void, inoperative or incapable of being performed. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the 1958 New York Convention to which all Member States are party and which takes precedence over this Regulation.*
- (z) *In order to respect party autonomy, this Regulation should ensure that arbitration agreements are given full effect when invoked in the course of court proceedings. This Regulation should therefore contain special rules aimed at avoiding parallel proceedings and abusive litigation tactics in those circumstances. It uses [among others] the seat of arbitration as a special connecting factor for the specific purposes pursued by the special rules. Taking into account this specific purpose, this connecting factor should refer to the seat selected by the parties or the seat designated by an arbitral tribunal, by an arbitral institution or by any other authority directly or indirectly chosen by the parties. It should not refer to the place of arbitration in the sense of a mere geographical location chosen for meetings under the arbitration."*

² A recital could clarify that this provision should apply based on a *prima facie* assessment of the existence of the arbitration agreement.

(...)

Where the existence, validity or effects of the arbitration agreement are established by a court referred to in the first subparagraph or by the arbitral tribunal, the courts of any Member State shall decline jurisdiction.

This paragraph shall not apply to disputes concerning matters referred to in Sections [3,] 4 and 5 of Chapter II when [the policyholder, the insured, the injured party or a beneficiary of the insurance contract], the consumer or the employee is the claimant¹.

- 4a. Paragraph 4 does not prevent the court whose jurisdiction is contested on the basis of an arbitration agreement from referring the parties to arbitration in accordance with national law.

Option 2

4. (Deleted)²

¹ A recital could clarify that the non-application of the rule to certain weaker parties aims at safeguarding the interests of these parties and that arbitrability remains otherwise governed by national law.

² The following recital will be inserted:

"This Regulation should not apply to arbitration. Nothing in this Regulation should prevent the courts of a Member State, when seised of an action in a matter in respect of which the parties have made an arbitration agreement, from referring the parties to arbitration in accordance with their national law.

*A ruling given by a court of a Member State as to whether or not an arbitration agreement is valid or covers the claim brought before the court should not be subject to the rules of recognition and enforcement of this Regulation, regardless of whether the court decided on this as a principal issue or as an incidental question. However, this should not prevent that the courts exercise jurisdiction in matters falling within the scope of this Regulation and that any resulting judgment on the substance of the matter is recognised and enforced in accordance with the rules of this Regulation, even if the courts decided, as an incidental question, on the validity, existence or effects of an arbitration agreement.**

This Regulation should not apply to any action or ancillary proceedings relating to, in particular, the establishment of the arbitral tribunal, the conduct of the arbitration procedure or any other aspects of such a procedure, nor to any action or judgment concerning the annulment, review, appeal, recognition and enforcement of an arbitral award."

* Delegations are invited to consider whether the second sentence of the second subparagraph is needed.

Article 30 (ex Article 28)

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where *the action in the court first seised is* pending at first instance, any *other* court ~~than the court first seised~~ may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question **and its law permits the consolidation thereof.**
3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 31

(moved to section 11 (new Article 36-1))

(...)

Article 32 (ex Article 29)

1. Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

- 2.¹ Without prejudice to Article 24, where a court of a Member State on which an agreement referred to in Article 23 confers exclusive jurisdiction is seised, any court of other Member States shall stay the proceedings until such time as the court seised on the basis of the agreement finds that it has no jurisdiction under the agreement.²
3. Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of other Member States shall decline jurisdiction in favour of that court.
4. Paragraphs 2 and 3 shall not apply to matters governed by Sections 3, 4 and 5 when the policyholder, the insured, the injured party or a beneficiary of the insurance contract, the consumer or the employee is the claimant and the agreement is not valid under those sections.

Article 33 (ex Article 30)

1. For the purposes of this Section, a court shall be deemed to be seised:
- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the **claimant** has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or
 - (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the **claimant** has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

¹ This provision will only apply when two sets of proceedings are pending. If only the non-chosen court is seised that court should just apply Article 23.

² A recital will clarify that Article 32(2) does not cover the situation where the parties have entered into two conflicting choice of court agreements. In such cases the ordinary *lis pendens* rules will apply.

The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served.

2. *The courts **or** authorities responsible for service referred to in paragraph 1 shall note (...) the date (...) of **the** lodging of the document instituting **the** proceedings **or** the equivalent document or of **the** receipt of the documents to be served.*

Option 1

3. *For the purposes of this Section, an arbitral tribunal is deemed to be seised **at the time when a request for the dispute to be referred to arbitration is received by the respondent, provided that the party invoking the arbitration agreement has not subsequently failed to take the steps he was required to take to have the arbitral tribunal established. (...)***

Option 2¹

3. **(deleted)**

¹ See the footnote to Article 29(4) option 2.

Article 34

1. **[Where jurisdiction is based on Articles 3 to 7 and] where proceedings involving the same cause of action and between the same parties are pending before the courts of a third State at the time when a court in a Member State is seised, the latter court may stay the proceedings if:**

(a) (...)

(b) **it is expected that the court of the third State will (...) give a judgment (...) capable of recognition and, where applicable, enforcement in that Member State, and**

(c) **the court is satisfied that a stay is necessary for the proper administration of justice (...).**¹

2. (...)

3. **The court may continue the proceedings at any time (...) if (...):**

(a) **the proceedings in the court of the third State are themselves stayed or discontinued;**

(b) **it appears to the court that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or**

(c) **the continuation of the proceedings is required for the proper administration of justice.**

¹ It is suggested to insert a recital along the following lines: "*When taking into account the proper administration of justice when deciding on a stay, the court should assess all the circumstances of the particular case. This could include the connections between the facts of the case and the parties and the third State in question, the availability of evidence in the third State and the stage to which the proceedings in the third State have progressed by the time proceedings are initiated in the court of the Member State. This could also include an assessment of the interests of the parties, [especially of the weaker parties], and whether or not it is expected that the court of the third State will give a judgment within a reasonable time.*"

4. *The court **shall** dismiss the proceedings (...) if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, enforcement in the Member State of the court seised.*
5. **The court seised shall apply this Article on application by one of the parties or, when this is possible under national law, of its own motion.**

Article 34-0

1. **[Where jurisdiction is based on Articles 3 to 7 and] where an action is pending before a court of a third State at the time when a court in a Member State is seised of an action which is related to the action in the third State, the court of the Member State may stay the proceedings if:**
- (a) it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings,**
 - (b) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, enforcement in the Member State of the court seised, and**
 - (c) the court is satisfied that the stay is necessary for the proper administration of justice.**

2. The court may continue the proceedings at any time if:
 - (a) it appears to the court that there is no longer a risk of irreconcilable judgments;
 - (b) the proceedings in the court of the third State are themselves stayed or discontinued;
 - (c) it appears to the court that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or
 - (d) the continuation of the proceedings is required for the proper administration of justice.
3. The court may dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, enforcement in the Member State of the court seised.
4. The court seised shall apply this Article on application by one of the parties or, when this is possible under national law, of its own motion.

SECTION 11 (EX SECTION 10)

PROVISIONAL, INCLUDING PROTECTIVE, MEASURES

Article 35

(deleted)

Article 36 (ex Article 31)

Option 1

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, ~~under this Regulation,~~ the courts of another ~~Member~~ **Member** State ~~or an arbitral tribunal~~ have jurisdiction as to the substance of the matter.

Option 2¹

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, ~~under this Regulation,~~ the courts of another Member State (...) have jurisdiction as to the substance of the matter.

¹ See the footnote to Article 29(4) option 2.

CHAPTER III

RECOGNITION (...) AND ENFORCEMENT

~~Article 32~~

~~For the purposes of this Regulation, 'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.~~

Article 37

(deleted)

SECTION I

(...) RECOGNITION

(...)

Article 38

1. (...) A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required (...).

(...)

2. Any interested party may, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 48.
3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question **of refusal** of recognition that court shall have jurisdiction over that question.

Article 39

1. A party who wishes to invoke in a Member State a judgment **given in another Member State** (...) shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b)(...) a certificate issued by the court of origin using the form established in accordance with the advisory procedure referred to in Article 88-3(3).

(...)

2. The court or authority before which a judgment given in another Member State is invoked may, where necessary, ask the party invoking it to provide a translation and/or a transliteration of the contents of the certificate referred to in paragraph 1. If the court or authority cannot proceed without a translation of the judgment itself, it may require such a translation instead of the translation of the contents of the certificate.

Article 39-1

The court or any other authority before which a judgment **given in another Member State** is invoked may suspend **the proceedings**, in whole or in part:

(a) if the judgment is challenged in the Member State of origin; or

(b) if an application **has been submitted** for a decision that there are no grounds for refusal of recognition as referred to in Article 48 or for a decision that the recognition shall be refused on the basis of those grounds.

SUBSECTION 2

ENFORCEMENT

Article 39-2

A judgment given in one Member State which is enforceable in that State shall be enforceable in another Member State without the need for a declaration of enforceability.

Article 40

*An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State **addressed**.*

Article 41

*I. Subject to the provisions of this **Section**, the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State **addressed**. A judgment given in a Member State which is enforceable in the Member State **addressed** shall be enforced there under the same conditions as a judgment given in that Member State.*

- 1a. Where required under the law of the Member State addressed, a judgment given in another Member State shall be served on the person against whom enforcement is sought. Such service may, however, not be required if the judgment was already served on that person.¹**

¹ This provision replaces Article 42-2 in the former revised proposal (doc. 8396/12 JUSTCIV 134 CODEC 885).

2. *Notwithstanding paragraph 1, the grounds of refusal or of suspension of enforcement under the law of the Member State addressed shall apply in so far as they are not incompatible with the grounds listed in Article 50-1.*¹
- [3. The party seeking the enforcement of a judgment given in another Member State shall not be required to have a postal address or an authorised representative in the Member State addressed, without prejudice to persons with competence in matters relating to enforcement proceedings.]²

Article 42

1. *For the purposes of enforcement in a Member State of a judgment given in another Member State, the applicant shall provide the competent enforcement authorities with:*
- (a) *a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and*
- (b) *the certificate issued by the court of origin in the form established in accordance with the advisory procedure referred to in Article 88-3(3), certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.*

¹ A recital will clarify that a party wishing to challenge the enforcement of a judgment given in another Member State should be able, to the extent possible, to invoke the grounds of refusal provided for in the future Regulation and those available under national law in the same procedure. However, the refusal of recognition can be based only on the grounds provided for in the Regulation.

² A recital should specify, along the lines of Recital 27 of Regulation 4/2009, that the party seeking the enforcement of a judgment should not be required to have a postal address or an authorised representative in the Member State of enforcement, without this otherwise affecting the internal organisation of the Member States in matters relating to enforcement proceedings. However, an authorised representative may be required under national law if the enforcement is contested before a court.

2. For the purposes of enforcement in another Member State of a judgment ordering a provisional, including a protective, measure, the applicant shall provide the competent enforcement authorities with
- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
 - (b) the certificate issued by the court of origin in the form established in accordance with the advisory procedure referred to in Article 88-3(3), containing a description of the measure and certifying
 - (i) that the court has jurisdiction as to the substance of the matter;(...)
 - (ii) that the judgment is enforceable in the Member State of origin indicating, where appropriate, under which conditions.
3. The competent **enforcement** authority may, where necessary, request a translation or a transliteration of the contents of the **certificate** referred to in point (b) of paragraphs 1 and 2 in accordance with Article 69.
4. The competent **enforcement** authority may (...) require the applicant to provide a translation of the judgment **only if it cannot proceed without a translation of the judgment itself.**

Article 43

(deleted)

Article 44

1. *In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court¹ in the Member State addressed may, on application by the person against whom enforcement is sought:*
- (a) limit the enforcement proceedings to protective measures; or*
 - (b) make enforcement conditional on the provision of such security as it shall determine; or*
 - (c) suspend, either wholly or in part, the enforcement proceedings.*
2. *The competent authority in the Member State addressed shall, on application by the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.*

¹ The Member States will be asked to provide the relevant information under Article 86.

SUBSECTION 3

(...) REFUSAL OF RECOGNITION AND ENFORCEMENT

SUBSECTION 1

Refusal of recognition

Article 45

(deleted)

Article 46

(deleted)

Article 47 (ex Article 33)

(deleted)

Article 48 (ex Article 34)

1. **On application by any interested party, the recognition of a *judgment shall (...) be refused:***
 - (a) if **such** recognition is manifestly contrary to public policy (*ordre public*) in the Member State **addressed**;
 - (b) where **the judgment** was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
 - (c) **if the judgment is irreconcilable with a judgment given (...) between the same parties in the Member State addressed;**

- (d) **if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed;**
 - (e) **if the judgment conflicts with:**
 - (i) **Sections 3, 4 and 5 of Chapter II to the extent that the policyholder, the insured, the injured party, the beneficiary of the insurance contract, the consumer or the employee was the defendant; or**
 - (ii) **Section 6 of Chapter II.**
2. **In its examination of the grounds of jurisdiction referred to in paragraph 1(e), the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.**
3. **Without prejudice to paragraph 1(e), the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in paragraph 1(a) may not be applied to the rules relating to jurisdiction.**
4. **The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.**

~~Article 35~~

- ~~1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.~~
- ~~2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.~~
- ~~3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.~~

Article 49 (ex Article 37)
(deleted)

(...)

~~2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin, by reason of an appeal.~~

~~(...)~~

Article 50 (ex Article 38)

(...)

~~2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.~~

SUBSECTION 2

Refusal of enforcement

Article 50-1

1. The enforcement of a judgment shall, on application by the person against whom enforcement is sought, be refused on one of the grounds listed in Article 48.
- [2. The court in the Member State addressed shall, on application by the person against whom enforcement is sought, refuse the enforcement of the judgment of the court of origin to the extent that the right to enforce the judgment is extinguished by the effect of prescription or statute of limitation under the law of the Member State of origin.]

Article 51 (ex Article 39)

1. The application **for refusal of enforcement** shall be submitted to the court *of the Member State addressed communicated by that Member State to the Commission in accordance with Article 87(d).*

(...)

2. The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.
3. The applicant shall provide the court with a copy of the judgment and, where necessary, a translation and/or transliteration of the judgment.

The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to ask the applicant to provide them. In the latter case, the court may request the other party to provide the documents.

4. The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

(...)

~~2. The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the Member State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem.~~

~~3. The documents referred to in Article 53 shall be attached to the application.~~

Article 52
(deleted)

Article 53 (ex Article 55)
(deleted)

Article 54 (ex Article 41)

The court shall decide on the application for refusal of enforcement without delay.

Article 55 (ex Article 42)
(deleted)

Article 56 (ex Article 43)

1. The decision on the application **for refusal of enforcement (...)** may be appealed against by either party.
2. The appeal is to be lodged with the court *of the Member State* **addressed communicated** *by that Member State to the Commission in accordance with Article 87(e).*

(...)

Article 57 (ex Article 44)

The **decision** given on the appeal may **only** be contested (...) by an **appeal referred to in annex IV** (...) where **communicated** by the Member State concerned to the Commission in accordance with Article 87(f).

Article 58 (ex Article 45)

(deleted)

Article 59 (ex Article 46)

1. The court to which **an application for refusal of enforcement is submitted or the court** which **hears** an appeal lodged under Article 56 or Article 57 **may** (...) stay the proceedings if **an ordinary appeal has been lodged against the judgment** (...) in the Member State of origin **or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.**
2. **Where the judgment was given in Cyprus, Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.**

(...)

Article 60 (ex Article 47)

(deleted)

Article 61 (ex Article 48)

(deleted)

Article 62 (ex Article 50)
(deleted)

Article 63 (ex Article 52)
(deleted)

SECTION 4

COMMON PROVISIONS

Article 64

Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State **addressed**.

Article 64-1

The court of origin shall, at the request of any interested party, issue the certificate using the form established in accordance with the advisory procedure referred to in Article 88-3(3).

Article 65

(deleted)

Article 66

1. *If a judgment contains a measure or an order which is not known¹ in the law of the Member State addressed, a (...) court in that Member State shall, to the extent possible, adapt the measure or order to one known in its own law which has equivalent effects attached to it and pursues similar aims and interests.*

The adaptation shall not lead to effects going beyond those provided for in the law of the Member State of origin.

2. **Any party may challenge the adaptation of the measure before a court.**
3. **If the court deems it necessary, it shall require the applicant to provide a translation and/or a transliteration of the judgment.**

Article 67 (ex Article 49)

A **foreign** judgment given in a Member State which orders a **periodic** payment by way of a penalty shall be enforceable in the Member State (...) **addressed only if** the amount of the payment (...) has (...) been finally determined by the court (...) of origin.

Article 68 (ex Article 51)

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the *Member State addressed*.

¹ **A recital could clarify that if a court has decided how to adapt a given measure or order, that measure or order should no longer be considered unknown in the law of the Member State where the measure or order has to be adapted.**

Article 69

1. *When a translation **and**/or a transliteration is required under this Regulation, such transliteration **and**/or translation shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where a (...) judgment **given in another Member State** is invoked or an application is made, in accordance with the law of that Member State.*
2. *For the purposes of the forms referred to in Articles 39, **42, 64-1 and 71-1**, translations **and**/or transliterations may also be into any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept.*
3. *Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.*

CHAPTER IV

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 70 (ex Article 57)

1. (...)An authentic instrument *which* is enforceable in one Member State shall (...) be (...) *enforced in the other Member States (...) in accordance with Section 2 of Chapter III. (...) Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (ordre public) of the Member State addressed.*
2. (ex 3.) The **authentic** instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin. (...)
3. (ex 4.) (...) **Subsection 2 of Section 3 and Section 4 of Chapter III, respectively,** shall apply as appropriate. (...)

Article 71 (ex Article 58)

A court settlement which (...) is enforceable in the Member State of origin shall be (...) enforced in the other Member States under the same conditions as authentic instruments. (...)

Article 71-1

The competent authority of the Member State of origin shall issue, at the request of any interested party, the certificate in the form established in accordance with the advisory procedure referred to in Article 88-3(3) containing a summary of the enforceable obligation contained in the authentic instrument or of the agreement between the parties contained in the court settlement.

CHAPTER V

GENERAL PROVISIONS

Article 72

No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.

Article 73 (ex Article 59)

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.
2. If a party is not domiciled in the 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

Article 74 (ex Article 60)

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:
 - (a) statutory seat, or
 - (b) central administration, or
 - (c) principal place of business.
2. For the purposes of **Cyprus, Ireland and** the United Kingdom ‘statutory seat’ means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.
3. In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 75 (ex Article 61)

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Member State who are being prosecuted in the criminal courts of another Member State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Member States.

~~*Article 63*~~

~~1. A person domiciled in the territory of the Grand Duchy of Luxembourg and sued in the court of another Member State pursuant to Article 5(1) may refuse to submit to the jurisdiction of that court if the final place of delivery of the goods or provision of the services is in Luxembourg.~~

~~2. Where, under paragraph 1, the final place of delivery of the goods or provision of the services is in Luxembourg, any agreement conferring jurisdiction must, in order to be valid, be accepted in writing or evidenced in writing within the meaning of Article 23(1)(a).~~

~~3. The provisions of this Article shall not apply to contracts for the provision of financial services.~~

~~4. The provisions of this Article shall apply for a period of six years from entry into force of this Regulation.~~

~~*Article 64*~~

~~1. In proceedings involving a dispute between the master and a member of the crew of a seagoing ship registered in Greece or in Portugal, concerning remuneration or other conditions of service, a court in a Member State shall establish whether the diplomatic or consular officer responsible for the ship has been notified of the dispute. It may act as soon as that officer has been notified.~~

~~2. The provisions of this Article shall apply for a period of six years from entry into force of this Regulation.~~

Article 76 (ex Article 65)

1. The jurisdiction specified in Article 6(2) and Article 11 in actions on a warranty *or* guarantee or in any other third **person** proceedings may ~~not~~ be resorted to ~~Germany, Austria and Hungary~~ *in the Member States referred to in* **the list established by the Commission in accordance with point (b) of Article 88(1)** only in so far as permitted under national law. A person **domiciled in another Member State** may be **invited to join the proceedings before the courts** *of those Member States pursuant to the rules on third person notice referred to in the aforementioned list, without prejudice to Articles 22 and 23* ~~[and Chapter II, sections 3, 4 and 5, when the policyholder, the insured, the injured party, a beneficiary of the insurance contract, the consumer or the employee is joined in the proceedings as third party].~~

~~[The court having jurisdiction pursuant to this Article shall decide on the admissibility of the third-party notice. If the national procedural law of the Member State whose courts have jurisdiction pursuant to this paragraph requires a decision on the admissibility of the third person notice, the courts of that Member State shall decide on that admissibility.]~~
2. Judgments given in other Member States by virtue of Article 6(2) or Article 11 shall be recognised and enforced **in accordance with Chapter III** in ~~Germany, Austria and Hungary~~ *the Member States referred to in* **the list established by the Commission in accordance with Article 88 (...)**. Any effects which judgments given in **those Member States** may have on third **persons** by application of (...) paragraph 1 shall also be recognised in the other Member States **[only if such effects have been finally determined [by the court of] [in] the Member State of origin].**

CHAPTER VI

TRANSITIONAL PROVISIONS

Article 77 (ex Article 66)

1. This Regulation shall apply only to legal proceedings instituted, (...) to documents formally drawn up or registered as authentic instruments **and to court settlements approved or concluded on or after** the date of (...) application thereof.

~~2. However, if the proceedings in the Member State of origin were instituted before the entry into force of this Regulation, judgments given after that date shall be recognised and enforced in accordance with Chapter III,~~

~~(a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels or the Lugano Convention both in the Member State of origin and in the Member State addressed;~~

~~(b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.~~

2. Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to documents formally drawn up or registered as authentic instruments and to court settlements approved or concluded before the date of application of this Regulation and which fall within the scope of that Regulation.

CHAPTER VII

RELATIONS WITH OTHER INSTRUMENTS

Article 78 (ex Article 67)

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in (...) instruments *of the Union* or in national legislation harmonised pursuant to such instruments.

Article 78-1 (Commission proposal Article 92(2))

*This Regulation shall **not affect the application of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.***

Article 79 (ex Article 68)

1. This Regulation shall, as between the Member States, supersede the Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the Treaty.
2. In so far as this Regulation replaces the provisions of the Brussels Convention between the Member States, any reference to **that** Convention shall be understood as a reference to this Regulation.

Article 80 (ex Article 69)

Subject to *Articles 81 and 82*, this Regulation shall, as between the Member States, supersede the ~~following conventions and treaty concluded between two or more of them~~ that cover the same matters as those to which this Regulation applies. In particular, the conventions mentioned in **the list established by the Commission in accordance with point (c) of Article 88(1)** shall be superseded.

Article 81 (ex Article 70)

1. The (...) conventions referred to in Article 80 shall continue to have effect in relation to matters to which this Regulation does not apply.
2. They shall continue to have effect in respect of judgments given, **of (...) authentic instruments established and of court settlements approved or concluded** before ~~the entry into force of this Regulation~~ **the date of entry into force of Regulation (EC) No 44/2001**.

Article 82 (ex Article 71)

1. This Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.
2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:
 - (a) this Regulation shall not prevent a court of a Member State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 28 of this Regulation;

- (b) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation **on (...)** recognition and enforcement of judgments may be applied.

Article 83 (ex Article 72)

This Regulation shall not affect agreements by which Member States (...), prior to the entry into force of (...) Regulation (EC) No 44/2001, **undertook** pursuant to Article 59 of the Brussels Convention not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

Article 84

1. *This Regulation shall not affect the application of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, done at Lugano on 30 October 2007.*

Option 1

2. **This Regulation shall not affect the application of the Convention on the recognition and enforcement of foreign arbitral awards done at New York on 10 June 1958.**

Option 2

2. **(deleted)¹**
3. **This Regulation shall not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 and which concern matters governed by this Regulation.²**

¹ See the footnote to Article 29(4) option 2.

² A recital shall explain that this is without prejudice to the obligations of the Member States under Article 351 of the Treaty.

CHAPTER VIII

FINAL PROVISIONS

Article 85

(deleted)

Article 73

~~No later than five years after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.~~

Article 86

*The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC^I (...), with a view to making **the information** available to the public, a description of national rules and procedures concerning enforcement, including authorities competent for enforcement, information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods.*

The Member States shall keep this information permanently updated.

^I OJ L 174, 27.6.2001, p. 25.

Article 87

By [...] ¹, the Member States shall communicate to the Commission

(a) (...)

(b) (...)

(c) (...)

(d) the courts to which the application for **refusal of enforcement** is to be submitted pursuant to Article 51 (1);

(e) the courts with which an appeal against the decision on the application for **refusal of enforcement** is to be lodged pursuant to Article 56 (2);

(f) the courts with which a further appeal is to be lodged pursuant to Article 57;

(g) the languages accepted for translations of the forms as referred to in Article 69.

The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC.

¹ 12 months before the date of application of the Regulation.

Article 88 (ex Article 74)

1. The Member States shall notify the Commission of:
 - (a) the rules of jurisdiction referred to in Articles 4(2) and 4a(2),
 - (b) the rules on third party notice referred to in Article 76, and
 - (c) the conventions referred to in Article 80.
2. The Commission shall, on the basis of the notifications by the Member States, establish the corresponding lists.
3. The Member States shall notify the Commission of any subsequent changes to those lists. The Commission shall amend the lists accordingly.
4. The Commission shall publish the lists and any subsequent amendments in the *Official Journal of the European Union*.
5. The Commission shall make all information notified in accordance with paragraphs 1 and 3 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters.

~~2. The updating or technical adjustments of the forms, specimens of which appear in Annexes V and VI, shall be adopted by the Commission. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 75(2).~~

Article 88-1

The Commission shall adopt implementing acts establishing a list of the authorities covered by the term "court" referred to in Article 2(2) and, at the request of the Member State by which the authority concerned is established, subsequently amend the list. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 88-3(2).

Article 88-2

The Commission shall adopt implementing acts establishing and subsequently amending the certificates and forms referred to in point (b) of Article 39(1), point (b) of Article 42(1), point (b) of Article 42(2), Article 64-1 and Article 71-1 . Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88-3(3).

Article 88-3 (ex Article 75)

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 89

(Deleted)

Article 90

(Deleted)

Article 91

(Deleted)

~~*Article 75 (deleted)*~~

Article 92

1. *This Regulation shall repeal Regulation (EC) No 44/2001. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex I.*

2. (moved to Article 78-1)

Article 93 (ex Article 76)

This Regulation shall enter into force on *the twentieth day following that of its publication in the Official Journal of the European Union.*

It shall apply from [...] ¹, with the exception of Articles 87, 88, 88-1, 88-2 and 88-3, which shall apply from [...] ².

This Regulation *shall be* binding in its entirety and directly applicable in **the** Member States **in accordance with the Treaties** ~~Treaty establishing the European Community~~.

Done at [...]

For the European Parliament
The President

For the Council
The President

¹ **24 months after the entry into force of the Regulation.**

² **12 months before the date of application of the Regulation.**