



# HANDBOOK

English for Judicial Cooperation  
in Civil Matters



With financial support from the Justice Programme of the European Union  
Avec le soutien financier du Programme Justice de l'Union européenne





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## Foreword of the EJTN's Secretary General

Mastering a foreign language and its legal terminology is important and should form part of the continuous training of legal practitioners. It is a precondition to effective contacts across Member States, which are in turn the cornerstone for judicial cooperation. It is essential that all stakeholders pay attention to training on legal terminology of foreign languages.\*

The European Judicial Training Network (EJTN) devotes special attention to designing and implementing linguistic training activities for members of the judiciaries of EU Member States. EU judges and prosecutors benefit from EJTN's high quality training programmes, which are supported by the European Commission.

EJTN courses aim at developing participants' legal and linguistics skills by combining legal knowledge and English and French language exercises in a practical and dynamic way. This offering includes highly acclaimed linguistic trainings on the vocabulary of judicial cooperation in criminal/civil matters, human rights, family law, competition law and cybercrime.

This Handbook is a 2<sup>nd</sup> edition of compilation of the most relevant training materials used in EJTN's judicial cooperation in civil matters linguistic courses. It is addressed not only to participants, but also to all European judges and public prosecutors interested in developing their linguistic skills. Definitions, exercises and examinations of real cases make the Handbook an invaluable, hands-on resource for any judge, prosecutor or trainer involved in linguistics endeavours.

On behalf of EJTN, I would like to express my sincere gratefulness to the authors of the texts and exercises in the Handbook for their dedicated work as well as to EJTN Project Coordinator, Mrs Carmen Domuta, for her excellent accomplishments in executing the EJTN linguistics activities.

Enjoy using this Handbook!

**Wojciech Postulski**  
EJTN Secretary General

\* European Commission – Communication of 13 September 2011 on Building trust in EU-Wide Justice, A new dimension to European judicial training (COM (2011) 551)

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# UNIT 1

## LEGAL ENGLISH AND EU LEGAL ENGLISH

### INTRODUCTION: WHAT IS LEGAL ENGLISH?<sup>1</sup>

In this chapter, we shall give a brief description of the distinctive features of Legal English, which can be divided into two categories: those having to do with legal vocabulary, and those having to do with syntax.

#### A. Legal vocabulary

Legal vocabulary may be classified into three types:

- a) technical terminology, i.e. words specifically belonging to legal contexts (“distrain”, “litigation”, “indemnity”, “condonation”, “alimony”, “collusion”);
- b) terms whose meaning in legal contexts differs from the one they possess in general language, also called “subtechnical” or “semitechnical terms” (e.g. “action” meaning “suit” or “proceedings”, “service” meaning “notification”, “hand” meaning “signature”, etc.
- c) general terms that are used in legal contexts, such as “theft”, “witness”, “judge”, etc. Some of the technical words and/or expressions come from other languages, either in their original form or adapted into English pronunciation, spelling or structure. These can be Latinisms, either in their original form (*prima facie*, *bona fide*), adapted into English (“abscond”, “insolvent”) or direct translations from Latin expressions (e.g. “law merchant”, from *lex mercatoria*), “last will” (*ultima voluntas*), “burden of proof” (*onus probandi*). Also, there are words of French origin, some of which have been imported directly, such as “fait accompli”, “force majeure”, etc., whereas others have been translated directly, such as “under pain of” (*sous peine de*), or “plead guilty” (*plaider coupable*), and yet others have been adapted (such as “salvage”, “towage”, “anchorage” or “demurrage”).

In general, the vocabulary of Legal English is characterized by a great degree of formality. This is partly brought about by a high frequency of terms of Greek or Latin origin, but also by some specific features, namely:

- a) archaisms and formal expressions: “whilst”, “showeth”, “witnesseth”, etc.;
- b) complex prepositions: “by virtue of” (instead of “by”), “in the event of” (instead of “if”), “in pursuance of” (instead of “under” or “according to”), “having regard to” (instead of “considering”) etc.;

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<sup>1</sup> The *Legal English* section of the Introduction has been prepared by Eva Samaniego Fernández and Miguel Ángel Campos Pardillos (pp. 7-9). The *EU Legal English* section of the Introduction has been prepared by Isabel Alice Walbaum Robinson (pp. 9-12).



- c) binomial or multinomial expressions, i.e. combinations of two or more elements with a similar meaning, such as “act or omission”, “advice and consent”, “under or in accordance with”, “rest, residue and remainder” or “give, devise and bequeath”;
- d) compound prepositions and adverbs, such as “herein” (meaning “in this document” or “mentioned here”), “hereby” (“by this document”) or “thereafter” (“after that, in the future”);
- e) choice of words pertaining to a higher register, e.g. “append” (instead of “attach”), “deem” (“consider”), “expedite” (“hasten”) or “initiate/commence” (“begin, start”);
- f) nominalization, i.e. the use of nouns instead of verbs, sometimes through the conversion of verbs into nouns (“to study – “make a study”) or through derivation (by adding suffix like “-ism”, “-tion”, “-ure”, amongst others);
- g) post-modification, which is a result of nominalization, whereby a number of elements follow the noun for greater accuracy or in order to avoid ambiguity, as in “on the payment to the Owner of the total amount of any installments then remaining unpaid of the rent hereinbefore reserved and agreed to be paid and the further sum of ten shillings (...)”.

## B. Legal syntax

There are also some specific features characterizing English syntax and sentence structure, which include the following:

- a) lexical repetition as a reference mechanism; instead of “it” or “this” or any other pronoun, legal English prefers to use specific words like “the aforesaid” or “the aforementioned”, or simply to repeat words, e.g. “The SEC has reinforced the insider trading restrictions with promulgation of Rule 14e-3 of the SEC, an independent provision prohibiting insider trading in connection with tender offers. Congress has further reinforced these trading restrictions by providing the SEC with the power to seek a treble penalty under the Insider Trading Sanctions Act of 1984 (ITSA). This legislation empowers the SEC to base enforcement actions on any recognized theory of insider trading restriction”;
- b) long and complex sentences, with multiple levels of subordination which are very seldom found in general English: “It will be your duty, when the case is submitted to you, to determine from the evidence admitted for your consideration, applying thereto the rules of law contained in the instructions given by the court, whether or not the defendant is guilty of the offense as charged”);
- c) frequent use of the passive, in order to emphasize the result of actions rather than the agents (e.g. “The case was clear authority for the proposition that regard must be had to the particular circumstances in which the rent payments were made”);
- d) use of connectors like “whereas”, “provided that”, “where” (e.g. “Where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences, (...)”);
- e) omission of the relative pronoun and the appropriate form of the verb “to be” (“all the rights and remedies [which are] available to a secured party”);
- f) a tendency to avoid the negative particle “not”, e.g. through the use of “never”, “unless”, “except”, “fail to” or negative prefixes, such as “un-”;
- g) use of prepositions which are separated from their complements, as in “tracing and identification of proceeds from, or other property related to, crime” or “illicit manufacturing of and trafficking in firearms”;

- h) use of the subjunctive, which is very seldom used in everyday language except for some fixed expressions. In legal English, the subjunctive is used after verbs like “ask”, “advise”, “command”, or “recommend” (e.g. “Even though someone may be eligible for an informal hearing, we will recommend that he attend a formal hearing.”), after adjectives like “important”, “essential”, “advisable” or “crucial” (e.g. “But even though he is no model of courtroom decorum, it is crucial that he be granted the opportunity to present his positions to the court”), after some nouns (“There is also the recommendation that the Council meet every week” or “There is the necessity that funding be found urgently”);
- i) use of conditional sentences with inversion, as in “Each Party may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically” or “The Court approached the EU law claim on the basis that EU Treaty principles would provide a basis for the claim as long as the contract was one which would have been subject to one or other Directive had it not been a concession”.

## WHAT IS EU LEGAL ENGLISH?<sup>2</sup>

In this section, we shall give a brief description of the distinctive features of EU Legal English (also referred to as EU Law English), by examining the vocabulary and syntax of the *acquis communautaire*.

### A. Legal vocabulary

EU Law vocabulary may be classified into three distinct types:

- a) *single, binomial and multi-word phrases* used in EU primary and secondary legislation, many of which are specifically defined: “appellate”, “applicant”, “authentic instrument”, “court of origin”, “free movement of persons/judgments/data”, “holder of parental responsibility”, “immovable property”, “maintenance obligations/recovery”, “Member State addressed/of enforcement/of origin”, “mutual trust”, “recognition and enforcement”, “recovery”, “rights of access”, “rights of custody”, “service”, “wrongful removal or retention”;
- b) *semi-technical terms* or words whose denotation in legal contexts are different from the meanings conveyed in general purpose language, such as: “accession” meaning “entering/joining the EU as Member State”, “access” meaning “right to take a minor to a location other than his/her habitual residence for a limited time period”, “actor” meaning “party”, “creditor” meaning “an individual to whom maintenance is owed or supposedly owed”, “debtor” meaning “an individual that owes or supposedly owes maintenance”, “decision” meaning “decree, order, judgment or writ” in relation to a specific subject matter, “default of appearance” meaning “procedural term to refer to lack of appearance in court”, “enhanced cooperation” meaning “procedure by which Member States (minimum nine) can work together in specific areas of EU law (e.g. divorce, legal separation) without other EU country involvement, for the purpose of efficiency and expeditious performance”, “participating Member State” meaning “a Member State that is party to enhanced cooperation”, “service” meaning “document transmission or notification”;
- c) *shared legal terminology* by both Legal English and EU law English such as “act”, “abduction” (usually in reference to child abduction), “admissibility”, “agreement”, “alimony”, “bankruptcy”, “beneficiary”, “burden of proof”, “claim”, “claimant”, “consent”, “defendant”, “defamation”, “delict”, “enforce”, “indemnity”, “insolvency”, “instalments”, “judge”, “legal aid”, “liquidator”, “parental responsibility”, “pension”, “tort”, “winding up”.

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<sup>2</sup> This EU Legal English section of Unit 1 - Introduction has been written by Linguistics Expert Isabel Alice Walbaum Robinson.

EU legal English also includes technical words and/or expressions from other languages. These can be direct borrowings in their original form and denotation or adaptations into EU law English with changes in pronunciation, spelling or form. Examples include:

- a) *Latin-based terms in their original form* such as, “*acta jure imperii*” meaning “temporary orders issued by a court based on one actor’s request without hearing the other side”, “*ad litem*” meaning “temporary appointment for the duration of an action”, “*forum conveniens*” meaning “the most appropriate court for the resolution of a dispute”, “*forum necessitatis*” meaning “rule which ensures that where no court of a Member State has jurisdiction, the courts of a Member State may exceptionally hear the case if proceedings cannot reasonably be brought in a third State with which the dispute is closely connected”, “*lex loci delicti commissi*” meaning “the locus or place where a tort, offence or injury has been committed”, “*lis pendens*” meaning “pending suit or notice of pending suit, where any other court other than the court first seised shall stay the proceedings until jurisdiction of the first court is established”, “*mutatis mutandi*” meaning “change where change is needed”, “*negotiorum gestio*” or “carrying out business on behalf of another”);
- b) *integrated Latin origin terms with different meaning* as in: “*institute*” meaning “established law” (Latin “*institutus*”, “to set up”); “*acquiesce*” meaning to consent or comply passively, without protesting” (Latin “*acquiescere*”, “to rest/to remain quiet”);
- c) *integrated into English from other languages*. From Old, Middle or Anglo-French: “*allege*” meaning “to affirm” or “to assert”; “*apprise*” meaning “to inform”, “to notify” (French “*apprendre*”; Old French “*aprendre*”, “to learn”); “*arrear*” meaning “to be behind in the fulfilment of an obligation” (French “*arriere*” “behind”, “backward”); “*durable*” meaning “permanent”, “lasting”; “*injury*” meaning “violation of a person’s rights” (Anglo-French “*injurie*”, “wrongful action”); “*tort*” meaning “damage or wrongful act carried out negligently” (Old French: “*tort*”, “fault”); “*warrant*” meaning “to safeguard”, “to protect” (Old French “*garantir*”, from Germanic “*waren*”, “to protect”, “to warn”);
- d) *borrowed directly from French*: “*acquis communautaire*” meaning “body of European Union law”, “*force majeure*” meaning “exceptional event/situation”, “*renvoi*” meaning “to send back”. Borrowed from Old Norse: “*ombudsman*” meaning “person who investigates violations of citizens’ rights regarding the public sector”.

For the most part, the vocabulary of EU law English compared to Legal English is characterized by a slightly reduced level of formality. This is partly due to the restricted use of borrowings from Latin and the mindful selection of words of those who, in a multi-cultural, multi-lingual contexts such as the EU, have the remit of drafting and translating legislative products (primary law: treaties; secondary law: recommendations, decisions, directives) from 3 working languages (English, French, German) into 24 EU ‘official’ languages, 6 ‘semi-official’ languages (Catalan, Galician, Basque, Scottish Gaelic, Welsh), and, where necessary, into 7 ‘main EU immigrant’ languages(s) (Arabic, Berber, Chinese, Hindustani, Russian, Turkish, Urdu).

As a discipline-based technical language, EU law English vocabulary shares linguistic conventions of Legal English, often with its own peculiar choice of vocabulary, such as:

- a) *formal, age-worn expressions* that have resisted change: “by way of derogation from”, “subject to the provisions of”, “where necessary and in so far as possible”, “nothing in this Title shall preclude”, “the competent administrative authorities within the meaning of”, “no reservations may be entered in respect of this Convention”;
- b) *formulaic* conventions that signal the different ‘structural’ components of EU acts: “whereas” used to introduce the Preamble section; citations used in the introductory section of EU legal documents, to indicate the legal grounds for the act, such as: “Having regard to”, “Acting in consideration of”; to indicate the closing or enacting formula: “Has/Have adopted this Regulation/Directive/Decision”; to indicate the final article stating the specific time of entry into force: “It shall apply from [...]”; and finally, to indicate its scope and legal grounds: “This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties”;
- c) *higher register word replacement*, e.g. “alien” (instead of “foreign”), “arrears” (“balance due”), “commence” (“start”), “convene” (“gather”), “foster” (“promote”), “jurisdiction” (“competence”), “removal” of liberty (“deprivation”), “seise” (“court where proceedings are brought”), “surrender” (“turn in”), “writ” (“legal document or instrument”);
- d) *nominalization*, i.e. the process of word formation by way of conversion from verb to noun: (i.) with no change of form: “to remedy” and “remedy”, “to table” and “a table”; “to stay” as in, “to stay the proceedings” and “a stay” as in, “a stay necessary for the proper administration of justice”, (ii.) with change of form, i.e., by derivation, e.g., adding a suffix such as “-ability” to a verb (“to enforce” and “enforceability”), “-ance”, (“to order” and “ordinance”), “-ion” (“to access” and “accession”), “ment” (“to employ” and “employment”), “-ure” (“to proceed” and “procedure”), “-y” (“to jeopardize” and “jeopardy”), (“to warrant” and “warranty”);
- e) *multiword* prepositional phrases: “pursuant to” (“under”), “in consideration of” (“considering”), “without prejudice to” (“without changing”), “in accordance with” (“according to”), “with the purpose of” (with to + infinitive): “to convey”; (with for + gerund): “for conveying”;
- f) *here-/there-adverbs*. For stylistic purposes, the full array of English here-adverbs is less frequently used in EU acts with, however, a few exceptions such as the use of “hereinafter” and the multiword expression “hereinafter referred to as” meaning “from this point in the text forward”; the full array of English there-adverbs is also less frequent compared to Legal English, with the exception of: “thereafter” used in expressions such as “By 31 December 2015, and every 5 years thereafter” meaning “from that point on”; “therefore” as in, “This Regulation should therefore provide”, meaning “for this reason”; “therein” as in, “including any right indicated therein” meaning “somewhere in the document cited”; “thereof” as in, “An appeal against the declaration [...] is to be lodged within one month of service thereof” meaning “from the time of the cited item”; and, “thereto” as in, “This Regulation shall not preclude the application of the Convention of 23 March 1962 between [...] on the recovery of maintenance by the Member States which are party thereto” meaning “actors or parties included”.

## B. Legal syntax

Some specific features characterizing EU law English syntax and sentence structure, are:

- a) *complex sentences containing subordination and embedding*, often in EU law Recitals such as the 84-word (numbers excluded) example below: "In the interest of consistency of Union legislation, the definition of 'contracting authorities' in Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination procedures for the award of public works contracts, public supply contracts and public services contracts should apply for the purposes of this Directive";
- b) *use of connectives to link sentences* including the three central ones, "and", "but", "or" as well as "according to", "as regards", "as against", "for the purposes of", "in accordance with", "in consideration of", "pursuant to", "subject to", "where", "where by virtue of", "within the meaning of", "without prejudice to" as in: "Without prejudice to the obligations of the participating Member States [...] this Regulation shall not affect the application of international conventions to which one or more participating Member States are party [...]";
- c) *verb tenses* such as the *present simple*, *present perfect*, *present continuous* and *past simple*. The present simple is used for events occurring "now, regularly": "The Directive combats late payment in commercial transactions to insure the proper functioning of the internal market." The present perfect is used to express past events "with results in the present", as in this present perfect passive: "The document in matters relating to maintenance obligations has been registered as an authentic instrument"; or events "started in the past with effect up to the present" as in: "The person refuses the recognition or enforcement on the ground that he has not had the opportunity to arrange for his defence." The present continuous is used to express an event happening "now, in this moment" as in: "The person is claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised"; if the action is finished, the past simple is used: "That report included an evaluation of the possible need for a further extension of the rules on jurisdiction to defendants not domiciled in a Member State";
- d) *use of the passive form of the verb* to highlight the result of an action rather than the agent(s) (e.g. "Rules on material and formal validity should be defined so that the informed choice of the spouses is facilitated and that their consent is respected"); or a combination of passive forms (modal verb + be + past participle) combined with (to-infinitive be + past participle) (e.g. "This Regulation should apply irrespective of the nature of the court or tribunal seised. Where applicable, a court should be deemed to be seised in accordance with Regulation (EC) No 2201/2003");
- e) *auxiliary/main verb separation*. Frequent in legal English documents, but used with reserve in EU and international legal instruments with a wide, multicultural, multilingual readership. Example: "Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be recognised";
- f) *verbs of enacting*. These are of two types: (i.) verbs used in EU primary and secondary legislation to denote "obligation" or "command" (e.g., modal verb *shall* for "positive command"; *shall not*

for “negative command”). Examples: positive command: “If the law applied to legal separation does not provide for the conversion of legal separation into divorce, Article 8 shall apply, unless the parties have agreed otherwise [...]”; negative command: “This Regulation shall not affect the application of the 1958 New York Convention”; (ii.) verbs used for ‘defining’ and ‘creating’ or ‘developing’: “For the purposes of this Directive: ‘undertaking’ means any organization, other than public authority, acting in the course of its independent economic or professional activity”; and, “To guarantee access to good-quality information, the Commission regularly updates the Internet-based public information system set up by Council Decision 2001/470/EC”;

- g) *use of collective noun + singular or plural verb*: singular, if the purpose is to highlight the organization, as in: “The Council has approved the content of the revised texts”; plural, where the purpose is to highlight members within the organization, as in: “The Commission have presented a report on the application of this Regulation”.

## LANGUAGE EXERCISES

### I. Match Latin terms with their definitions in English. Place the term number in the corresponding box.

*lis pendens rule, lex fori, exequatur procedure, ad litem representative, acta jure imperii, ex parte measures, forum necessitates rule, quantum meruit*

1. \_\_\_\_\_: A legal document permitting an officer of the court to execute a judgment within the jurisdiction of the judge who put it below the judgment.
2. \_\_\_\_\_: Person appointed to act for a party during the course of legal proceedings.
3. \_\_\_\_\_: Measure of damages where an express contract is either mutually changed by the implied agreement of the parties or is not completed, in which case a reasonable calculation of services rendered is made.
4. \_\_\_\_\_: Acts by right of dominion commonly used in conflict of laws. It regards issues of liability of a state for acts and omissions in the exercise of State authority.
5. \_\_\_\_\_: In the context of provisional measures, it means temporary orders issued by the court based on one party's request without hearing from the other side.
6. \_\_\_\_\_: Rule that ensures that where no court of a MS has jurisdiction pursuant to Regulation (EC) 4/2009, the courts of the MS may hear the case if proceedings cannot reasonably be brought or conducted or would be impossible in a third MS with which the dispute is closely connected.
7. \_\_\_\_\_: Term used to refer to the laws of the jurisdiction in which a legal action is brought in case of a conflict of laws.
8. \_\_\_\_\_: Rule that requires that, where proceedings involving the same cause of action and between the same parties are brought in the courts of different MSs, any court other than the Court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.

### II. In the box below you will find some of the most frequently used nouns in the 44/2001 Council Regulation. Match the words with the corresponding definitions. The first one has been provided for you.

*accession, debtor, provision, writ, settlor, winding up, liability, jurisdiction, proceedings, defendant, mutual trust, claimant, recognition, domicile, enforcement, judgment*

1. **accession:** Becoming a member (e.g., of the EU) by formally subscribing to its treaties and instruments.
2. \_\_\_\_\_: Order issued by a court or tribunal in written form.
3. \_\_\_\_\_: One that makes a property or financial settlement on behalf of someone else.
4. \_\_\_\_\_: Closing the financial aspects of a firm or enterprise.
5. \_\_\_\_\_: A party who responds to a civil action brought against them in a court or tribunal.



6. \_\_\_\_\_: A person or party who initiates a civil action in a court or tribunal.
7. \_\_\_\_\_: Power of a court to hear and decide a case or issue a certain order.
8. \_\_\_\_\_: One who owes something to somebody else.
9. \_\_\_\_\_: An order or decision given by a court or tribunal of a Member State.
10. \_\_\_\_\_: Principle that seeks to ensure free movement of judgments in the EU.
11. \_\_\_\_\_: Legal capacity of a judgment given in a MS to be executed in another MS.
12. \_\_\_\_\_: Acceptance of a judgment in another MS without extra requirements needed.
13. \_\_\_\_\_: A stipulation or qualification such as a clause in a document or agreement.
14. \_\_\_\_\_: Something one is liable for such as an obligation, debt, or responsibility.
15. \_\_\_\_\_: The instituting or conducting of legal action.
16. \_\_\_\_\_: A person's legal residence regardless of whether it may or may not be the place where that person resides at any one time.

**III. Read and complete the sentences using the adjectives below:**

***concurrent, participating, harmonious, sound, immovable,  
legal, internal, competent, compulsory, ancillary, liability,  
consecutive, harmful, maintenance, national***

1. The provisions of this Section may be departed from only by an agreement with a policyholder who is not domiciled in a Member State, except in so far as the insurance is \_\_\_\_\_ or relates to \_\_\_\_\_ property in a Member State.
2. In the interests of the \_\_\_\_\_ administration of justice it is necessary to minimise the possibility of \_\_\_\_\_ proceedings.
3. The application shall be submitted to the court or \_\_\_\_\_ authority indicated in the list in Annex II.
4. Certain differences between \_\_\_\_\_ rules governing jurisdiction and recognition of judgments hamper the \_\_\_\_\_ operation of the \_\_\_\_\_ market.
5. In respect of \_\_\_\_\_ insurance, the insurer may in addition be sued in the courts for the place where the \_\_\_\_\_ event occurred.
6. In proceedings which have as their object tenancies of property concluded for temporary private use for a maximum period of six \_\_\_\_\_ months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction.
7. Preliminary questions such as \_\_\_\_\_ capacity, \_\_\_\_\_ obligations or any other \_\_\_\_\_ measures should be determined by the conflict-of-laws rules applicable in the \_\_\_\_\_ Member State concerned.



**IV. Use the verbs below to complete the sentences. Change the form of the verb if necessary.**

***oblige, arbitrate, evict, adjourn, rescind, settle***

1. The new landlady started proceedings to \_\_\_\_\_ all her tenants.
2. The management and the unions were unable to \_\_\_\_\_ the dispute.
3. It was necessary for the parties to request a tribunal to \_\_\_\_\_.
4. The contract \_\_\_\_\_ the company to purchase a minimum amount of goods each year.
5. The committee will have to \_\_\_\_\_ its initial decision to rent their premises.
6. The tribunal will \_\_\_\_\_ until tomorrow morning at 9:00.

**V. Complete the sentences with the EU verbs below. Change the form of the verb where needed**

***block, seise, raise, sign, apply, entail, sue, call, bring, came***

1. The court \_\_\_\_\_ of the patent infringement in each of several jurisdictions may \_\_\_\_\_ high costs for the victims.
2. Defendants in infringement proceedings may \_\_\_\_\_ proceedings. This means to \_\_\_\_\_ the alleged invalidity of the patent as a defence.
3. The EU Small Claims Procedure \_\_\_\_\_ to claims of a value not exceeding €2000.
4. The new Lugano Convention was \_\_\_\_\_ into law in October 2007.
5. A person domiciled in a MS may be \_\_\_\_\_ in another MS in matters relating to a contract.
6. Increasing the mobility of citizens \_\_\_\_\_ for more flexibility.
7. Revenue, customs and administrative matters do not \_\_\_\_\_ within the scope of the regulation.
8. The obligation to \_\_\_\_\_ proceedings in each of several jurisdictions is costly for the victims.

# UNIT 2

## CIVIL JUDICIAL COOPERATION

### INTRODUCTION: JUDICIAL COOPERATION IN CIVIL MATTERS

“Judicial cooperation in civil matters” is the official name for a quickly expanding and developing European Civil Procedure. The notion of European Civil Procedure does not mean that there exists a uniform “European Civil Procedure Act”. Rather, it covers fragmented areas of (international) civil procedure. The main focus still remains on typical cross-border issues: determining (international) jurisdiction, on the one hand, and rules concerning recognition and enforcement of foreign judgments, on the other (for civil and commercial<sup>1</sup> and for family law matters<sup>2</sup>). This is accompanied by the regulation of traditional areas of “international legal assistance”: cross-border service of documents<sup>3</sup> and cross-border taking of evidence<sup>4</sup>. Hence, these are topics which are often considered as a procedural part of international private law. Nevertheless, since the adoption of so-called “second generation regulations” (European Enforcement order for uncontested claims<sup>5</sup>, European order for payment<sup>6</sup>, European small claims procedure<sup>7</sup>) European civil procedure has slowly started to detach itself from the traditional domains of international private law. Certain – though still fragmented – areas of “pure” civil procedure are now subject to regulation at the community level. Another striking feature is a strong emphasis that has since recently been put on the broad and rapidly developing concept of alternative dispute resolution (e.g. mediation in civil and commercial matters<sup>8</sup>, ADR for consumer disputes<sup>9</sup>).

1 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (from January 2015: Regulation (EU) No 1215/2012 – “Brussels I Recast”).

2 Now: Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) No 1347/2000 – “Brussels II Regulation”.

3 Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

4 Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters.

5 Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.  
European Parliament and Council Regulation No 805/2004 of 21 April 2004 creating a European enforcement order for uncontested claims.

6 Regulation No 1896/2006 of the European Parliament and of the Council of 12 December creating a European order for payment procedure.

7 Regulation No 861/2007 of the European Parliament and of the Council of 11 July establishing a European small claims procedure.

8 Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters ;

9 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR); Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

Other areas to which co-operation in civil and commercial matters extends are, for example, cross-border aspects of insolvency proceedings<sup>10</sup>, maintenance obligations<sup>11</sup>, legal aid for foreign litigants<sup>12</sup> and – adopted most recently – cross-border freezing of bank accounts<sup>13</sup> as well as mutual recognition of restraining orders in civil matters.<sup>14</sup> There are other legislative initiatives that are currently discussed on the community level, e.g. concerning transparency of debtors' assets.<sup>15</sup> Another major project (for the time being resulting in the adoption of a Commission's Recommendation) concerns establishing common standards for group actions for collective recovery of mass monetary claims.<sup>16</sup>

Initially judicial cooperation in civil matters took the form of international agreements. The most important instrument of that kind was the Brussels Convention (1968). It is undisputed that the Brussels Convention proved to be a great success in practice. Certainly, the case law of the (then) European Court of Justice (ECJ; since the Lisbon treaty: Court of Justice of the European Union: CJEU), which clarified and interpreted several concepts of the Convention upon requests for preliminary rulings contributed massively to this undisputed success of the "Brussels I Regime". It is a valid conclusion that the case law of the ECJ (CJEU) has formed and still forms an integral and essential part of the European Civil Procedure and that a careful study of this case law is absolutely essential for the proper understanding of European Civil Procedure.

With the Maastricht Treaty (1992), judicial co-operation in civil matters was determined as an area of common interest to the EU Member States (third pillar). The most important step forward followed with the adoption of the Amsterdam Treaty (1999), which (*inter alia*) created the area of freedom, security and justice. The Amsterdam Treaty inserted into the Treaty establishing the European Community a new Title IV containing specific provisions on judicial cooperation in civil matters. Judicial cooperation in civil matters was thereby transferred to the first pillar, which means that it fell within the scope of immediate legislative competence of European Union. In particular, the Amsterdam treaty determined that "measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and in so far as necessary for the proper functioning of the internal market, shall include *inter alia* (a) improving and simplifying the system for cross-border service of judicial and extrajudicial documents, cooperation in the taking of evidence and the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases and (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction..." The European legislature immediately availed itself of the new competencies which it acquired through the Amsterdam treaty. In the following two years (2000-2001), the Brussels I and the (first) Brussels II Regulations were adopted as well as the (first) Service of Documents Regulation and the Taking of evidence regulation.

10 Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (expected to be amended in the near future).

11 Council Regulation (EC) No 4/2009 EU Regulation No 4/2009 of 18 December, 2008 on jurisdiction, applicable law, recognition and decisions and cooperation in matters relating to maintenance obligations ("the Maintenance Regulation").

12 Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

13 Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (OJ L 189 of 27.7.2014).

14 Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ L 181, 29.6.2013).

15 Green Paper - Effective enforcement of judgments in the European Union: the transparency of debtors' assets, /\* COM/2008/0128 final \*/

16 Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law.

The adoption of the “second-generation regulations” (European enforcement order for uncontested claims, European Payment Order, European Small Claims Procedure) amounts to a clear paradigm shift. Not only because for the first time, as has already been mentioned, the European civil procedure actually ventured into more traditional areas of civil procedure. The most important change relates to the question of recognition and enforcement of judgments adopted in one member state in other member states. The Brussels I and II Regulations, while both streamlining the procedure for obtaining a declaration of enforceability as well as considerably restricting grounds for refusal of recognition from other member states still adhered to traditional principles of international civil procedural law. The traditional starting point is that a state is not under an absolute and unavoidable duty to adopt a foreign judgment into its legal order. Rather it can refuse to recognize its effects if certain (however minimal) conditions are not fulfilled. In particular, judgments from the country of origin, in this system, are not directly enforceable in other member states, but are still subject to obtaining of exequatur (declaration of enforceability) in the country of enforcement. On the other hand, the typical feature of the “Second generation Regulations” is the abolition of exequatur. If there is still any control necessary (especially in order to ensure that certain procedural guarantees – “minimum standards” – have been complied with), it is done exclusively in the country of origin (the so-called “certification approach”). The courts in the country of enforcement cannot re-examine whether the “certification” in the country of origin was rendered in compliance with the Regulation. Obviously, in such a system the principle of (required) mutual trust and recognition is set to a much higher level.

The seeds for such development of European civil procedure were planted already in the 1999 *Tampere Programme*. Here it was declared that “In civil matters the European Council calls upon the Commission to make a proposal for further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgement in the requested State” and that “The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. An even clearer language as to the pursued policy of abolition of exequatur was used in the 2001 *Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters*. Here it was stated that “Abolition, pure and simple, of any checks on the foreign judgment by courts in the requested country allows national judgments to move freely throughout the EU”. This should result in a system where “each requested State treats these national judgments as if they had been delivered by one of its own courts”. Thus, as a long term goal the abolition of exequatur was perceived to be the most important step towards the “genuine principle of free movement of judgments”. In the *Hague Programme* (2004) the Commission further stressed the need to continue the implementation of mutual recognition and to extend it to new areas such as family property, successions and wills. In the *Stockholm Programme* (2009) it announced further development, but for the first time – more in a retrospective manner but undoubtedly quite necessary – emphasized the questions of quality control, evaluation, scrutiny and consolidation of what was already achieved.

In pursuing the ultimate goal of creating a genuine area of “free movement of judgments” by abolishing exequatur, the European policymaker opted for a gradual method. The idea was to first abolish exequatur in certain limited areas (as a “pilot project”) where this was perceived to be particularly unproblematic (uncontested claims, small claims). Following this experience it should then be examined whether the same approach could be generally adopted for all judgments in civil and commercial matters (and later perhaps also in family law matters). It should be noted that actually the first abolishment of exequatur can be found already in the Brussels II Regulation, but only limited to two specific types of decisions:

decisions concerning access to child and decisions concerning return of the child in case of child abduction. In regard to the “second-generation regulations” one further distinction should be made between the European Enforcement order for uncontested claims, on the one hand, and the European payment order and European small claims regulations, on the other. The former does not create any rules of “autonomous European procedure”. It merely sets certain standards which a *national* procedure should meet. Thus, in the context of the European Enforcement Order Regulation the court still applies national law. Only subsequently it is checked whether the application of national procedural law (e.g. concerning default judgments and judgments by acknowledgment) met certain standards as required by the Regulation. The situation is different with the European payment order and European small claims procedure. Here, for the first time, the European legislature created an autonomous European procedural regime which the national court must apply from the very start of (payment order or small claims) proceedings – in case the claimant avails himself of this option.

The Treaty on the Functioning of the European Union (TFEU; the *Lisbon Treaty*) of 2007 brought further expansion of the judicial co-operation in civil matters. In Art. 81 it provides that measures relating to matters “... having cross-border implications, based on the principle of mutual recognition”... “ may include the adoption of measures for the approximation of the laws ... particularly when necessary for the proper functioning of the internal market, aimed at ensuring: (a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases; (b) the cross-border service of judicial and extrajudicial documents; (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction; (d) cooperation in the taking of evidence; (e) effective access to justice; (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States; and – emphasizing strongly for the first time – (g) the development of alternative methods of dispute settlement.

By far the most important instrument of cooperation in civil matters in terms of its significance for commercial and legal practice in the EU is the Brussels I Regulation. The Brussels I regime has recently been subject to a long-awaited reform. As of 10 January 2015, it has been repealed and replaced by the Brussels I (recast) Regulation: Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

In its initial proposal, the Commission – in line with the aforementioned trend - recommended abolition of the declaration of enforceability mechanism (exequatur) and in its view that was inevitably linked to abolition of *ordre public* (public policy) control. This proposal was however met with firm opposition by (some) member states – for good reasons probably – and the final “outcome” represents a sort of a compromise. In principle the need for exequatur – in the sense of special procedure for declaration of enforceability in the member state of enforcement – was abolished. However, in a substantive sense the criterion of review (relating foremost to certain minimum standards as well as the public policy) has been retained (but the burden of initiative has been placed on the party opposing recognition who can file a request for a special review in the country of enforcement). Another expression of the Commission’s obvious ambition to extend the scope of community law to the detriment of national laws was the proposal for extending the Regulation’s rules to non-EU domiciled defendants. This proposal as well was faced with opposition and here as well a final outcome represents a sort of a compromise: the extension of the applicability of the Regulation to defendants from the third states was finally adopted only in regard to special protective jurisdictional regime in favour of weaker parties (consumers, employees).

It should be noted that numerous pieces of EU legislation, intended for cross-border cases, can equally serve as a kind of a “model law” for national regulation of purely domestic cases. The EU Mediation directive is one such instrument.<sup>17</sup> The Directive, technically, applies to cross-border cases, but in fact the Commission aspired to achieve a more general approximation of mediation laws of member states, hoping that when transposing the directive, this would not limit the applicability of corresponding legislation to cross-border cases.

It should be noted that important EU instruments which affect civil procedure, perhaps even to a greater extent than the “judicial co-operation in civil matters” can be found in those areas of EU law which are primarily concerned with substantive, not procedural law. Alternative dispute resolution of consumer disputes has already been mentioned. Other such fields are, e.g. EU consumer protection law in regard to unfair contract terms, protection of collective interests (both in the field of consumer law as well as competition law), as well as effective protection of IP rights and private antitrust enforcement.

Even a brief overview of the cooperation in civil and commercial matters would not be complete without mentioning the Charter of the Fundamental Rights of the European Union (“the Charter”). The Charter (which binds institutions and bodies of the Union the Member States when they are implementing Union law) contains provisions which are of immediate importance for European Civil Procedure. In Article 47 it determines that “*everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.*” Furthermore it provides for a right to an effective remedy, a right to legal advice and representation and the right to legal aid available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. The Charter is obviously influenced by the European Convention of Human Rights and in so far as this Charter contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights shall be the same as those laid down by the said Convention. According to the explanatory memorandum, the same applies to the case-law of the European Court for Human Rights. The Charter has already been often applied and referred to in the case law of the CJEU concerning judicial co-operation in civil and commercial matters, e.g. relating to exclusion of legal persons from legal aid<sup>18</sup>, omission of reasons in a judgment by default<sup>19</sup>, fictitious service upon a defendant, whose whereabouts are unknown<sup>20</sup>, mandatory pre-litigation mediation procedure and a right to effective judicial protection<sup>21</sup>, fictitious service and the right to be heard.<sup>22</sup> This is an expression of a “constitutionalization of European Civil Procedure”.

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17 Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters

18 C-279/09, *DEB v Germany*, 22 December 2010.

19 C619/10, *Trade Agency Ltd v Seramico Investments Ltd*, 6 September 2012.

20 C292/10, *De Visser*, 15 March 2012.

21 C-243/09, *Alassini*, 18 March 2010.

22 C325/11, *Alder*, 19 December 2012.

## LANGUAGE EXERCISES

### I. Choose the appropriate term in each case

#### *The judge's role in civil cases*

(Source: <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/jurisdictions/civil-jurisdiction>)

Civil cases involve hearings in open court which the public may attend; hearings in the judge's private room from which the public are excluded; and matters decided by the judge in private but on the basis of the papers alone, without any (1) \_\_\_\_\_ by the parties or their legal representatives.

1.        a) assistances                      b) showings                      c) appearances                      d) attendances

Before (2) \_\_\_\_\_ a civil case the judge reads the relevant case papers and becomes familiar with their details.

2.        a) judging                              b) sentencing                      c) trying                              d) adjourning

The vast majority of civil cases tried in court do not have a jury - libel and slander trials are the main exception - and the judge (3) \_\_\_\_\_ them on his own, deciding them by finding facts, applying the relevant law to them - and there may be considerable argument about what that law actually is - and then giving a (4) \_\_\_\_\_ judgment.

3.        a) audits                                b) hears                                c) audiences                        d) listens

4.        a) reasoned                              b) grounded                        c) justified                              d) motivated

Judges also play an active role in managing civil cases once they have started, helping to ensure they proceed as quickly and efficiently as possible. This includes:

- encouraging parties to co-operate with each other in the conduct of the case;
- helping the parties to (5) \_\_\_\_\_ the case;
- encouraging the parties to use an alternative dispute resolution procedure if appropriate and;
- controlling the progress of the case.

5.        a) agree                                      b) resolve                              c) settle                                      d) accord

Occasionally, the parties will have agreed the relevant facts and it will not be necessary for the judge to hear any live (6) \_\_\_\_\_. The issues may concern the law to be applied or the terms of the judgment to be given. But more often than not, written and live evidence will be given by the parties and their witnesses and the live witnesses may be (7) \_\_\_\_\_.

6.        a) evidences                              b) proofs                              c) proof                                      d) evidence

7.        a) cross-asked                              b) cross-examined                      c) cross-questioned                      d) cross-interrogated



The judge ensures that all parties involved are given the opportunity to have their case presented and considered as fully and fairly as possible. During the case the judge will ask questions on any point he feels requires clarification, or which he feels is relevant. The judge also decides on matters of (8) \_\_\_\_\_ which may arise during a hearing.

8. a) proceedings                      b) procedure                      c) process                      d) course

Once the judge has heard the evidence from all parties involved and any (9) \_\_\_\_\_ they wish to put forward, he delivers his (10) \_\_\_\_\_. This may be immediately, or in complicated cases, it may be given at a later date.

9. a) interventions                      b) comments                      c) submissions                      d) remarks

10. a) judgment                      b) sentence                      c) finding                      d) ruling

Civil judges do have the power to punish parties if, for example, they are in (11) \_\_\_\_\_ of court but, generally, civil cases do not involve the imposition of any punishment on anyone. The (12) \_\_\_\_\_ -the person who has brought the case to court- will have asked for some form of relief against the defendant. This will more often than not be (13) \_\_\_\_\_ to compensate them for the losses they say have suffered as a result of the defendant's actions. Then, if the judge decides that the claimant is (14) \_\_\_\_\_ to damages, he will have to go on to decide the amount. Or the claimant may have asked for an (15) \_\_\_\_\_ -for example, to forbid the defendant from making excessive noise by playing the drums in the flat upstairs in the early hours of the morning, or a declaration -an order specifying the precise boundary between two properties about which the parties had never been able to agree. The task of the judge is to decide on what is the appropriate (16) \_\_\_\_\_, if any, and on the precise terms of it.

11. a) scorn                      b) disdain                      c) despise                      d) contempt

12. a) claimant                      b) complainant                      c) plaintiff                      d) petitioner

13. a) damages                      b) harms                      c) losses                      d) hurts

14. a) liable                      b) entitled                      c) empowered                      d) likely

15. a) mandate                      b) injunction                      c) ruling                      d) admonition

16. a) solution                      b) countermeasure                      c) remedy                      d) sentence

And then, when the judgment in the case has been (17) \_\_\_\_\_ and the result is known, the judge must (18) \_\_\_\_\_ with the cost of the case -like the (19) \_\_\_\_\_ of lawyers (if they have been involved), the court (20) \_\_\_\_\_ paid out by the parties, the (21) \_\_\_\_\_ of (22) \_\_\_\_\_ witnesses, the (23) \_\_\_\_\_ that may be allowed to litigants who have acted in person (without lawyers), and the (24) \_\_\_\_\_ lost and travelling and other expenses incurred by the parties and their witnesses in getting to and from court and in preparing for the case. Whilst the general rule is that the unsuccessful party will have to pay the successful party's (25) \_\_\_\_\_, the judge has a wide (26) \_\_\_\_\_ to depart from this rule. The judge's decision on this part of the case will be highly crucial to the parties. He may decide, for example, that the unsuccessful party should pay only a proportion of the successful party's costs or that each party should (27) \_\_\_\_\_ their own costs.



- |     |                 |                 |                  |               |
|-----|-----------------|-----------------|------------------|---------------|
| 17. | a) read         | b) called       | c) delivered     | d) dictated   |
| 18. | a) deal         | b) treat        | c) allocate      | d) cover      |
| 19. | a) payments     | b) fees         | c) salaries      | d) wages      |
| 20. | a) experienced  | b) expert       | c) expertise     | d) specialist |
| 21. | a) expenditure  | b) coverages    | c) allowances    | d) diets      |
| 22. | a) remuneration | b) returns      | c) stipends      | d) earnings   |
| 23. | a) expenses     | b) costs        | c) rate          | d) charges    |
| 24. | a) discretion   | b) jurisdiction | c) consideration | d) judgment   |
| 25. | a) put up with  | b) support      | c) bear          | d) carry      |

**II. Complete the phrases below by matching the words in the two columns. Then explain what they mean.**

- |              |                |
|--------------|----------------|
| 1. burden of | A. audience    |
| 2. file      | B. question    |
| 3. serve     | C. proof       |
| 4. right of  | D. summons     |
| 5. issue     | E. a writ      |
| 6. writ of   | F. a suit      |
| 7. seek      | G. damages     |
| 8. leading   | H. differences |
| 9. award     | I. a claim     |
| 10. settle   | J. redress     |

**III. Fill in the blanks in the following text using the words and phrases in the list below.**

- A. torts
- B. custody
- C. defendant
- D. evidence
- E. proceedings
- F. wrongful
- G. initiated
- H. rule of law

- I. contract
- J. damages
- K. defamation
- L. repayment
- M. summons
- N. adversary
- O. claimant
- P. govern
- Q. enforced
- R. prescribed
- S. burden of proof
- T. plaintiff
- U. injunction

The role of the civil law and civil (1) ..... is to determine the rights and obligations of individuals themselves, as well as in their relations with others. Civil cases may concern: the determination of rights arising under a (2) ....., the rights regarding property, the obligation of paying damages for (3) ....., like negligence or (4) ....., questions of debt (5) ....., as well as questions of status, such as divorce, adoption and the (6) ..... of children.

In civil proceedings, the person who begins the proceedings is the (7) ....., previously referred to as (8) ....., who brings an action against the (9) ....., Most claims are (10) ..... by the use of a claim form, which functions as a (11) ....., The claimant will be seeking a remedy, usually in the form of (12) ..... (money compensation), but possibly also in the form of an (13) ....., an order whereby a party is required to refrain from doing a (14) ..... act.

It is the claimant who must prove the facts on which the claim is based. This means that the claimant has the (15) ....., In other words, the claimant must satisfy the judge through admissible (16) .....

The English system of civil procedure is based on the (17) ..... principle: a series of statements of facts are put forward by one party to be attacked by the opposing party. The rules of civil procedure which (18) ..... the handling of cases have three main objectives. The first objective is to ensure that the facts on which a claim is based are accurately found, so that the issues between the parties can be identified. The second objective is to ensure that the correct and appropriate (19) ..... is found and applied. The third objective is to ensure that the remedy (20) ..... by that rule of law can adequately be (21) .....

**IV. Complete the table below. Then use the words in sentences of your own.**

| Noun    | Adjective |
|---------|-----------|
| action  |           |
|         | legal     |
| dissent |           |
|         | tortious  |
| equity  |           |
|         | damaged   |
| appeal  |           |

| Noun    | Adjective  |
|---------|------------|
|         | triable    |
| answer  |            |
|         | dissolved  |
| slander |            |
|         | defamatory |
| libel   |            |
|         | liable     |

**V. Now, do the same with the following verbs and verb phrases:**

| Infinitive               | Past Tense | Past Participle |
|--------------------------|------------|-----------------|
| abide by                 |            |                 |
| bind                     |            |                 |
| break (the law)          |            |                 |
| find                     |            |                 |
| hold                     |            |                 |
| override                 |            |                 |
| bring an action against  |            |                 |
| uphold (a decision)      |            |                 |
| take proceedings against |            |                 |
| set forth                |            |                 |
| seek a remedy            |            |                 |
| lose                     |            |                 |
| lend                     |            |                 |
| pay                      |            |                 |

**VI. Complete the table below, then use the words in sentences of your own.**

| Verb     | Noun           |
|----------|----------------|
| infringe |                |
|          | dismissal      |
| dissent  |                |
|          | suspension     |
| sit      |                |
|          | implementation |
| appeal   |                |
|          | deferment      |
| sum up   |                |
|          | enforcement    |

| Verb     | Noun       |
|----------|------------|
| dissolve |            |
|          | regulation |
| try      |            |
|          | claimant   |
| defend   |            |
|          | agreement  |
| settle   |            |
|          | adoption   |
| pay      |            |
|          |            |

**VII. Match the following words and phrases with their corresponding definitions.**

**A. counterclaim form**

**G. strict liability**

**B. witness statement**

**H. claim form**

**C. injunction**

**I. acknowledgement of receipt form**

**D. damages**

**K. disclosure**

**E. tort**

**L. breach of contract**

**F. limitation period**

1. a court order requiring somebody to refrain from committing a specific act.
2. document initiating the proceedings.
3. a civil wrong, consisting in a breach of duty towards other people, entitling the person injured to claim damages in compensation.
4. legal responsibility for damage independent of negligence.
5. document to be filled in by the defendant if they wish to claim against the claimant.
6. failure to carry out what was agreed in the contract.
7. financial compensation for damage or loss as a result of a tort.
8. the process whereby the claimant is required to inform the defendant of documents relevant to the claim which they hold.
9. a certain period limited by statute after which the claimant cannot enforce his/her claims by suit.
10. form used to confirm receipt of the claim.
11. document containing evidence given by someone who saw or heard something relevant to the case.

# UNIT 3

## JURISDICTION, RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

### **INTRODUCTION: REGULATION (EC) NO 1215/2012 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL OF 12 DECEMBER 2012 ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (RECAST)**

Regulation (EC) No 1215/2012 sets rules on jurisdiction on civil and commercial matters as well as on the recognition and enforcement of judgments, authentic instruments and court settlements.

#### **Material scope**

The Regulation covers civil and commercial matters. As far as the concept of civil and commercial matters is concerned, it needs to be said that it is independent of the nature of the court or tribunal, so that it is the topic, not the nature of the court, that needs to be taken into consideration so as to decide on the need to apply the rules set by the Regulation.

When setting the material scope of the Regulation, it excludes some topics that are not civil, but are considered important to clarify as being out of its scope. This is the case (art 1,1) of revenue, customs and administrative matters.

Besides that, the Regulation lists some civil matters that are out of its scope. They are the ones related to (art 1,2): the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage, maintenance obligations arising from a family relationship, parentage, marriage or affinity, wills and succession, bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings, social security and arbitration.

### **Territorial scope**

The Regulation is to be applied in all EU member states including Denmark after its acceptance of the Regulation (Council Decision 2006/325/EC)

### **Entry into force**

The Regulation applies from 10 January 2015 (previously the instruments to apply were the Brussels Convention of 27.09.1968, the Lugano Convention of 16.09.1988 and Regulation 44/2001).

The Regulation is to be applied only to legal proceedings instituted, authentic instruments formally drawn up or registered and court settlements approved or concluded on or after 10 January 2015. For judgments given in legal proceedings instituted, authentic instruments formally drawn up or registered and court settlements approved or concluded before 10 January 2015 Regulation (EC) No 44/2001 is to be applied.

## **JURISDICTION**

The Regulation sets rules on jurisdiction that can overlap, except for the case related to exclusive jurisdiction in which there is no possibility to apply any other rules except those specially foreseen for these matters.

The rules have the following structure:

- Exclusive Jurisdiction

- Prorogation of Jurisdiction

- Special Jurisdiction

- General Jurisdiction

- Related Actions

- Provisional Measures

### **Exclusive jurisdiction**

It covers the following topics (art 24):

Rights in rem in immovable property or tenancies of immovable property: in relation to them jurisdiction lies in the Courts of the Member State in which the property is situated (except tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months in which jurisdiction belongs to the courts of the Member State in which the defendant is domiciled, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State).

Companies or other legal persons or associations: jurisdiction belongs to Courts of the Member State in which the company, legal person or association has its seat.

Validity of entries in public registers: jurisdiction is held by Courts of the Member State in which the register is kept.

Patents, trade marks, designs, or other similar rights: the jurisdiction belongs to the Courts of the Member

State of deposit or registration (except European Patents, on which jurisdiction lies in the Courts of each Member State on patents granted for that State).

Finally, for the enforcement of judgments, jurisdiction corresponds to Courts of the Member State in which the judgment has been or is to be enforced.

### Prorogation of Jurisdiction

This situation (not applicable for topics object of exclusive jurisdiction) implies that the parties can choose the jurisdiction that is to deal with a particular case (arts. 25-26). The Court to be chosen needs to be one of a Member State but there is no need for any of the parties to have a domicile in a Member State. It can be done either through an agreement by the parties or by the appearance of the defendant before the Court that hears the case.

The agreements must be in writing or evidenced in writing, in a form which accords with practices which the parties have established between themselves or 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.

In the case of prorogation of jurisdiction based on the appearance of the defendant before the Court that deals with the case, the appearance must not contest the jurisdiction.

In addition to the general rules on prorogation of jurisdiction, the Regulation includes special additional rules in cases related to insurance, consumer contracts and individual contracts of employment, as in these situations prorogation of jurisdiction can only be accepted if the policyholder, insured, beneficiary of the insurance contract, injured party, consumer or employee is the defendant and is informed by the court of his right to contest the jurisdiction and the consequences of entering or not entering an appearance.

### Special jurisdiction rules

They set special rules on jurisdiction on some topics. They are to be applied in addition to the general jurisdiction rules and the possibility of prorogation of jurisdiction, in such a way that different Courts could deal with a case. In this situation where different Courts that can handle the same or a related case, and to avoid contradictions, the Regulation provides for an answer through the rules on "lis pendens" and related actions (arts. 29-33). It sets rules both for lis pendens and related actions brought before Courts of Member States and also before Courts of third States. The main rule in situations which only involve courts of Member States is that the jurisdiction belongs to the court first seised. When third States are concerned the rule is similar but there is a need for an analysis of the possibility that the Court of that third State gives a judgment capable of recognition and enforcement in the EU.

The special jurisdiction rules cover the following situations (art 7):

Contracts: place of performance of the obligation.

Delict or Quasi-delict: place where the harmful event occurred or may occur.

Damages based on an act giving rise to criminal proceedings: jurisdiction belongs to the Penal Court to the extent that that court has jurisdiction under its own law to entertain civil proceedings.

Branches or agencies: courts of situation of the branch or agency.

Trusts: domicile of the trust.

Salvage of Cargo or Freight: court in which the cargo has been arrested to secure payment or could have been arrested but bail or security has been given.

In addition to the rules mentioned above, additional special jurisdiction rules are set in relation to insurance (arts. 10 to 16), consumer contracts (arts. 17 to 19) and individual contracts of employment (arts. 20 to 23), the basic principle of these additional rules being that of the protection of the policyholder, insured, beneficiary, consumer or employee.

### General Jurisdiction Rules

The general rule on jurisdiction is that of the domicile of the defendant (art 4). In addition to that, a person can also be sued in another member state (besides the special jurisdiction rules, insurance, consumer contracts, individual contracts of employment, exclusive jurisdiction and prorogation of jurisdiction) in the situations indicated in art. 8 that cover:

- in case of plural defendants, the courts of 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;
- if the action is based on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings;
- 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;
- finally 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.

National rules on jurisdiction may apply if the defendant is not domiciled in a Member State except in the situations foreseen by the Regulation that grant jurisdiction to the courts of a Member State even though the defendant has not the domicile in that Member State (art 6).

### Provisional/Protective Measures

As far as provisional/protective measures are concerned (art 35) jurisdiction is held by the court of the Member State that has jurisdiction as to the substance of the matter even though in addition to it, a provisional/protective measure can also be requested from a court of the member state where the measures are to be taken if they are available under the law of that State.

### Examination of jurisdiction

As set in arts. 27-28, and based on the nature of the rules mentioned above, in the case of exclusive jurisdiction, this examination needs to be done by the court of its own motion from the beginning of the procedure.

In the other situations, the court needs to control jurisdiction also on its own motion but in case where a defendant domiciled in one Member State is sued in a court of another Member State, the court needs to see if the defendant enters an appearance (in this case there could be a prorogation of jurisdiction).



In case this does not happen, it needs to control its jurisdiction unless it is derived from the other rules set by the Regulation that can set a jurisdiction different to that of the domicile of the defendant.

## RECOGNITION AND ENFORCEMENT

### Recognition

The Regulation sets the principle of automatic recognition (art. 36) even though it establishes some grounds for non recognition in art. 52 that under no circumstances can open the possibility of revision as to the substance of the decision. They are to be applied in case of request of a decision that there are no grounds for refusal of recognition (art. 36.2), request for refusal of recognition (art. 45) or through an incidental question (art 36.3).

The grounds for non-recognition of a judgment (the concept of judgment is open) are the following:

- if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;
- where it 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;
- if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;
- if it 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.

In addition to the grounds mentioned above, recognition can also be refused because of the lack of respect of the jurisdiction rules set in the Regulation on insurances, consumer contracts and exclusive rules

### Enforcement

In the enforcement of judgments taken on another member state (arts. 39-44), jurisdiction belongs to the courts of the place of enforcement as no court of a EU member state can take enforcement measures out of the country where it sits.

Under Regulation 44/2001 there was a requirement previous to enforcement, which was the declaration of enforceability declared by the court where enforcement is sought. This requirement has disappeared under Regulation 1215/2012.

The enforcement procedure is the one foreseen in the civil procedural rules of the state of enforcement. In addition to them, special rules are set by the Regulation (which as mentioned above are to be applied in addition and in coordination with national enforcement rules). They cover:

- documents of the request for enforcement: They need to include a copy of the judgment and the certificate of annex I of the Regulation.
- immediate and automatic decision on enforcement, with possible decision on partial enforcement if the foreign judgment has been given in respect of several matters and the declaration of enforceability cannot be given for all of them.

- possible application for refusal of enforcement (and further contest) of the decision before the courts that Member States communicate to the Commission (see website European E-Justice: <https://e-justice.europa.eu/home.do>) This needs to be based on the same grounds of opposition to recognition and also under the grounds for refusal or suspension of enforcement under the law of the Member State addressed in so far as they are not incompatible with those set by the Regulation.

In addition to the points mentioned above, the Regulation also includes rules on the suspension of enforcement and protective measures, adaptation of measures included in the judgment and not known in the Member State of enforcement, rules on a periodic payment of penalty, automatic recognition of decisions on legal aid and the lack of requirement of securities, deposits, charges, dues or fees calculated by reference to the value of the matter at issue.

Finally the Regulation also foresees the enforcement of authentic instruments and court settlements (arts. 58-60). In this situation the basis for enforcement is a document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Member State or a settlement approved by a court in the course of proceedings (Annex II).

## ESSENTIAL CASE LAW

### *Basic principles*

Judgments 4.03.1982 (Effer); 13.07.1993 (Mulox Ibc); 3.07.1997 (Benincasa); 27.04.1999 (Mietz); 20.01.2005 (Petra Engler)

### *Scope*

Judgments 22.02.1979 (Gourdain); 21.04.1993 (Sonntag); 28.03.2000 (Krombach); 27.02.2001 (Weber); 15.05.2003 (Préservatrice Foncière Tiard); 5.02.2004 (Frahuil); 15.02.2007 (Lechouritou); 12.02.2009 (Seagon); 18.10.2011 (Realchemie Nederland); 21.06.2012 (Wolf Naturprodukte); 11.04.2013 (Land Berlin); 13.05.2015 ("Gazprom" OAO); 11.06.2015 (Stefan Fahrenbrock).

### *Exclusive Jurisdiction*

Judgments 14.12.1977 (Sanders), 10.01.1990 (Reichert); 26.02.1992 (Hacker); 26.03.1992 (Reichert Y Kockler); 27.01.2000 (Dansommer); 18.05.2006 (Landoberösterreich); 13.07.2006 (Gat); 17.12.2015 (Komu).

### *Prorogation of jurisdiction*

Judgments 14.12.1976 (Estasis Salotti/Ruewa); 14.12.1976 (Segoura/Bonakdarian); 17.01.1980 (Zelger); 24.06.1981 (Elefanten Schuh); 2.10.1981 (Rohsr/Ossberger); 16.03.1999 (Castelletti); 9.11.2000 (Coreck Maritime); 7.02.2013 (Refcomp Spa); 13.06.2013 (Goldbet); 21.05.2015 (Jaouad El Majdoub).

### *Special Jurisdiction*

Judgments 6.10.1976 (De Bloos); 30.11.1976 (Mines De Potasse D' Alsace); 22.11.1978 (Somafer); 4.03.1982 (Effer); 6.05.1982 (Ivenel); 14.07.1983 (Gerling); 15.01.1987 (Shenavai); 27.09.1988 (Kalfelis); 15.02.1989 (Six Constructions); 26.03.1992 (Reichert Y Kockler); 19.01.1993 (Shearson Lehman Hutton); 13.07.1993 (Mulox); 29.06.1994 (Custom Made Comercia); 7.03.1995 (Shevill); 3.07.1997 (Benincasa); 27.12.1998 (Réunion Européenne); 13.07.2000 (Group Josi); 1.10.2002 (Henkel); 20.01.2005 (Engler); 12.05.2005 (Société Financière Et Industrielle Du Peloux); 26.05.2005 (Gie); 13.12.2007 (Fbto Schadeverzekeringen Nv); 13.12.2007 (Fbto Schadeverzekeringen); 9.07.2009 (Peter Rehder); 25.02.2010 (Catrim); 7.12.2010 (Peter Pammer); 25.10.2011 (E-date Advertising); 19.04.2012 (Wintersteiger); 19.07.2012 (Ahmed Mahamdia); 6.09.2012 (Daniela Mühlleitner); 14.03.2013 (Česká Spořitelna); 10.09.2015 (Holterman Ferho Exploitatie BV), 21.01.2016 (ERGO Insurance)

*General jurisdiction*

Judgments 7.06.1984 (Zelger); 8.12.1987 (Gubisch Maschinenfabrik); 27.09.1988 (Kalfelis); 6.12.1994 (Tatry); 13.07.1995 (Danvaern Production A/S); 19.05.1998 (Drouot Assurances); 27.10.1998 (Réunion Européenne Sa); 13.10.2011 (Prism Investments); 21.05.2015 (Akzo Nobel); 21.05.2015 (Cártel Damage Claims Hydrogen Peroxide SA); 21.01.2016 (SOVAG)

*Lis pendens*

Judgments 8.12.1987 (Gubisch / Palumbo); 6.12.1994 (Tatry); 3.04.2014

C 438/12 (Weber); 27.02.2014 (Cartier Parfums); 22.10.2015 (Aannemingsbedrijf Aertssen NV).

*Provisional Measures*

Judgments 17.11.1998 (Van Unden); 28.04.2005 (Paul Dairy)

*Recognition and enforcement*

Judgments 21.05.1980 (Denilauler); 4.02.1988 (Hoffmann); 2.06.1994 (Kleinmotoren); 28.03.2000 (Krombach); 14.10.2004 (Maersk)

*Grounds non recognition/enforcement*

Public order: Judgments 26.05.1981 (Rinkau); 11.06.1985 (Debaecker Y Plouvier); 4.02.1988 (Hoffmann); 3.07.1990 (Lancray); 10.10.1996 (Hendrikman & Feyen); 28.03.2000 (Krombach); 13.10.2005 (Scania Finance France); 16.02.2006 (Verdoliva); 14.12.2006 (Asml).

Service: Judgments 10.10.1996 (Hendrikman Et Feyen); 21.04.1993 (Sonntag); 6.09.2012 (Trade Agency Ltd).

Judgment given other state: Judgments 4.03.1982 (Effer); 28.09.1999 (Groupe Concorde); 19.02.2002 (Besix); 6.06.2002 (Italian Leather).

*Public documents*

Judgment 17.06.1999 (Unibank A/S).

## LANGUAGE EXERCISES

### I. Read the following excerpt from a judgment by the CJEU:

JUDGMENT OF THE COURT (Fourth Chamber)

3 April 2014

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — International jurisdiction in matters relating to tort, delict or quasi-delict — Act committed in one Member State consisting in participation in an act of tort or delict committed in another Member State — Determination of the place where the harmful event occurred)

In Case C387/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany), made by decision of 28 June 2012, received at the Court on 15 August 2012, in the proceedings

**Hi Hotel HCF SARL**

v

**Uwe Spoering,**

THE COURT (Fourth Chamber),

5

10

15 (...)

having regard to the written procedure and further to the hearing on 5 September 2013, after considering the observations submitted on behalf of:

- Hi Hotel HCF SARL, by H. Leis, Rechtsanwalt,
- 20 – Mr Spoering, by P. Ruppert, Rechtsanwalt,
- the German Government, by T. Henze and F. Wannek, acting as Agents,
- the United Kingdom Government, by A. Robinson, acting as Agent,
- the European Commission, by W. Bogensberger and M. Wilderspin, acting as Agents,

25 having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

### **Judgment**

30 1. This request for a preliminary ruling concerns the interpretation of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2. The request has been made in proceedings between Hi Hotel HCF SARL ('Hi Hotel'), established in Nice (France), and Mr Spoering, residing in Cologne (Germany), concerning a claim for an order to cease an infringement of copyright and for compensation.

35

### **Legal context**

3. According to recital 2 in the preamble to Regulation No 44/2001, the regulation is intended, in the interests of the sound operation of the internal market, to implement '[p]rovisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation'.

40

4. Recitals 11, 12 and 15 in the preamble to that regulation state:

'(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

45

(12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.

(...)

(15) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. ...'

55

5. The rules on jurisdiction appear in Chapter II, 'Jurisdiction', of Regulation No 44/2001.

6. Article 2(1) of that regulation, which is in Chapter II, Section 1, 'General provisions', provides:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

60

7. Article 3(1), which is also in Chapter II, Section 1, of the regulation, provides:

‘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.’

8. Article 5(3) of the regulation, which forms part of Chapter II, Section 2, ‘Special jurisdiction’, provides:

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

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.’

70 **The dispute in the main proceedings and the question referred for a preliminary ruling**

9. According to the order for reference, Mr Spoering is a photographer who in February 2003, on behalf of Hi Hotel, took 25 transparencies of interior views of various rooms in the hotel run by that company in Nice. Mr Spoering granted Hi Hotel the right to use the photographs in advertising brochures and on its website. There was no written agreement on the rights of use. Hi Hotel paid the invoice for the photographs, in the amount of EUR 2 500, which contained the note ‘include the rights — only for the hotel hi’.

10 In 2008 Mr Spoering noticed in a bookshop in Cologne an illustrated book with the title ‘Innenarchitektur weltweit’ (‘Interior Architecture Worldwide’), published by Phaidon-Verlag of Berlin (Germany), containing reproductions of nine of the photographs he had taken of the interior of the hotel in Nice run by Hi Hotel.

11 Since he considered that Hi Hotel had infringed his copyright in the photographs by passing them on to a third party, namely Phaidon-Verlag, Mr Spoering brought proceedings against Hi Hotel in Cologne. He sought inter alia an order that Hi Hotel should cease reproducing or causing to be reproduced, distributing or causing to be distributed or exhibiting or causing to be exhibited within the Federal Republic of Germany, without his prior consent, the photographs mentioned in the preceding paragraph (claim for a prohibitory order), and should pay compensation for all damage which he had sustained or would sustain as a result of the conduct of Hi Hotel.

12 The order for reference states that Hi Hotel submitted that Phaidon-Verlag also has a place of business in Paris (France) and that the manager of Hi Hotel could have made the photographs in question available to that publisher. Hi Hotel stated that it did not know whether the publisher had then passed them on to its German sister company.

13 The court of first instance allowed Mr Spoering’s claim, and the appeal by Hi Hotel was unsuccessful. The Bundesgerichtshof (Federal Court of Justice), before which Hi Hotel brought an appeal on a point of law, is uncertain as to whether international jurisdiction of the German courts may be established on the basis of Article 5(3) of Regulation No 44/2001.

14 The Bundesgerichtshof observes that, in view of the submissions of Hi Hotel summarised in paragraph 12 above, which have not been contradicted by Mr Spoering, the international jurisdiction of the German courts under Article 5(3) of Regulation No 44/2001 must be examined on the basis of the assumption that Phaidon-Verlag of Berlin distributed the photographs in question in Germany in breach of copyright and that Hi Hotel assisted it in so doing by handing them over to Phaidon-Verlag of Paris.

15 In those circumstances the Bundesgerichtshof decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

110 'Is Article 5(3) of Regulation ... No 44/2001 to be interpreted as meaning that the harmful event occurred in one Member State (Member State A) if the tort or delict which forms the subject-matter of the proceedings or from which claims are derived was committed in another Member State (Member State B) and consists in participation in the tort or delict (principal act) committed in the first Member State (Member State A)?'

(...)

115 It should be noted that jurisdiction to hear an action in tort, delict or quasi-delict may be established in favour of the court seised of a claim for a finding of a breach of copyright, where the Member State in which that court is situated protects the rights of copyright relied on by the applicant and the alleged damage may occur within the jurisdiction of the court seised (see *Pinckney* EU:C:2013:635, paragraph 43).

120 36 In the main proceedings Mr Spoering is claiming a breach of various rights of copyright, namely the rights to reproduce, distribute and exhibit the photographs in question. It is common ground that those rights are protected in Germany in accordance with Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

125 37 In circumstances such as those at issue in the main proceedings, it must be considered that the fact that damage may occur follows from the possibility of acquiring a reproduction of the work to which the copyright relied on by the applicant attaches in a bookshop located within the jurisdiction of the court seised. As appears from the facts referred to in paragraph 14 above, the handing over of the photographs in question to Phaidon-Verlag of Paris gave rise to the reproduction and distribution of the photographs, and thereby to the possibility that the damage alleged might occur.

130 38 On the other hand, in so far as the protection afforded by the Member State of the court seised applies only in that Member State, the court seised on the basis of the place where the damage occurs has jurisdiction only to determine the damage caused in the territory of that State (*Pinckney* EU:C:2013:635, paragraph 45).

135 39 The courts of other Member States in principle retain jurisdiction, in the light of Article 5(3) of Regulation No 44/2001 and the principle of territoriality, to rule on the damage to copyright caused in their respective Member States, given that they are best placed, first, to ascertain whether the rights of copyright guaranteed by the Member State concerned have in fact been infringed and, secondly, to determine the nature of the damage caused (see *Pinckney* EU:C:2013:635, paragraph 46).

140 40 In the light of the above considerations, the answer to the question is that Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, where there are several supposed perpetrators of damage allegedly caused to rights of copyright protected in the Member State of the court seised, that provision does not allow jurisdiction to be established, on the basis of the causal event of the damage, of a court within whose jurisdiction the supposed perpetrator who is being sued did not act, but does allow the jurisdiction of that court to be established on the basis of the place where the alleged damage occurs, provided that the damage may occur within the jurisdiction of the court seised. If that is the case, the court has jurisdiction only to rule on the damage caused in the territory of the Member State to which it belongs.

#### Costs

145 41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

160 **Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the**  
**recognition and enforcement of judgments in civil and commercial matters must be interpreted**  
**as meaning that, where there are several supposed perpetrators of damage allegedly caused to**  
**rights of copyright protected in the Member State of the court seised, that provision does not**  
**allow jurisdiction to be established, on the basis of the causal event of the damage, of a court**  
**within whose jurisdiction the supposed perpetrator who is being sued did not act, but does**  
165 **allow the jurisdiction of that court to be established on the basis of the place where the alleged**  
**damage occurs, provided that the damage may occur within the jurisdiction of the court seised.**  
**If that is the case, the court has jurisdiction only to rule on the damage caused in the territory of**  
**the Member State to which it belongs.**

**II. Now, answer the following questions:**

**1. Explain, in your own words, the meaning of the following terms from the text:**

- a) Tort (I.4):
- b) Delict (I.4):
- c) Quasi-delict (I.4):
- d) Jurisdiction (I.31):
- e) Formalities (I.40):
- f) Litigation (I.46):
- g) Irreconcilable (I.55):

**2. Give synonyms or near-synonyms for the following terms/expressions from the text:**

- a) Commit (I.5):
- b) Harmful (I.6):
- c) Request (I.9):
- d) Proceed (I.25):
- e) Implement (I.39):
- f) Autonomy (I.46):
- g) Agreement (I.76):
- h) Infringe (I.83):
- i) Contradict (I.101):
- j) Assumption (I.102):
- k) Hear (I.114):
- l) At issue (I.125):
- m) Afford (I.131):
- n) Ascertain (I.137):

**3. Read lines 3-6. What is this case basically about?**

**4. Read lines 30-32. What is Mr. Soering seeking?**

**5. Read lines 38-41. What is the purpose of Regulation No 44/2001?**

**6. Read lines 44-48. What is jurisdiction based on and what are the exceptions?**

**7. Read lines 59-67. Where is a person domiciled in a Member State sued? Does this depend on his/her nationality?**



**8. Summarise the following paragraphs in your own words, using the terms in bold. For the rest of the terms that appear in the text and that you would like to use you will have to find synonyms. You may use names of people and places freely.**

9. According to the order for reference, Mr Spoering is a **photographer** who in February 2003, on behalf of Hi Hotel, took 25 **transparencies** of **interior** views of various **rooms** in the **hotel** run by that company in Nice. Mr Spoering granted Hi Hotel the **right to use** the photographs in **advertising brochures** and on its **website**. There was no written agreement on the **rights of use**. Hi Hotel paid the invoice for the photographs, in the amount of EUR 2 500, which contained the note 'include the rights — only for the hotel hi'.

10 In 2008 Mr Spoering noticed in a **bookshop** in Cologne an **illustrated book** with the title 'Innenarchitektur weltweit' ('Interior Architecture Worldwide'), published by Phaidon-Verlag of Berlin (Germany), containing **reproductions** of nine of the **photographs** he had taken of the interior of the hotel in Nice run by Hi Hotel.

11 Since he considered that Hi Hotel had infringed his **copyright** in the photographs by passing them on to a third party, namely Phaidon-Verlag, Mr Spoering brought proceedings against Hi Hotel in Cologne. He sought inter alia an order that Hi Hotel should cease **reproducing** or causing to be reproduced, **distributing** or causing to be distributed or **exhibiting** or causing to be exhibited within the Federal Republic of Germany, without his prior consent, the photographs mentioned in the preceding paragraph (claim for a **prohibitory order**), and should pay **compensation** for all **damage** which he had sustained or would sustain as a result of the conduct of Hi Hotel.

**9. Read lines 95-98. Where did Mr. Spoering bring his claim? What happened to Mr. Spoering's claim and to the appeal brought by Hi Hotel? What is the Bundesgerichtshof uncertain about?**

**10. Read lines 105-112. What did the Bundesgerichtshof do in view of its uncertainty? What is the basis of the question referred?**

**11. Read lines 114-140 and explain why the court refers to *Pinckney* EU:C:2013:635.**

**12. Below are: (1) the answer and (2) the judgment given by the CJEU. Summarise both in your own words, trying not to quote extensively from the texts.**

In the light of the above considerations, the answer to the question is that Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, where there are several supposed perpetrators of damage allegedly caused to rights of copyright protected in the Member State of the court seised, that provision does not allow jurisdiction to be established, on the basis of the causal event of the damage, of a court within whose jurisdiction the supposed perpetrator who is being sued did not act, but does allow the jurisdiction of that court to be established on the basis of the place where the alleged damage occurs, provided that the damage may occur within the jurisdiction of the court seised. If that is the case, the court has jurisdiction only to rule on the damage caused in the territory of the Member State to which it belongs.

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, where there are several supposed perpetrators of damage allegedly caused to rights of copyright protected in the Member State of the court seised, that provision does not allow jurisdiction to be established, on the basis of the causal event of the damage, of a court within whose jurisdiction the supposed perpetrator who is being sued did not act, but does



allow the jurisdiction of that court to be established on the basis of the place where the alleged damage occurs, provided that the damage may occur within the jurisdiction of the court seised. If that is the case, the court has jurisdiction only to rule on the damage caused in the territory of the Member State to which it belongs.

### III. Choose the correct option for each gap.

JUDGMENT OF THE COURT (Third Chamber)

27 February 2014

(Request for a preliminary (1) \_\_\_\_\_ – Judicial cooperation in civil matters – Regulation (EC) No 44/2001 – Article 27(2) – Lis pendens – Article 24 – Prorogation of jurisdiction – Establishment of (2) \_\_\_\_\_ of the court first (3) \_\_\_\_\_ by reason of appearance being (4) \_\_\_\_\_ without objection by the parties or the adoption of a final judgment)

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|-----|----------------|------------------|
| (1) | (a) judgment   | (b) ruling       |
| (2) | (a) competence | (b) jurisdiction |
| (3) | (a) seised     | (b) seized       |
| (4) | (a) entered    | (b) put in       |

In Case C1/13,

REQUEST for a (5) \_\_\_\_\_ ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 19 December 2012, received at the Court on 2 January 2013, in the (6) \_\_\_\_\_ .

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|-----|-----------------|-----------------|
| (5) | (a) preliminary | (b) previous    |
| (6) | (a) procedure   | (b) proceedings |

**Cartier parfums – lunettes SAS,  
Axa Corporate Solutions assurances SA**

v

**Ziegler France SA,  
Montgomery Transports SARL,  
Inko Trade s. r. o.,  
Jaroslav Matěja,  
Groupama Transport,**

THE COURT (Third (7) \_\_\_\_\_ Chamber),

- |     |             |             |
|-----|-------------|-------------|
| (7) | (a) Section | (b) Chamber |
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(...) having decided, after hearing the Advocate General, to proceed (8) \_\_\_\_\_ judgment without an Opinion,

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|-----|--------|---------|
| (8) | (a) to | (b) for |
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gives the following

#### Judgment

1. This request (9) \_\_\_\_\_ a preliminary ruling concerns the interpretation of Article 27(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement

of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

(9) (a) of (b) for

2. The request has been made in proceedings between Cartier parfums – lunettes SAS ('Cartier') and Axa Corporate Solutions assurances SA ('Axa assurances') and Ziegler France SA ('Ziegler France'), Montgomery Transports SARL ('Montgomery Transports'), Inko Trade s. r. o. ('Inko Trade'), Jaroslav Matěja and Groupama Transport, concerning compensation for (10) \_\_\_\_\_ sustained by Cartier and Axa assurances as a result of the theft of goods during an international transport of goods by road.

(10) (a) damages (b) damage

**(...) Dispute in the main proceedings and the question referred for a preliminary ruling**

10. Cartier (11) \_\_\_\_\_ the transport by road of cosmetic products to Ziegler France between Genas (France) and Wickford (United Kingdom). Ziegler France subcontracted the transport of those goods to Montgomery Transports, which (12) \_\_\_\_\_ subcontracted that service to Inko Trade which was, in turn, replaced by Jaroslav Matěja.

(11) (a) entrusted (b) confided

(12) (a) it (b) itself

11. Jaroslav Matěja took charge of the goods at the warehouses of Saflog in Genas on 25 September 2007. During the night of 26 to 27 September 2007, at 00.30, in accordance (13) \_\_\_\_\_ the legislation in force concerning the (14) \_\_\_\_\_ of driving times, the driver stopped to rest at a service station in the United Kingdom. The next morning he noticed that part of the consignment of goods had been stolen. The damage was estimated by Cartier's insurance company, Axa assurances, (15) \_\_\_\_\_ EUR 145,176.08. Axa assurances paid Cartier EUR 144,176.08 by way of (16) \_\_\_\_\_.

(13) (a) with (b) to

(14) (a) length (b) duration

(15) (a) in (b) at

(16) (a) indemnity (b) compensation

12. On 24 September 2008, Cartier and Axa assurances brought an action (17) \_\_\_\_\_ the Tribunal de commerce de Roubaix-Tourcoing (France) (Commercial Court, Roubaix-Tourcoing) (18) \_\_\_\_\_ Ziegler France, Montgomery Transports, Inko Trade and Jaroslav Matěja (19) \_\_\_\_\_ an order that they should be jointly and (20) \_\_\_\_\_ liable for payment of the sum of EUR 145 176.08.

(17) (a) in front of (b) before

(18) (a) versus (b) against

(19) (a) seeking (b) searching

(20) (a) severally (b) separately

13. Subsequently, a series of guarantee claims were (21) \_\_\_\_\_ before the same court by the carriers in which their respective insurers intervened.

(21) (a) taken (b) brought

14. The Tribunal de commerce de Roubaix-Tourcoing ordered all the proceedings to be (22) \_\_\_\_\_.

(22) (a) attached (b) joined

15. At the (23) \_\_\_\_\_ on 28 October 2010, Ziegler France raised a (24) \_\_\_\_\_ of *lis pendens*, based on Article 27 of Regulation No 44/2001, on the ground that it had previously brought an action before the High Court of Justice (England and Wales), Queen's Bench Division (London Mercantile Court), United Kingdom, by document of 16 September 2008. As is apparent from the (25) \_\_\_\_\_ sent to this Court, Ziegler France (26) \_\_\_\_\_ a claim form before the High Court of Justice against Cartier, Saflog and Wright Kerr Tyson Ltd, a company incorporated under the law of England and Wales, in order to determine (27) \_\_\_\_\_ and calculate the damage (28) \_\_\_\_\_ by Cartier as a result of the theft at issue.

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|------|--------------------|---------------|
| (23) | (a) hearing        | (b) trial     |
| (24) | (a) request        | (b) plea      |
| (25) | (a) file           | (b) folder    |
| (26) | (a) brought        | (b) lodged    |
| (27) | (a) responsibility | (b) liability |
| (28) | (a) sustained      | (b) suffered  |

16. Cartier and Axa assurances claimed that that plea was inadmissible on the ground that it had not been (25) \_\_\_\_\_ in *limine litis*. Prior to the hearing, Ziegler France had lodged written (26) \_\_\_\_\_ before the Tribunal de commerce de Roubaix-Tourcoing, relating to the substance of the case, although under Article 74 of the French Code of Civil Procedure procedural objections must be raised before any defence on the (27) \_\_\_\_\_, failing which such an objection must be dismissed as (28) \_\_\_\_\_.

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|------|------------------|------------------|
| (25) | (a) risen        | (b) raised       |
| (26) | (a) submissions  | (b) allegations  |
| (27) | (a) substances   | (b) merits       |
| (28) | (a) inadmittable | (b) inadmissible |

(...) 18. By (29) \_\_\_\_\_ of 6 January 2011, the Tribunal de commerce de Roubaix-Tourcoing (30) \_\_\_\_\_ that the plea of *lis pendens* raised by Ziegler France was well (31) \_\_\_\_\_ on the ground, in particular, that Article 871 of the French Code of Civil (32) \_\_\_\_\_ Procedure allows procedural objections to be raised orally.

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| (29) | (a) judgment  | (b) sentence    |
| (30) | (a) held      | (b) understood  |
| (31) | (a) funded    | (b) founded     |
| (32) | (a) Procedure | (b) Proceedings |

19. In that connection, the Tribunal de commerce held that the High Court of Justice had been first seised and that its jurisdiction had not been (33) \_\_\_\_\_. Therefore, as regards the dispute between Cartier and Axa assurances and Ziegler France, the Tribunal de commerce held that it should (34) \_\_\_\_\_ jurisdiction pursuant to Article 27(2) of Regulation No 44/2001 in favour of the High Court of Justice. As regards the other parties, the Tribunal de commerce de Roubaix-Tourcoing decided to (35) \_\_\_\_\_ its proceedings pending the judgment of the High Court of Justice.

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|------|--------------|---------------|
| (33) | (a) appealed | (b) contested |
| (34) | (a) decline  | (b) refuse    |
| (35) | (a) stay     | (b) suspend   |

(...) 21. Cartier and Axa assurances appealed (36) \_\_\_\_\_ that judgment before the referring court.

Those parties claim *inter alia* that the Cour d'appel de Douai has (37) \_\_\_\_\_ the meaning and scope of Article 27 of Regulation No 44/2001 by holding that the jurisdiction of the High Court of Justice was 'established' within the meaning of that article as its jurisdiction has not been contested. Those companies argue that the jurisdiction of the court first seised may be (38) \_\_\_\_\_ only by a judgment from that court explicitly rejecting its lack of jurisdiction or by the (39) \_\_\_\_\_ of the remedies that are available against its decision to assume jurisdiction.

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|------|-------------------|------------------|
| (36) | (a) Ø             | (b) against      |
| (37) | (a) misunderstood | (b) misconstrued |
| (38) | (a) established   | (b) set          |
| (39) | (a) consumption   | (b) exhaustion   |

(...) 23. In those circumstances, the Cour de Cassation decided to stay the proceedings and to (40) \_\_\_\_\_ the following question to the Court:

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|------|-----------|--------------|
| (40) | (a) refer | (b) transmit |
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'Must Article 27(2) of [Regulation No 44/2001] be interpreted as meaning that the jurisdiction of the court first seised is established, if neither party has claimed that it lacks jurisdiction or if the court has accepted its jurisdiction by a decision which is irrevocable for any reason whatsoever, including the exhaustion of legal remedies?'

**The question referred for a preliminary ruling**

(...) 27. Therefore, it must be held that, by its question, the (41) \_\_\_\_\_ court asks essentially whether Article 27(2) of Regulation No 44/2001 must be interpreted as meaning that it is sufficient, for the jurisdiction of the court first seised to be established within the meaning of that (42) \_\_\_\_\_, that no party has contested its jurisdiction or whether it is necessary that that court has impliedly or expressly assumed jurisdiction by a judgment which has become (43) \_\_\_\_\_.

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|------|---------------|-----------------|
| (41) | (a) remitting | (b) referring   |
| (42) | (a) provision | (b) disposition |
| (43) | (a) final     | (b) definite    |

# UNIT 4

## MATRIMONIAL MATTERS AND PARENTAL RESPONSIBILITY

### INTRODUCTION: COUNCIL REGULATION (EC)

#### NO 2201/2003 OF 27 NOVEMBER 2003 CONCERNING JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN MATRIMONIAL MATTERS AND MATTERS OF PARENTAL RESPONSIBILITY

Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, known as *Regulation Brussels II bis*<sup>1</sup>, is one of the most important instruments in the field of cross-border family law issues within European Union facilitating the proper functioning of the internal market.

#### Material scope

The Regulation sets out rules on jurisdiction, recognition and enforcement of judgments both in matrimonial matters (divorce, separation and marriage annulment) and in parental responsibility matters.

As to the **matrimonial matters**, it must be underlined that Council Regulation (EU) no 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation<sup>2</sup> (so called *Rome III Regulation*) aims to create a predictable legal framework in the area of the law applicable to divorce and legal separation. Nevertheless, *Brussels II bis Regulation* is still applicable in order to determine the competent court to deal with the matrimonial matters.

1 The original *Brussels II Regulation* was Regulation (EC) No 1347/2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses which entered into force on 1 March 2001. The content of that Regulation was substantially taken over from the Convention of 28 May 1998 on jurisdiction and the recognition and enforcement of judgments (known as the *Brussels II Convention*) which was never ratified. As *Brussels II Regulation* had a very limited scope of application and based on the principle of mutual recognition and trust endorsed by the Tampere European Council of 15- 16 October 1999 it was drafted Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

2 The *Rome III Regulation* took effect from 21 June 2012 in 14 Member States - Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia.

The **parental responsibility**<sup>3</sup> deals with the rights of custody<sup>4</sup> and rights of access<sup>5</sup>; the guardianship, curatorship and similar institutions; the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child; the placement of the child in a foster family or in institutional care; measures for the protection of the child relating to the administration, conservation or disposal of the child's property (*n.b.* the list from Article 1, paragraph 2 is not exhaustive).

The concept of **civil matters** on attribution, exercise, delegation, restriction or termination of parental responsibility has an autonomous meaning and it also applies to decisions to take into care and place a child that are governed by public law according to the domestic law of a Member State.<sup>6</sup>

In contrast to Brussels II Regulation, the present Regulation applies to all decisions issued by a court of a Member State in matters of parental responsibility, whatever the judgment may be called, including a decree, order or decision or even to other type of decisions pronounced by authorities (e.g. social/welfare authority or youth authority) with special competencies in matters falling under the Regulation<sup>7</sup>.

Another important part of the Regulation deals with the **child abduction**<sup>8</sup> between Member States<sup>9</sup>. The aim of *Brussels II bis* is to prevent the wrongful removal of a child and to ensure cross-border cooperation in this highly sensitive field. The decisions ordering the return of the child are directly recognised and enforceable in the requested Member State. In cases of child abduction between Member States, the courts of the Member State of origin retain jurisdiction to decide on the question of custody notwithstanding the abduction.

The Regulation **excludes** from its scope the establishment of or contesting a parent-child relationship; the decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;

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3 See Article 2.

4 The term "rights of custody" includes rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence.

5 The term "rights of access" includes, in particular, the right to take a child to a place other than his or her habitual residence for a limited period of time.

6 See, Case C-435/06, C, paragraph 51, Case C-523/07, A, paragraph 29.

7 See Article 46.

8 The term "wrongful removal or retention" shall mean a child's removal or retention where:

(a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention; and (b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.

The Hague Convention of 25 October 1980 on the civil aspects of international child abduction ("the 1980 Hague Convention") defines in Article 3 the wrongful removal or retention of a child in a similar way. It must be underlined that Brussels II bis Regulation requires that custody is to be considered to be exercised jointly when one of the holders of parental responsibility cannot decide on the child's place of residence without the consent of the other holder of parental responsibility. Thus, when a child is removed from one Member State to another without the consent of the relevant person, it constitutes child abduction under the Regulation.

9 The 1980 Hague Convention will continue to apply in the relations between Member States. However, the 1980 Hague Convention is supplemented by certain provisions of the Regulation as explained by Recital 17 of the Regulation.

the name and forenames of the child; emancipation; maintenance obligations<sup>10</sup>; trusts or succession<sup>11</sup>; measures taken as a result of criminal offences committed by children (Article 1 paragraph 3).

### Territorial scope

The Regulation is applicable in all Member States of the European Union, with the exception of Denmark. In respect of the newest Member State, Croatia, the Regulation is applicable from 1 of July 2013.

### Entry into force

*Brussels II bis* entered into force on 1 August 2004 and has been applicable since 1 March 2005 (Article 72)<sup>12</sup>. According to the transitional provisions, the rule is that the provisions of the Regulation apply only to legal proceedings that have been instituted, to documents either formally drawn up or registered as authentic instruments and to agreements concluded between the parties after the Regulation's date of application (1 March 2005). Some exceptions are provided in order to accommodate the transition from the Brussels II Regulation to the new instrument<sup>13</sup>.

## JURISDICTION

### 1. Matrimonial matters

Articles 3 – 7 set out a system of seven alternative grounds of jurisdiction<sup>14</sup> to determine which court is competent to deal with matters of divorce, legal separation and marriage annulment. As provided by Article 6, the grounds are exclusive in the sense that a spouse who is habitually resident in a Member State or who is a national of a Member State (or who has his or her "domicile" in the United Kingdom or Ireland) may only be sued in another Member State on the basis of the Regulation.

10 As to maintenance obligation, it must be underlined that the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations covers all maintenance obligations arising from a family relationship, parentage, marriage or affinity, in order to guarantee equal treatment of all maintenance creditors and to allow a maintenance creditor to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities. When maintenance is due from or to the benefit of a person living in a non-EU State, the Hague Convention on the international recovery of child support and other forms of family maintenance and the Protocol on the law applicable to maintenance obligations concluded on 23 November 2007 are applicable.

11 Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession

12 The exceptions to this rule refers to Article 67, 68, 69,70

13 See Article 64.

14 The spouses may file a petition with the courts of the Member State of:

- (a) their habitual residence or
- (b) their last habitual residence if one of them still resides there or
- (c) the habitual residence of either spouse in case of a joint application or
- (d) the habitual residence of the respondent or
- (e) the habitual residence of the applicant provided that he or she has resided there for at least one year before making the application or
- (f) the habitual residence of the applicant provided that he or she has resided there for at least six months before making the application and he or she is a national of that Member State or
- (g) their common nationality (common "domicile" in the case of the U.K. and Ireland).

## 2. Parental responsibility

Articles 8 to 15 of *Brussels II bis* establish the rules of jurisdiction in matters of parental responsibility. As explained by Recital 12 in the preamble of *Brussels II bis Regulation*, these grounds are shaped in the light of the best interest of the child and on the criterion of proximity.

Thus, the primary ground for jurisdiction is provided by Article 8 paragraph 1 according to which the most appropriate forum for such matters is the court of the Member State of the **habitual residence of the child**. The autonomous meaning of this concept of “habitual residence” was developed by Court of Justice of European Union in its case-law. “It must be interpreted as meaning that it corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family’s move to that State, the child’s nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case.”<sup>15</sup>

The exceptions to the general rule are provided by Articles 9, 10 and 12, which cover certain specific situations.

Article 9 sets out jurisdiction in connection to access rights. Thus, when the child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child’s former residence retain jurisdiction if some conditions are met<sup>16</sup>.

## 3. Child abduction

Article 10 specifies that the courts of the Member State of origin, where the child was habitually resident before the abduction, retain jurisdiction to decide the case also after the abduction.

Nevertheless, the courts of the new Member State, “the requested Member State”, will have jurisdiction only under very strict conditions.

Two situations are envisaged by the Regulation.

Firstly, if the child has acquired habitual residence in the requested Member State and the holders of custody rights have acquiesced in the removal or the retention.

Secondly, if the child has acquired habitual residence in the requested Member State and has resided in that Member State for at least one year after the holders of custody rights have learned or should have learned of the whereabouts of the child and the child has settled in the new environment. Additionally to these two conditions, at least one of the conditions provided for by Article 10 must be fulfilled.<sup>17</sup>

<sup>15</sup> See Case C-523/07, A, paragraph 44

<sup>16</sup> Article 9 applies only to the situation where a holder of access rights wishes to modify a previous decision on access rights; it applies only to lawful moves; the continuing of the child’s former habitual residence is limited to a period of three months following the child’s move; the holder of access rights must still have habitual residence in the Member State of origin and must not have accepted the change of jurisdiction. This rule was seen as “an *innovative rule* which encourages holders of parental responsibility to agree upon the necessary adjustments of access rights before the move and, if this proves impossible, to apply to the competent court to resolve the dispute” - Practice Guide for the application of the new Brussels II Regulation, page 11,- [http://ec.europa.eu/civiljustice/divorce/parental\\_resp\\_ec\\_vdm\\_en.pdf](http://ec.europa.eu/civiljustice/divorce/parental_resp_ec_vdm_en.pdf)

<sup>17</sup> (i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained; (ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i); (iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7); (iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.



As to the return of a child wrongfully removed or retained, Article 11 provides for procedural rules, deadlines, important procedural safeguards, namely the hearing of the child<sup>18</sup> and for the parties, especially the non-abducting custody holder. Similar to Article 12 of the 1980 Hague Convention, *Brussels II Bis Regulation* enshrine the principle of the immediate return of the child. Article 11 paragraph 6 and 7 provides for a special procedure if the court seised issues an order of non-return of the child.

Nevertheless, the court of the Member State of origin is competent to deal with the substance of the case in its entirety. Its jurisdiction is therefore not limited

to deciding upon the custody of the child, but may also decide, for example, on access rights (see Article 42).

### Prorogation of Jurisdiction

The prorogation rule of **Article 12** stipulates that a court which is seised of divorce proceedings under the Regulation also has jurisdiction in matters of parental responsibility connected with the divorce if certain conditions are met<sup>19</sup>.

The second situation foreseen by Article 12 paragraph 3 is triggered by a **substantial connection** of the child with a Member State where he/she is not habitually resident. For example, the fact that one of the holders of parental responsibility is habitually resident in that Member State or the child's nationality could, non-exclusively, indicate such substantial connection to that jurisdiction.<sup>20</sup> However, the principle that governs this issue is that the jurisdiction must be determined based on the best interest of the child.

**Article 13** provides a case of jurisdiction in favor of a court of a Member State to decide on matters of parental responsibility based on the **child's presence** before that court if it proved impossible to determine the habitual residence of the child and Article 12 is not applicable.

### Residual jurisdiction

If no court has jurisdiction pursuant to Articles 8 to 13, the court may find its jurisdiction on the basis of its own national rules on private international law (**Article 14**).

### Transfer to a better placed court

As mentioned above, the court of the child's habitual residence (at the time the court is seised) has jurisdiction to deal with civil matters concerning parental responsibility. The mere fact that a child lawfully moves to another Member State where he/she acquires habitual residence does not remove the jurisdiction of the former court ("court of origin"). On the other hand, the best interest of the child requires that a particular case should be dealt with by a "better placed court", which, in some particular circumstances, could be different from the court of origin.

Exceptionally, Article 15 allows the transfer of the case<sup>21</sup> from the court of origin to a court of another

18 As explained in Recital 19 of Brussels II bis, the hearing of the child plays an important role in the application of this Regulation, although this instrument is not intended to modify national procedures applicable.

19 The jurisdiction conferred in paragraph 1 shall cease as soon as:

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;(c) the proceedings referred to in (a) and (b) have come to an end for another reason.

20 All parties to the proceedings must have accepted the jurisdiction of that court explicitly or otherwise unequivocally at the time the court was seised.

21 The transfer may take place: on application from a party ; or of the court's own motion, if at least one of the parties agrees; or on application of a court of another Member State, if at least one of the parties agrees.

Member State with whom the child has a “particular connection” with. Such connection exists in the following five situations - the child has acquired habitual residence there after the court of origin was seised; or the other Member State is the former habitual residence of the child; or it is the place of the child’s nationality; or it is the habitual residence of a holder of parental responsibility; or the child owns property in the other Member State and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

In order to identify the competent court from another Member State for transferring the case, the judge may use the European Judicial Atlas in Civil Matters<sup>22</sup>. Direct communication is also essential for the accurate application of these provisions and the contact points of the European Judicial Networking civil and commercial matters could facilitate the dialogue between judges.

### Provisional/Protective Measures

Article 20 enables a court to take provisional, including protective measures<sup>23</sup> in accordance with its national law in respect of a child situated on its territory even if a court of another Member State has jurisdiction as to the substance of the application. The measure can be taken by a court or by an authority having jurisdiction in matters falling within the scope of the Regulation (Article 2.1). A welfare authority or a youth authority may, for instance, be competent to take provisional measures under national law.

Article 20 is not a rule which confers jurisdiction. Consequently, the provisional measures cease to have effect when the competent court has taken the measures it considers appropriate.

## Examination of jurisdiction

### Seising of a Court

Article 16 indicates that a court shall be deemed to be seised at the time when (a) the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent; 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 applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

### Examination of the jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.

### *Lis pendens* rule and dependent actions

The aim of the “*lis pendens*” rule is to ensure legal certainty and to avoid irreconcilable judgments. Article 19 sets out the conditions for *lis pendens*, namely the identity of the subject-matter and cause of action of the proceedings brought before courts of different Member States, as well as for the “dependent actions” which do not relate to the same cause of action, but which are brought before courts of different Member States.

<sup>22</sup> [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm)

<sup>23</sup> For details see case C403/09 PPU *Jasna Detiček*, paragraph 40, 42, 57.

### 1. Matrimonial matters

Once a court seised based on Article 3 of the Regulation has declared itself competent, the courts of other Member States are no longer competent and must dismiss any subsequent application. Pursuant to Article 17 each court has the obligation to verify its jurisdiction.

In the event that proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established (Article 19 paragraph 1).

### 2. Parental responsibility

Where proceedings relating to parental responsibility concern the same child and having the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established (Article 19 paragraph 2).

Thus, if the first court establishes its own jurisdiction, the other court must decline jurisdiction in favour of the competent court.

## RECOGNITION AND ENFORCEMENT

The Tampere European Council of 15-16 October 1999 concluded that judgments in the field of family litigation should be "**automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement**".

The principle of mutual trust among Member States was transposed in the wording of Article 21 of *Brussels II bis Regulation* which provides that a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

### 1. Matrimonial matters

Four situations are foreseen by Article 22 as grounds to refuse the recognition of a judgment relating to a divorce, legal separation or marriage annulment: (a) such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought; (b) where it was given in default of appearance, if the respondent 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 the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally; (c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or (d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

The jurisdiction of the court of the Member State of origin may not be reviewed and the recognition of a judgement may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

Moreover, Article 26 prevents the review of the judgment as to its substance.

## 2. Parental responsibility

The grounds for non-recognition of judgments relating to parental responsibility are set out in Article 23: (a) such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child; (b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought; (c) where it was given in default of appearance if the person in default 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 that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally; (d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard; (e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought; (f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought, or (g) if the procedure laid down in Article 56 has not been complied with.

## 3. Access rights

In order to smooth the exercise of access rights in cases with cross-border elements, Brussels II bis abolishes the “*exequatur*” proceedings for those judgements granting access rights. Additionally, no opposition to the recognition of the judgment is allowed and the grounds of non-recognition do not apply to these judgments.

A certificate providing that certain procedural safeguards<sup>24</sup> have been respected must be issued by the court of origin by using the standard form in Annex III. The interested party is not allowed to appeal against the issuing of a certificate. He/She can only request for rectification to the court of origin<sup>25</sup>.

If at the time of the delivery of the judgment the case had already a cross-border element, the certificate shall be issued *ex officio* when the judgment becomes enforceable. In other situations, the certificate shall be issued at the request of one of the parties.

## 4. Decisions ordering the return of child following abduction

As provided by Article 42, an enforceable judgement ordering the return of the child is automatically recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin.

The certificate issued by the judge of origin will confirm the fulfilment of the following procedural

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24 The judge of origin shall issue the certificate only if: (a) where the judgment was given in default, the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defense, or, the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally; (b) all parties concerned were given an opportunity to be heard; and (c) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

25 See Case ase C-491/10 PPU Joseba Andoni Aguirre Zarraga v Simone Pelz.

safeguards – that the child was given an opportunity to be heard<sup>26</sup>, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity; that the parties were given an opportunity to be heard; and the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

The Regulation facilitates a proper mechanism for the functioning of the automatic recognition and enforceability of such decisions by providing the obligation for the judge of origin to issue of his/her own motion the certificate concerning return of the child (standard form - Annex IV).

### Tools

- 1. Practice Guide for the application of the new Brussels II Regulation - [http://ec.europa.eu/civiljustice/divorce/parental\\_resp\\_ec\\_vdm\\_en.pdf](http://ec.europa.eu/civiljustice/divorce/parental_resp_ec_vdm_en.pdf)
- 2. European Judicial Atlas- [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm))
- 3. The European e-Justice portal
- [https://e-justice.europa.eu/content\\_taking\\_of\\_evidence-76-en.do](https://e-justice.europa.eu/content_taking_of_evidence-76-en.do)
- 4. The website of the European Judicial Network in civil and commercial matters - [http://ec.europa.eu/civiljustice/index\\_en.htm](http://ec.europa.eu/civiljustice/index_en.htm)
- 5. European Judicial Training Network – e-learning space – “Parental responsibility and Brussels II bis Regulation”- <http://www.ejtn.co.uk/ejtn/course/category.php?id=6>

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<sup>26</sup> “The court with jurisdiction in the Member State of enforcement cannot oppose the enforcement of a certified judgment, ordering the return of a child who has been wrongfully removed, on the ground that the court of the Member State of origin which handed down that judgment may have infringed Article 42 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, interpreted in accordance with Article 24 of the Charter of Fundamental Rights of the European Union, since the assessment of whether there is such an infringement falls exclusively within the jurisdiction of the courts of the Member State of origin.” See Case ase C-491/10 PPU Joseba Andoni Aguirre Zarraga v Simone Pelz.

## LANGUAGE EXERCISES

### I. Read the following text:

AB V JJB (EU MAINTENANCE REGULATION: MODIFICATION APPLICATION PROCEDURE) [2015] EWHC 192 (FAM)<sup>1</sup>

The case concerned an **application by a German national to vary a German order**.

The parties had divorced in Germany in 2000, following which the wife moved to England to live. On 2 April 2014, the **wife received**, out of the blue, **a letter from her former husband's solicitors, serving court papers which included a direction requiring her to file a compendious financial statement by 2 June 2014**.

On 29 April, the legal representative of the wife (Penningtons Manches) sent a considered letter **inviting the former husband to withdraw his application**, failing which he would himself apply to dispose of the application by striking it out or to dismiss it for want of jurisdiction or as **an abuse of the court's process**. When the former husband did not **withdraw his application**, James Stewart proceeded with a **strike out application on behalf of the former wife**.

In essence, the former husband **had filed an application for a financial order** in Form A in the Slough County Court in the belief that this was sufficient to confer jurisdiction onto the English court under Chapter VII of the Maintenance Regulation. More concerning was the fact that the **Slough County Court** - apparently oblivious to the workings of the Maintenance Regulation - **had issued the application and had given standard directions which included the filing of a detailed financial statement, referred to above**.

The strike out application sought by the wife was brought on a number of grounds including:

Form A is wholly inapplicable to a Maintenance Regulation case as 'financial order' is defined in rule 2.3 FPR 2010 and **an application may only be made in direct connection to or after an application for a matrimonial or civil partnership order** (i.e. divorce, nullity, dissolution etc.) – FPR 9.4 i.e. the husband's free-standing application had no substantive underlying jurisdiction.

Chapter VII of the Maintenance Regulation is the only conceivable route by which the English court could have the jurisdiction to vary a foreign maintenance order (N.B. Chapter VII is entitled '**Cooperation between Central Authorities**' and sets out a very specific process, including a specific form, by which an application may be made).

Sir Peter Singer disagreed with Mostyn J's interpretation in *EDG v RR* [2014] EWHC 816 (Fam) where **he identified that there were two available routes for enforcement** – directly under Chapter IV of the Maintenance Regulation and through the Central Authority under Chapter VII.

The former wife also argued, as an alternative, **that the application should be struck out for abuse of process** (as it was an undisguised exercise in '**forum shopping**') and/or by virtue of FPR 4.4. This particular argument was not considered in any detail in the judgment as Penningtons Manches succeeded on points 1 and 2 above. The judge also felt it inappropriate to deal with these fall-back submissions given the pending Supreme Court decision in an appeal from *Vince v Wyatt* [2014] 1 FLR 246.

<sup>1</sup> This article is used with kind permission of the authors: Penningtons Manches LLP, 125 Wood Street, London EC2V 7AW [www.penningtons.co.uk](http://www.penningtons.co.uk); <http://www.penningtons.co.uk/expertise/solicitors-for-individuals-family/>

It is hoped that this judgment will provide some clarity in the operation of the Maintenance Regulation and, in particular, how to issue an application appropriately. The only route laid down by the Maintenance Regulation is via the Central Authorities and there is no permissible short-circuit option.

#### THE EUROPEANISATION OF DOMESTIC FAMILY LAW

While **substantive family law ostensibly remains under the sole competence of EU countries, the EU is empowered to take measures concerning family law with cross-border implications on the basis of a special legislative procedure which make European rules directly applicable in member states.**

This jurisprudence has given rise to a variety of EU Regulations on family matters which have forever altered UK domestic family law. These regulations include:

Brussels II R (Council Regulation (EC) No 2201/2003) concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters;

the Rome III Regulation (Council Regulation (EU) No 1259/2010), implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (which, if the United Kingdom decides to opt into, would lead to judges throughout the UK applying foreign law);

perhaps the most controversial, the Maintenance Regulation, which is intended to ensure a consistent approach to the jurisdiction for and enforcement of maintenance orders which was the subject of *AB v JJB*.

**AB v JJB is a case which starkly illustrates the complexities of European family law in general and the Maintenance Regulation in particular.** It is indicative of how international family law has become a minefield for practitioners. EU Regulations on family law matters are becoming ever more complex and difficult.

These changes have led to a feeling among many family law professionals that the "Europeanisation" of domestic family law **may have already gone** too far and is, generally, not a positive development - other than creating interesting legal conundrums.

**If the goal of the EU regulations on family matters is to encourage integration by simplifying procedures, ensuring predictability of outcome and reducing costs, it has arguably failed.**

**Regulations which were designed to encourage predictable and cost-effective outcomes have achieved the opposite because of drafting which is, in part, poor, overly complex and arguably ambiguous.**

The problem is exacerbated by the fact that the **Regulations have to cater for legal systems and procedures which may be completely incompatible with our own.**

While European cooperation on enforcement and protective measures is a good thing, one has to ask whether the Europeanisation of our domestic law is a positive development.

## II. Now, answer the following questions

### 1. True and false: mark the sentences T or F depending on the circumstances described in the text:

- a) The parties' marriage was dissolved in Germany.
- b) The wife moved to England before the divorce.
- c) The husband filed an application with a German court.



- d) The husband filed an application seeking maintenance from his wife.
- e) EU has no legal sources governing matters of family law.
- f) Article refers to three European sources of law.
- g) European Maintenance Regulation aims at uniform issuance of maintenance orders.
- h) The author of the article believes the European legislation simplifies the family law issues.
- i) The AV vs JJB case concerned primarily annulment of marriage.
- j) The author of the article presumes the goals pursued by the Maintenance Regulation and claims it has failed to achieve those.
- k) The wife in the instant case submitted her financial statement without contesting the application.
- l) The wife contested the application for a variety of reasons.
- m) One of the reasons for seeking to have the application struck out was the fact that it was filed in England.
- n) The article was written by the legal counsel of the husband.
- o) The reasons for seeking to have the application stricken out were based on English law only.
- p) The husband applied for the financial order referring to Chapter VII of the Maintenance Regulation.

## 2. Discussion questions:

- a) Under your national law, do you think the Court would grant a maintenance application if the marriage had been dissolved in a different member state?
- b) Under what circumstances may a divorced spouse seek a financial order in your country?
- c) May a Court in your country grant a maintenance order to the former spouse 10 years after divorce? If so, under what circumstances?
- d) Does your language recognise the term of "forum shopping"? Would this be prohibited in your country?
- e) Does the law in your country recognise the concept of "abuse of process"? If so, explain the details.
- f) Explain the arguments of the wife against the application of the ex-husband.

## 3. Vocabulary: Please agree if ten following are synonyms or similar in meaning. Then, discuss the meaning of the above terms with your partner and if in doubt ask an expert:

- a) to modify - to vary
- b) to apply - to find
- c) husband - spouse
- d) husband - partner
- e) solicitor - witness
- f) maintenance - alimony
- g) to withdraw the application - to strike out the application
- h) sexual abuse - abuse of process
- i) financial statement - financial order
- j) nullity of marriage - dissolution of marriage
- k) substantive law - European law
- l) directions - directive
- m) to have jurisdiction - to enforce
- n) the only way - the only route
- o) permissible - admissible



**4. Try to find errors in the following sentences:**

- a) The case concerning an application by a German national.
- b) The parties had divorced at Germany in 2000.
- c) The wife received court papers required her to file a finances statement.
- d) The legal representative of the wife invited the former husband to withdrew his apply.
- e) The English Court issued the application ordered the wife to fill of a detailed financial statement.
- f) The wife claimed that an application to modification maintenance may only be make in direct connection with or after an application related directly to divorce proceedings.
- g) She claimed that the English court could only issued such an orders under Chapter VII of the Maintenance Regulation entitled 'Cooperation between Central Authorities'.

**5. Grammar: Please try and find examples of the following:**

- a) Past tense
- b) Future simple tense
- c) Present perfect tense
- d) Reported speech
- e) Past perfect
- f) Passive voice
- g) Conditional construction
- h) Modal verb followed by a perfect infinitive

**6. Which one of the following is a perfect infinitive:**

- He has pleaded not guilty.
- He may plead guilty.
- He might have confessed.

**7. Decide which of these are passive constructions:**

- a) He lost the case.
- b) The case is being heard by an Appellate Court.
- c) They will award compensation.
- d) He is prosecuting this case.
- e) The compensation has been awarded.
- f) He must plead guilty.
- g) The decision has been delivered.
- h) They must have delivered the judgement.

**8. Are these sentences cases of reported speech or not?**

- a) He asked her to go.
- b) He said she should assist him.
- c) I asked when she would come.
- d) I asked for a drink.
- e) I felt she was right.
- f) I felt cold.
- g) She argued with him all night.
- h) She argued he had made a mistake.

# UNIT 5

## SERVICE OF DOCUMENTS AND EXTRAJUDICIAL DOCUMENTS

### INTRODUCTION: SERVICE ABROAD IN CIVIL AND COMMERCIAL MATTERS –THE EU 1393/2007 REGULATION

Cross-border service of judicial documents has long been one of the main fields of mutual judicial assistance in civil and commercial matters. Service through diplomatic channels proved to be extremely time-consuming, costly and unreliable, often bringing the parties to international litigation to the edge of denial of justice. Different methods were thus agreed upon in different international treaties, allowing for service abroad without recourse to consular and diplomatic channels. Besides numerous bilateral treaties, multilateral treaties were also adopted, beginning already with the Hague Convention of 1 March 1954 on civil procedure, which was followed by the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. Furthermore, in the framework of the European Union this subject-matter has been one of the cornerstones of judicial cooperation in civil and commercial matters as already defined in the Amsterdam Treaty of 1999. The Treaty altered the legal basis for judicial cooperation in civil matters, placing it amongst direct legislative competences of the Union, provided that it concerned matters having cross-border implications and insofar as it is necessary for the proper functioning of the internal market. Pursuant to the Treaty, these measures include improving and simplifying the system for cross-border service of judicial and extrajudicial documents. The European legislator reacted quickly to the newly attained competences and adopted Regulation 1348/2000.<sup>1</sup> The system was later elaborated and improved with the adoption of Regulation (EC) 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.<sup>2</sup>

The most striking feature in this development is a clear paradigm shift as to what the main concern is in the regulation of cross-border service. Once it was the protection of national sovereignty but this is gradually losing importance. What prevails in focus today is the striving for the protection of individual procedural guarantees for the parties to the procedure. From the viewpoint of the defendant, this concerns guarantees of due process and especially the right to be heard (related to language requirements), whereas from the viewpoint of the claimant the speed, reliability and low-cost in transmission in order to facilitate effective access to justice is essential. The service of process is no longer viewed predominantly as an “act

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1 Council Regulation (EC) No of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

2 The Regulation also applies to Denmark under the 2005 parallel agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

of exercising powers of a sovereign state”.<sup>3</sup> It is rather considered as an »act of providing information« with the goal of guaranteeing adversarial procedure and effective exercise of rights of defence. This is foremost evident in the new approach to the language guarantees and the unrestricted possibility of direct postal service. It is also not surprising that the public policy exception, characteristic still for both Hague Conventions does not apply under the EU Regulation.

The Regulation provides for different ways of transmitting and serving documents. The first one is transmission through designated transmitting and receiving agencies. These are decentralised in most member states, whereas others have a single centralised agency.<sup>4</sup> In addition, Article 14 of the Regulation provides for service on addressees directly by mail (registered letter with acknowledgement of receipt or equivalent), whereas Article 15 of the regulation allows for direct service through competent judicial officials or other competent persons of the member state addressed (e.g. *huissiers de justice*), although member states may oppose the latter option to be applicable in their territory. In addition the Regulation also provides for the possibility of transmission by consular or diplomatic channels, but this has remained without any practical significance though. Thereby the Regulation establishes neither a hierarchy nor an order of precedence between the different methods of service allowed under the Regulation.<sup>5</sup> In Slovenia at least, the most important methods of service under the Regulation are service via designated transmitting and receiving agencies (Arts. 4-11) and direct service by post (Art. 14). The Regulation relies heavily on the use of simplified standard forms, contained in the Annexes to the Regulation (thus abolishing the requirement of the once burdensome letters-rogatory). An important practical instrument for facilitating judicial co-operation under the Regulation is the European Judicial Atlas in civil matters.<sup>6</sup> It enables users to find quickly and easily the appropriate receiving and transmitting agency in any member state, the relevant standard forms and relevant member states’ notifications concerning the Regulation. In general the Regulation considerably improved and speeded up transmission of judicial documents among member states.<sup>7</sup> Nevertheless in certain states delays are still common although the Regulation stipulates that the receiving agency shall take all necessary steps to effect the service of the document as soon as possible, and in any event within one month of receipt.

With regard to the methods of service, the Regulation provides for important requirements concerning language. The approach is different from that in the Hague Convention 1965: pursuant to Art. 8, it is sufficient that the document to be served is in a language (or accompanied by a translation) which the addressee understands (or the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected). If this is not the case, the addressee may refuse to accept the document, whether at the time of the service or returning the document within one week (thus after

3 Compare the Opinion of Advocate General Bot delivered on 20 September 2012 in Case C-325/11 (Alder): “While procedural acts in the territory of another Member State were traditionally considered to encroach upon the sovereignty of those States, those different regulations, by establishing minimum standards, amount to a gradual, but limited, waiver of certain attributes of sovereignty.”

4 Communication between these agencies is conducted in the language, which the state has designated as acceptable for that purpose (e.g. for communication with Slovenian authorities besides Slovenian, English is also acceptable). Designated transmitting and receiving agencies should not be confused with the designated “Central Body”. The latter is responsible for supplying information to the transmitting agencies and seeking solutions to any difficulties which may arise during transmission of documents for service.

5 *Plumex v. Young Sports NV*, C-473/04, 9.2.2006.

6 [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/ds\\_information\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_en.htm) (2 May 2013).

7 Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Regulation (EC) 1348/2000 on the service in the Member States of Judicial and Extrajudicial documents in civil or commercial matters {SEC(2004)1145}; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0603:EN:NOT> (2 May 2013).

s/he has actually “opened” the document and seen its content). Thus an attempt of service may be refused if a proper translation is not included. It is a clear violation of the Regulation if the court refuses to serve the document abroad without a proper translation. Consequently, the court may not require the applicant to provide for or pay for a translation. If the applicant insists, service must be attempted even if it is entirely clear that the document is neither in a language that the addressee understands nor in an official language of the receiving Member State. But there is the danger that the addressee will refuse acceptance in accordance with Art. 5 of the Regulation the transmitting agency must advise the applicant who forwarded the document that the addressee may refuse the service of the document if it is not in one of the languages under Art. 8 (the official language of the Member State of destination or a language the addressee understands; Art. 5/1). The described system of requirements concerning language applies as appropriate also in cases of other means of transmission and service of judicial documents, as well, thus also with regard to direct service through postal channels.

In the event of the addressee (justifiably) refusing to accept the document, the opposite party may remedy the defective service by subsequent service of translated documents. In this case the day of the subsequent service will be regarded as the date of the service; where under the national law of the State of transmission the application must be served within a certain period of time, the claimant is still protected, because (from this point of view) the service is regarded to have been effected in the first attempt (Art. 8/3 of the Regulation). Regulation 1393/2007, with interests of both parties properly considered, thus accepted the views the ECJ had already taken before.<sup>8</sup>

Neither the Regulation nor the Hague Convention define the term “document” and therefore a commonly disputed issue concerning cross-border service is also the question of whether all Annexes to the document must be translated as well or the translation of the application suffices. The ECJ already ruled on this, saying that the absolute obligation of translation concerns documents instituting proceedings or an equivalent document. However, as to the Annexes though, an assessment must be made, determining whether a translation is actually needed in order for the defendant to properly understand the content (of the claim and cause of action) and to enable him to arrange for his defence.<sup>9</sup>

In comparison to the traditional system of the Hague 1954 and 1965 Conventions, the EU Service of Documents Regulation strengthens the guarantees concerning language on the one hand, mostly, because it is beyond doubt that these guarantees must apply to cases of direct postal service as well, where it is assured that the addressee can effectively exercise the right to refuse acceptance of the document for the reasons concerning language. On the other hand, introducing the criteria of the “language, which the addressee understands”, the Regulation lowers the standards which were applied in traditional regimes of cross-border service of judicial documents to a certain extent. At the level of principles, the new approach may be favoured as it corresponds to what should be the overriding principle in cross-border service of documents from the viewpoint of the addressee – effective exercise of the right to be heard in the proceedings. On the other hand, the new approach has positive effects concerning certain other equally important procedural guarantees – those which relate to the cost barriers for an effective access to court and those relating to the duration of proceedings. The problem however is that the new standard of “understanding the language” causes numerous difficulties when applied in practice. Many questions remain unsolved, which does not contribute to legal certainty and predictability in this field of law, such as questions as to the burden of proof and the method to determine understanding of a language, the consequences of unjustified refusal of acceptance of service, the degree of required proficiency of “understanding” a language, the dilemma of how to apply the discussed standard when

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<sup>8</sup> Götz Leffler v. Berlin Chemie AG, C-443/03, 8.11.2005.

<sup>9</sup> Ingenieurbüro Michael Weiss und Partner GbR v. Industrie- und Handelskammer Berlin, C-14/07, 8.5.2008.

it comes to legal entities etc.<sup>10</sup> In addition there exist dilemmas as to how much space is there for party autonomy concerning the possibility to waive guarantees concerning language in advance. The issue of the required quality of translation also causes difficulties in the practice since a bad translation may in fact amount to the frustration of effective participation in proceedings. When national courts are faced with these questions in pending proceedings, it would be desirable for them to refer these to the Court of the European Union for preliminary rulings. Another striking development, which demonstrates that the EU Regulation is slowly detaching itself from the Hague Convention, which it was originally based on, concerns the clear preference, given by the CJEU to the methods of service, set out in the Regulation, over the “inventions” of national laws which by providing for more or less fictitious methods of service within the jurisdiction, substituted the need to serve abroad.<sup>11</sup> Whether this development is entirely justified still remains to be seen.

## LANGUAGE EXERCISES

### I. Read the following text.

#### JUDGMENT OF THE COURT (First Chamber)

19 December 2012

(Regulation (EC) No 1393/2007 – Service of documents – Party domiciled in the territory of another Member State – Representative domiciled in national territory – None – Procedural documents placed in the case file – Presumption of knowledge)

In Case C-325/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy w Koszalinie (Poland), made by decision of 15 June 2011, received at the Court on 28 June 2011, in the proceedings

Krystyna Alder,

Ewald Alder,

v

Sabina Orłowska,

Czesław Orłowski,

#### ABBREVIATED SUMMARY:

The service of documents among the member states of the European Union is governed by EC regulation 1393/2007, 13 November 2007. This text entered into force on 13 November 2008 and replaced the first Service Regulation, EC regulation 1348/2000 of 29 May 2000. These two regulations were inspired by the Hague Service Convention of 1965. Alder v. Orłowska (ECJ 2012) gave the European Court of Justice its first opportunity to give an interpretation of the second Service regulation, EC 1393/2007.

In that case, Mr. and Mrs. Alder, Germans living in Germany, decided to sue Mrs. Orłowska, who lived in Poland, concerning the recovery of a debt. In accordance with European conflict of jurisdiction rules,

<sup>10</sup> Compare the ECJ judgment in the case *Ingenieurbüro Michael Weiss und Partner GbR v. Industrie- und Handelskammer Berlin*, C-14/07, 8.5.2008.

<sup>11</sup> *Krystyna Alder and Ewald Alder v. Sabina Orłowska and Czesław Orłowski*, C-325/11, Adler, 19 December 2012.

they seized the Polish court, the Sąd Rejonowy w Koszalinie, or District Court of Koszalin. That court instructed the Alders that under article 1135 of the Polish Code of Civil Procedure, they had to appoint “a representative who is authorized to accept service of documents in the Republic of Poland.” If they did not, “judicial documents addressed to that party shall be placed in the case file and shall be deemed to have been effectively served.”

The Alders did not appoint any representative, and a notice was placed in the case file without having been sent to their address in Germany. The Sąd Rejonowy w Koszalinie delivered a default judgment and rejected the Alders’ claim. The decision was not challenged and acquired the force of *res judicata*. The Alders decided once again to seize the Sąd Rejonowy w Koszalinie concerning the same issue, but the judges rejected their claim. They challenged the decision in front of the Sąd Okręgowy w Koszalinie (the Regional Court of Koszalin). That Court vacated the decision and send the case back to the Sąd Rejonowy w Koszalinie. The lower court expressed its disagreement and decided to seek a preliminary ruling from the European Court of Justice on the following question:

Are Article 1(1) of Regulation ... No 1393/2007 ... and Article 18 TFEU to be interpreted as meaning that it is permissible to place in the case file, deeming them to have been effectively served, judicial documents which are addressed to a party whose place of residence or habitual abode is in another Member State, if that party has failed to appoint a representative who is authorized to accept service and is resident in the Member State in which the court proceedings are being conducted?

The Court answered:

1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that judicial documents addressed to a party whose place of residence or habitual abode is in another Member State are placed in the case file, and deemed to have been effectively served, if that party has failed to appoint a representative who is authorized to accept service and is resident in the first Member State, in which the judicial proceedings are taking place.

Some comments are needed to understand the importance of the decision.

The regulation itself does not give clear guidance concerning its scope. Article 1 just says:

1. This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there. It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).

2. This Regulation shall not apply where the address of the person to be served with the document is not known.

The text contains no explanation to determine when a document has to be transmitted from one Member State to another for service there.”

The ECJ stated that it is not for national law to determine if the document has to be sent abroad (see § 24-27 and especially § 25: “ In ... situations ... where the person to be served with the judicial document resides abroad, the service of that document necessarily comes within the scope of Regulation No 1393/2007 and must, therefore, be carried out by the means put in place by the regulation to that end, as provided for by Article 1(1) thereof”).

The main goal of the court was to protect the plaintiff as, in this case, the plaintiff had no chance to express its view, as the notice was not sent to him. The real problem, then, does not appear to be the scope of the regulation but the deemed service and the violation of the fundamental right to real access to justice (article 6 of the European Convention on Human Rights and article 47 of the Charter of Fundamental Rights of the European Union).

The solution in itself is satisfactory, as the Polish law, which in that case deprives the plaintiff of the right to real access to justice, has to be amended.

It does not strictly mean that the document has to be served abroad if the plaintiff does not nominate a representative. The Polish law has to be changed to comply with fundamental rights,

Apparently, the desire of the Court to protect the party may lead to more complexity in the process of serving documents abroad.

If we consider that to achieve the goals of creation of an area of freedom, security and justice, the issue of the mandatory character of the Regulation should be answered by a European source, the answer may not belong to the ECJ (especially if the solution is not clear at all). The solution should come from the legislator of the European Union during the next revision of this regulation.

## II. Read and answer the following questions:

1. Who was acting in the capacity of the Plaintiff in the instant case?
2. What was the subject matter of the original proceedings?
3. Which court was first seised?
4. What were the Plaintiffs invited to do?
5. What would have been the result of the Plaintiffs failing to appoint a representative with regard to service of document?
6. What does the phrase “deemed to have been effectively served” refer to in connection to court documents?
7. Was a representative appointed by the plaintiffs?
8. What does the term “default judgment” refer to?
9. What was the outcome of the first proceedings?
10. Which court referred the questions in the instant case to the CJEU?
11. What was the main legal test of the question referred?
12. What was, briefly, the response of the ECJ?
13. What was – in the opinion of the writer of the case summary – the true legal ground behind the ruling?
14. Does the Regulation offer clear and detail guidance on the scope of the application of its Article 1?
15. Does the Regulation offer practical solution of service of documents in cross border litigation regarding a party residing in another Member State and service of documents?



### III. Put in the correct form of the verbs in brackets

(Source: Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000)

#### Article 4

Transmission of documents

1. Judicial documents (1. *TRANSMIT*; FUTURE TENSE, PASSIVE) directly and as soon as possible between the agencies designated pursuant to Article 2.
2. The transmission of documents, requests, confirmations, receipts, certificates and any other papers between transmitting agencies and receiving agencies may (2. *CARRY OUT*; PASSIVE) by any appropriate means, provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it (3. *BE*) easily legible.
3. The document to (4. *TRANSMIT*; PASSIVE) shall be accompanied by a request drawn up using the standard form set out in Annex I. The form (5. *COMPLETE*; FUTURE TENSE, PASSIVE) in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. Each Member State (6. *INDICATE*; FUTURE) the official language or languages of the institutions of the European Union other than its own which is or are acceptable to it for completion of the form.
4. The documents and all papers that (7. *TRANSMIT*; PASSIVE) shall be exempted from legalisation or any equivalent formality.
5. When the transmitting agency (8. *WISH*) a copy of the document to be returned together with the certificate referred to in Article 10, it shall send the document in duplicate.

#### Article 5

Translation of documents

1. The applicant (9. *ADVISE*; FUTURE, PASSIVE) by the transmitting agency to which he forwards the document for transmission that the addressee may (10. *REFUSE*) to accept it if it is not in one of the languages provided for in Article 8.

#### Article 6

Receipt of documents by receiving agency

1. On receipt of a document, a receiving agency shall, as soon as possible and in any event within seven days of receipt, send a receipt to the transmitting agency by the swiftest possible means of transmission (11. *USE*) the standard form set out in Annex I.
2. Where the request for service cannot (12. *FULFIL*; PASSIVE) on the basis of the information or documents transmitted, the receiving agency shall contact the transmitting agency by the swiftest possible means in order to secure the missing information or documents.
3. If the request for service is manifestly outside the scope of this Regulation or if non-compliance with



the formal conditions required makes service impossible, the request and the documents transmitted (13. *RETURN*; *PASSIVE*), on receipt, to the transmitting agency, together with the notice of return using the standard form set out in Annex I.

#### Article 7

Service of documents

1. The receiving agency (14. *SERVE*; *FUTURE*) the document or have it (15. *SERVE*), either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State.

#### IV. Complete the table with the missing word categories

(from Council Regulation (EC) No. 1393/2007 (service of judicial and extrajudicial documents))

| Verb        | Noun           | Adjective   | Verb      | Noun         | Adjective  |
|-------------|----------------|-------------|-----------|--------------|------------|
| acknowledge |                |             | judge     |              |            |
|             | administration |             |           | notification |            |
| amend       |                |             | omit      |              |            |
| annul       |                |             | prevent   |              |            |
| appeal      |                |             | prohibit  |              |            |
|             |                | applied     | propose   |              |            |
| arrange     |                |             |           |              | protective |
| assist      |                |             | prove     |              |            |
| authorise   |                |             |           | provision    |            |
| certify     |                |             | pursue    |              |            |
|             | claim          |             |           | receipt      |            |
| conclude    |                |             | recognize |              |            |
|             |                | cooperative | refer     |              |            |
|             | concern        |             |           |              | refused    |
|             | construction   |             | rely      |              |            |
| defend      |                |             | remove    |              |            |
| deprive     |                |             |           |              | reported   |
| designate   |                |             |           | request      |            |
|             |                | disclosed   | require   |              |            |

| Verb     | Noun       | Adjective |
|----------|------------|-----------|
|          |            | dismissed |
| dispose  |            |           |
| enforce  |            |           |
|          | excess     |           |
|          | execution  |           |
| hear     |            |           |
|          | imposition |           |
| infringe |            |           |
|          |            | Informed  |
| intend   |            |           |
| issue    |            |           |

| Verb     | Noun       | Adjective |
|----------|------------|-----------|
| respond  |            |           |
|          | revocation |           |
|          | retention  |           |
| rule     |            |           |
| serve    |            |           |
| sign     |            |           |
|          | submission |           |
| sue      |            |           |
| transfer |            |           |
| transmit |            |           |
|          | update     |           |

#### V. Put in the correct prepositions

(Source: Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000)

**between, by, for, from, in, since, over, to, under, until, upon, than, through, with**

#### Article 16

Transmission

Extrajudicial documents may be transmitted (1) \_\_\_\_\_ service in another Member State in accordance (2) \_\_\_\_\_ the provisions of this Regulation.

#### Article 19

Defendant not entering an appearance

1. Where a writ of summons or an equivalent document has had to be transmitted (3) \_\_\_\_\_ another Member State (4) \_\_\_\_\_ the purpose of service (5) \_\_\_\_\_ the provisions of this Regulation and the defendant has not appeared, judgment shall not be given (6) \_\_\_\_\_ it is established that:

(a) the document was served (7) \_\_\_\_\_ a method prescribed (8) \_\_\_\_\_ the internal law of the Member State addressed (9) \_\_\_\_\_ the service of documents (10) \_\_\_\_\_ domestic actions (11) \_\_\_\_\_ persons who are within its territory; or

(b) the document was actually delivered (12) \_\_\_\_\_ the defendant or to his residence (13) \_\_\_\_\_ another method provided (14) \_\_\_\_\_ by this Regulation;

and that (15) \_\_\_\_\_ either of these cases the service or the delivery was effected (16) \_\_\_\_\_ sufficient time to enable the defendant to defend.

2. Each Member State may make it known, (17) \_\_\_\_\_ accordance with Article 23(1), that the judge, notwithstanding the provisions of paragraph 1, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

(a) the document was transmitted (18) \_\_\_\_\_ one of the methods provided for in this Regulation;

(b) a period of time of not less (19) \_\_\_\_\_ six months, considered adequate (19) \_\_\_\_\_ the judge in the particular case, has elapsed (20) \_\_\_\_\_ the date of the transmission of the document;

(c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it (21) \_\_\_\_\_ the competent authorities or bodies of the Member State addressed.

3. Notwithstanding paragraphs 1 and 2, the judge may order, (22) \_\_\_\_\_ case of urgency, any provisional or protective measures.

### Article 20

Relationship (23) \_\_\_\_\_ agreements or arrangements (24) \_\_\_\_\_ which Member States are party

1. This Regulation shall, in relation to matters (25) \_\_\_\_\_ which it applies, prevail (26) \_\_\_\_\_ other provisions contained (27) \_\_\_\_\_ bilateral or multilateral agreements or arrangements concluded (28) \_\_\_\_\_ the Member States, and in particular Article IV of the Protocol (29) \_\_\_\_\_ the Brussels Convention of 1968 and the Hague Convention of 15 November 1965.

2. This Regulation shall not preclude individual Member States (30) \_\_\_\_\_ maintaining or concluding agreements or arrangements to expedite further or simplify the transmission of documents, provided that they are compatible (31) \_\_\_\_\_ this Regulation.

3. Member States shall send (32) \_\_\_\_\_ the Commission:

(a) a copy of the agreements or arrangements referred (33) \_\_\_\_\_ in paragraph 2 concluded (34) \_\_\_\_\_ the Member States as well as drafts of such agreements or arrangements which they intend to adopt; and

(b) any denunciation (35) \_\_\_\_\_, or amendments (36) \_\_\_\_\_, these agreements or arrangements.

### VI. Choose the correct option for each of the following:

*(Source: Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters)*

1. Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the \_\_\_\_\_ in the Member States of judicial and extrajudicial documents.

- a) delivery                      b) giving                      c) transport                      d) service

2. This Regulation should not apply to service of a document on the party's authorised representative in the Member State where the proceedings are taking place \_\_\_\_\_ of the place of residence of that party.

- a) regardless                      b) with no regard                      c) with no consideration                      d) independent

3. Security in transmission requires that the document to be transmitted \_\_\_\_\_ accompanied by a standard form, to be completed in the official language or one of the official languages of the place.
- a) will be                      b) be                      c) to be                      d) is
4. The service of a document should be \_\_\_\_\_ as soon as possible, and in any event within one month of receipt by the receiving agency.
- a) effectuated                      b) given                      c) effected                      d) made
5. To secure the effectiveness of this Regulation, the possibility of refusing service of documents should be confined \_\_\_\_\_ exceptional situations.
- a) to                      b) at                      c) for                      d) within
6. This rule should also apply to the \_\_\_\_\_ service once the addressee has exercised his right of refusal.
- a) later                      b) posterior                      c) latter                      d) subsequent
7. The expiry of this period should not imply that the request be returned to the transmitting agency where it is clear that service is \_\_\_\_\_ within a reasonable period.
- a) feasible                      b) practicable                      c) available                      d) effectible
8. Where according to the law of a Member State a document has to be served within a particular period, the date to be taken into \_\_\_\_\_ with respect to the applicant should be that determined by the law of that Member State.
- a) with                      b) to                      c) account                      d) onto
9. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go \_\_\_\_\_ what is necessary in order to achieve those objectives.
- a) after                      b) furthermore                      c) beyond                      d) more beyond
10. It shall not extend in particular to revenue, customs or administrative matters or to \_\_\_\_\_ of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).
- a) responsibility                      b) liability                      c) accountability                      d) answerability
11. Each Member State shall designate the public officers, authorities or other persons, \_\_\_\_\_ referred to as "transmitting agencies", competent for the transmission of judicial or extrajudicial documents to be served in another Member State.
- a) hereinwith                      b) herewith                      c) hereafterin                      d) hereinafter
12. The designation shall have effect for a period of five years and may be \_\_\_\_\_ at five-year intervals.
- a) renewed                      b) renovated                      c) reactivated                      d) redesignated
13. The transmission of documents, requests, confirmations, receipts, certificates and any other papers between transmitting agencies and receiving agencies may be carried out by any appropriate means, provided that the content of the document received is \_\_\_\_\_.
- a) truthful                      b) truth                      c) true                      d) veritable
14. The applicant shall bear any costs of translation prior \_\_\_\_\_ the transmission of the document.
- a) off                      b) for                      c) of                      d) to

15. \_\_\_\_\_ receipt of a document, a receiving agency shall, as soon as possible and in any event within seven days of receipt, send a receipt to the transmitting agency.

- a) at                                      b) on                                      c) in                                      d) to

16. If the request for service is manifestly outside the scope of this Regulation or if non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned, on receipt, to the transmitting agency, together with the \_\_\_\_\_ of return.

- a) noticing                                      b) notifying                                      c) notification                                      d) notice

17. If it has not been possible to effect service within one month of receipt, the receiving agency shall continue to take all necessary steps to effect the service of the document, unless indicated \_\_\_\_\_ by the transmitting agency.

- a) otherwise                                      b) differently                                      c) otherhow                                      d) another

18. The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency \_\_\_\_\_ one week.

- a) in                                      b) within                                      c) between                                      d) amongst

19. If the addressee has refused to accept the document pursuant to paragraph 1, the service of the document can be \_\_\_\_\_ through the service on the addressee.

- a) realised                                      b) solutioned                                      c) remedied                                      d) answered

20. Where according to the law of a Member State, a document has to be served within a particular period, the date to be taken into account \_\_\_\_\_ respect to the applicant shall be the date of the service of the initial document.

- a) for                                      b) towards                                      c) to                                      d) with

21. The certificate shall be \_\_\_\_\_ in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated that it can accept.

- a) completioned                                      b) completed                                      c) fulfilled                                      d) filed

22. The service of judicial documents coming from a Member State shall not give rise to any payment or \_\_\_\_\_ of taxes or costs for services rendered by the Member State addressed.

- a) reimbursement                                      b) devolution                                      c) return                                      d) allowance

23. Costs occasioned by \_\_\_\_\_ to a judicial officer or to a person competent under the law of the Member State addressed shall correspond to a single fixed fee laid down by that Member State.

- a) resort                                      b) recourse                                      c) coming                                      d) attending

24. The request and document must be returned \_\_\_\_\_ receipt.

- a) on                                      b) at                                      c) in                                      d) from

25. If the addressee has \_\_\_\_\_ to accept the document pursuant to paragraph 1, the service of the document can be remedied through the service on the addressee in accordance with the provisions of this Regulation of the document.

- a) denied                      b) declined                      c) refused                      d) neglected

26. Without prejudice to Article 8, the date of service of a document pursuant to Article 7 shall be the date \_\_\_\_\_ which it is served in accordance with the law of the Member State addressed.

- a) in                      b) on                      c) at                      d) to

27. The service of judicial documents coming from a Member State shall not give rise to any payment or reimbursement of taxes or costs \_\_\_\_\_ services rendered by the Member State addressed.

- a) of                      b) on                      c) for                      d) towards

28. Where a \_\_\_\_\_ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and the defendant has not appeared, judgment shall not be given.

- a) writing                      b) writ                      c) written                      d) writt

29. When a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the \_\_\_\_\_ of the time for appeal from the judgment.

- a) termination                      b) caducity                      c) expiration                      d) expiry

30. The transmitting agency should be able to specify a time \_\_\_\_\_ in the standard form after which service is no longer required.

- a) limit                      b) limitation                      c) expiry                      d) deadline

# UNIT 6

## TAKING OF EVIDENCE

### INTRODUCTION: COUNCIL REGULATION (EC) NO 1206/2001 OF 28 MAY 2001 ON COOPERATION BETWEEN THE COURTS OF THE MEMBER STATES IN THE TAKING OF EVIDENCE IN CIVIL OR COMMERCIAL MATTERS

EU Regulation 1206/2001 of 28 May 2001 is an excellent tool for cooperation between courts of the European Union. Its objective is to enable a court of a Member State to take evidence easily in another Member State through direct contact with judicial authorities of the latter. This type of cooperation has been relatively easy to implement, and has a great procedural interest. This can be seen by the fact that, although the Regulation dates from 2001, it is well known by national judges.

#### Scope

The Regulation has the advantage of being applicable in all Member States except Denmark. It is suitable for all proceedings commenced or contemplated in civil and commercial matters, including civil aspects of family law. The transnational requirement is fulfilled simply by the fact that the evidence needs to be taken in other Member State.

#### Two ways of operating:

The Regulation provides two ways: a court may ask a court of another Member State to take the evidence if it is needed to solve the case. It can also take it directly in another Member State.

In the first case, the **direct communication between the courts of the requesting State and the requested State** will take place by using the standard forms attached to the Regulation. These forms have a complete nature, and are identical in all languages of the European Union. This facilitates the understanding between the two jurisdictions. They must be filled in a language accepted by the requested State. Some items must be fully completed by the requesting court (e.g. nature and purpose of the proceedings, description of the evidence to be taken, questions to be submitted to witnesses ...), and sometimes documents are attached to the application. Finally, the result of the request is drawn up by the requested court, which can compel the requesting judge to use his/her personal linguistic skills or those of an interpreter.

In the case of direct communication between courts, the European Regulation foresees specific conditions that may be asked by the court of the requesting Member State, provided that the law and organization of the requested Member State so enables. This implies the implementation of taking of evidence following a special procedure foreseen by the national law of the requesting Member State. In addition to that, it includes the use of modern communication technologies, such as videoconferencing. Finally, it also includes the presence in the taking of evidence of the parties themselves and/or their lawyers, and even the presence of a representative of the requesting court.

The execution of the taking of evidence must be done within a maximum period of 90 days from the receipt of the request. It is done, except in the case of specific conditions asked by the court of the requesting Member State mentioned above, in accordance to the law of the requested court, and in the language of that court, in such a way that the judge will sometimes need the use of an interpreter in the hearing of witnesses.

Courts must pay special attention to the quick communications between them, in particular through the use of modern communication technologies.

In the second case, **direct taking of evidence by the requesting court in the territory of the requested Member State**, the request goes through the central authority appointed by the requested Member State, which, if accepted, will implement it. This system of operation, once exceptional, has increased dramatically with the development of videoconferencing, which makes it unnecessary for the judge, the parties and their lawyers to travel.

### Restrictive grounds of refusal:

The European Regulation provides for restrictive grounds for refusal of an application for the taking of evidence: if it is without the scope of the Regulation (as in criminal matters), if the taking of evidence does not fall within the functions of the judiciary, if the application is not complete, if the person subject to a hearing invokes an exemption or if the deposit or advance of expenses related to the use of an expert or an interpreter is not complied with.

### Fees charged to the requesting court:

The Regulation provides that the fees of experts and interpreters may be reimbursed by the requesting court. It includes also the costs that would result from implementing a special system or the use of modern technologies but excludes other expenses, such as compensation payments to witnesses (on this point, see Case C-283/09 ECJ Werynski).

### Optional nature of the Regulation:

On several occasions, the Court of Justice of the European Union has decided that a court of a Member State had the option of resorting to the use of Regulation N° 1206/2001 to take evidence, or to use the procedures foreseen in national law such as for example requesting a witness to appear directly before it (see Case C-170/11 ECJ Lippens) or by appointing an expert to take evidence in the territory of another Member State (see Case C-332/11 ECJ ProRail).

## TOOLS:

To facilitate the application of the provisions of this Regulation on the taking of evidence, the European Union provides the courts with valuable tools in addition to the forms already mentioned.

### 1 European Judicial Atlas

([http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm))

It notably allows the court to find, in its own language:



- For each Member State, the courts or central authority competent to receive the applications for the taking of evidence (both based on the topic as well as on the territorial jurisdiction)
- For each Member State, the language/s they accept, and the means of transmission that can be used to transmit the request to obtain evidence (post, fax, e-mail ...)

## 2 The European e-Justice portal

[https://e-justice.europa.eu/content\\_taking\\_of\\_evidence-76-en.do](https://e-justice.europa.eu/content_taking_of_evidence-76-en.do)

It notably allows the court to find in its own language:

- the full text of the Regulation and a Practical Guide on its implementation;
- an introduction on the rules related to the taking of evidence in each Member State.
- dynamic forms to be filled in online or download
- a Practical Guide on the use of videoconferencing for the taking of evidence.
- information on videoconferencing equipment in each court of each Member State (under "tools help courts and legal practitioners" and "Videoconferencing: information on national videoconferencing facilities")
- court interpreters, translators in each Member State (under "find ..." then "find an interpreter or legal translator")

## LANGUAGE EXERCISES

### I. Choose the correct option for each of the following:<sup>1</sup>

- Where a court requests to take \_\_\_\_\_ directly in another Member State, it shall submit a request to the central body or the competent authority.
 

|          |              |             |                |
|----------|--------------|-------------|----------------|
| a) proof | b) evidences | c) evidence | d) declaration |
|----------|--------------|-------------|----------------|
- Each Member State shall draw up a list of the courts competent for the \_\_\_\_\_ of taking of evidence according to this Regulation.
 

|                |              |                |                |
|----------------|--------------|----------------|----------------|
| a) performance | b) carry-out | c) realization | d) achievement |
|----------------|--------------|----------------|----------------|
- The request and all documents accompanying the request shall be exempted \_\_\_\_\_ authentication or any equivalent formality
 

|        |         |       |       |
|--------|---------|-------|-------|
| a) for | b) from | c) of | d) to |
|--------|---------|-------|-------|
- Requests and communications pursuant \_\_\_\_\_ this Regulation shall be transmitted by the swiftest possible means, which the requested Member State has indicated it can accept.
 

|       |         |            |       |
|-------|---------|------------|-------|
| a) of | b) from | c) towards | d) to |
|-------|---------|------------|-------|
- Within seven days of receipt of the request, the requested competent court shall send a(n) \_\_\_\_\_ of receipt to the requesting court.
 

|              |                   |                 |               |
|--------------|-------------------|-----------------|---------------|
| a) admission | b) acknowledgment | c) confirmation | d) acceptance |
|--------------|-------------------|-----------------|---------------|

<sup>1</sup> Exercises I, II, IV, V and VI are based on Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters).

6. Where the execution of a request made using form A in the Annex, which complies with the conditions laid down in Article 5, does not fall within the jurisdiction of the court to which it was transmitted, the \_\_\_\_\_ shall forward the request to the competent court of its Member State.

- a) later                      b) last                      c) latter                      d) last one

7. The requested Court shall acknowledge receipt of the deposit or advance without delay, \_\_\_\_\_ within 10 days of receipt of the deposit or the advance.

- a) to the latest              b) at the latest              c) in the latest              d) on the latest

8. The requested court shall execute the request in accordance \_\_\_\_\_ the law of its Member State.

- a) with                      b) to                      c) on                      d) onto

9. The requested court shall comply \_\_\_\_\_ such a requirement unless this procedure is incompatible with the law of the Member State of the requested court.

- a) at                      b) to                      c) on                      d) with

10. The requested court shall notify the requesting court, \_\_\_\_\_ the time when, and the place where, the proceedings will take place.

- a) from                      b) to                      c) of                      d) with

11. Where necessary, \_\_\_\_\_ executing a request the requested court shall apply the appropriate coercive measures in the instances and to the extent as are provided for by the law of the Member State of the requested court.

- a) in                      b) at                      c) towards                      d) onto

12. A request for the hearing of a person shall not be executed when the person concerned claims the right to \_\_\_\_\_ to give evidence or to be prohibited from giving evidence.

- a) deny    b) neglect              c) refused    d) decline

13. The execution of a request may be refused only if the execution of the request under the law of the Member State of the requested court does not fall \_\_\_\_\_ the functions of the judiciary.

- a) in                      b) at                      c) within                      d) between

14. Execution may not be refused by the requested court solely on the ground that under the law of its Member State a court of that Member State has exclusive \_\_\_\_\_ the subject matter of the action.

- a) jurisdiction of              b) jurisdiction over              c) competence over              d) discretion on

15. If execution of the request is refused on one of the \_\_\_\_\_ referred to in paragraph 2, the requested court shall notify the requesting court thereof within 60 days of receipt of the request.

- a) grounds                      b) foundation                      c) bases                      d) causes

16. The grounds for the delay shall be given as well as the \_\_\_\_\_ time that the requested court expects it will need to execute the request.

- a) calculated                      b) computed                      c) budgeted                      d) estimated

17. Where the direct taking of evidence implies that a person shall be \_\_\_\_\_, the requesting court shall inform that person that the performance shall take place on a voluntary basis.

- a) seen                      b) heard                      c) listened                      d) appeared

18. The central body or the competent authority may refuse direct taking of evidence only if the direct taking of evidence requested is contrary \_\_\_\_\_ fundamental principles of law in its Member State.

- a) to                                      b) against                                      c) towards                                      d) for

19. Without prejudice \_\_\_\_\_ the conditions laid down in accordance with paragraph 4, the requesting court shall execute the request in accordance with the law of its Member State.

- a) of                                      b) in                                      c) to                                      d) against

20. If it is compatible \_\_\_\_\_ the law of the Member State of the requesting court, representatives of the requesting court have the right to be present in the performance of the taking of evidence by the requested court.

- a) for                                      b) towards                                      c) to                                      d) with

21. The execution of the request, in accordance with Article 10, shall not give \_\_\_\_\_ to a claim for any reimbursement of taxes or costs.

- a) arise                                      b) rise                                      c) raise                                      d) risen

22. The duty for the parties to \_\_\_\_\_ these fees or costs shall be governed by the law of the Member State of the requesting court.

- a) bear                                      b) carry                                      c) relay                                      d) bring

23. In all other cases, a deposit or advance shall not be a condition \_\_\_\_\_ the execution of a request.

- a) for                                      b) of                                      c) to                                      d) with

24. This Regulation shall not preclude Member States \_\_\_\_\_ maintaining or concluding agreements or arrangements between two or more of them to further facilitate the taking of evidence.

- a) for                                      b) of                                      c) to                                      d) from

25. So as to ensure the utmost clarity and legal \_\_\_\_\_ the request for the performance of taking of evidence must be transmitted on a form to be completed in the language of the Member State of the requested court or in another language accepted by that State.

- a) warrant                                      b) certitude                                      c) certainty                                      d) security

26. The parties and, if any, their representatives, should be able to be present at the performance of the taking of evidence, if that is provided for by the law of the MS of the requesting court, in order to be able to follow the \_\_\_\_\_.

- a) proceedings                                      b) procedures                                      c) processes                                      d) proceeds

27. This Regulation should prevail \_\_\_\_\_ the provisions applying to its field of application, contained in international conventions concluded by Member States.

- a) on top of                                      b) above                                      c) over                                      d) beyond

28. Each MS shall designate a central body responsible for \_\_\_\_\_, in exceptional cases, at the request of a requesting court, a request to the competent court.

- a) forwarding                                      b) resending                                      c) directing                                      d) advancing

29. The request shall contain the nature and \_\_\_\_\_ of the case and a brief statement of the facts.

- a) issue                                      b) subject matter                                      c) content                                      d) topic

30. The request shall contain any requirement that the \_\_\_\_\_ is to be carried out under oath or affirmation in lieu thereof, and any special form to be used.

- a) interrogation                      b) declaration                      c) examination                      d) asking

**II. Put in the correct nouns for the verbs in brackets:**

CHAPTER II

(1. *TRANSMIT*) AND (2. *EXECUTE*) OF (3. *REQUEST*; PLURAL FORM)

Section 1

(4. *TRANSMIT*) of the (5. *REQUEST*)

**Article 4**

Form and (6. *CONTAIN*) of the (7. *REQUEST*)

1. The request shall be made using form A or, where appropriate, form I in the Annex. It shall contain the following details:

- (a) the requesting and, where appropriate, the requested court;
- (b) the names and addresses of the parties to the (8. *PROCEED*, PLURAL FORM) and their (9. *REPRESENT*; PLURAL FORM), if any;
- (c) the nature and subject matter of the case and a brief (10. *STATE*) of the facts;
- (d) a (11. *DESCRIBE*) of the (12. *TAKE*) of evidence to be performed;
- (e) where the (13. *REQUEST*) is for the (14. *EXAMINE*) of a person:
  - the name(s) and address(es) of the person(s) to be examined,
  - the questions to be put to the person(s) to be examined or a (15. *STATE*) of the facts about which he is (they are) to be examined,
  - where appropriate, a (16. *REFER*) to a right to refuse to testify under the law of the Member State of the requesting court,
  - any (17. *REQUIRE*) that the (18. *EXAMINE*) is to be carried out under oath or (19. *AFFIRM*) in lieu thereof, and any special form to be used,
  - where appropriate, any other information that the requesting court deems necessary;
- (f) where the request is for any other form of (20. *TAKE*) of evidence, the documents or other objects to be inspected;
- (g) where appropriate, any (21. *REQUEST*) pursuant to Article 10(3) and (4), and Articles 11 and 12 and any (22. *INFORM*) necessary for the (23. *APPLY*) thereof.

2. The (24. *REQUEST*) and all documents accompanying the request shall be exempted from (25. *AUTHENTICATE*) or any equivalent formality.

3. Documents which the requesting court deems it necessary to enclose for the (26. *EXECUTE*) of the request shall be accompanied by a (27. *TRANSLATE*) into the language in which the (28. *REQUEST*) was written.

**Article 5**

## Language

The request and (29. *COMMUNICATE*; PLURAL FORM) pursuant to this Regulation shall be drawn up in the official language of the requested Member State or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where the requested (30. *TAKE*) of evidence is to be performed, or in another language which the requested Member State has indicated it can accept. Each Member State shall indicate the official language or languages of the institutions of the European Community other than its own which is or are acceptable to it for (31. *COMPLETE*) of the forms.

**Article 7**

(32. *RECEIVE*) of (33. *REQUEST*)

1. Within seven days of (34. *RECEIVE*) of the (35. *REQUEST*), the requested competent court shall send an (36. *ACKNOWLEDGE*) of (37. *RECEIVE*) to the requesting court using form B in the Annex.

**III. Choose the most appropriate option:****Article 1**

## Scope

1. This Regulation (1) *WILL/SHALL* apply in civil or commercial matters (2) *WHERE/WHEN* the court of a Member State, in (3) *AGREEMENT/ACCORDANCE* with the (4) *DISPOSITIONS/PROVISIONS* of the law of that State, (5) *DEMANDS/REQUESTS*:

- (a) the competent court of another Member State to take evidence; or
- (b) to take evidence directly in another Member State.

2. A request shall not be (6) *DONE/MADE* to (7) *OBTAIN/ACHIEVE* evidence which is not (8) *MEANT/INTENDED* for use in judicial (9) *PROCEDURES/PROCEEDINGS*, commenced or (10) *CONTEMPLATED/FORESEEN*.

3. In this Regulation, the term "Member State" shall mean Member States with the exception of Denmark.

**Article 2**

Direct (11) *TRANSFERENCE/TRANSMISSION* between the courts

1. Requests pursuant to Article 1(1)(a), (12) *HERETOFORE/HEREINAFTER* referred to as "requests", shall be transmitted by the court before which the proceedings are commenced or contemplated, (13) *HERETOFORE/HEREINAFTER* referred to as the "requesting court", directly to the competent court of another Member State, (14) *HERETOFORE/HEREINAFTER* referred to as the "requested court", for the (15) *PERFORMANCE/ACTION* of the taking of evidence.

2. Each Member State shall (16) *DRAW UP/ELABORATE* a list of the courts competent for the performance of taking of evidence according to this Regulation. The list shall also (17) *INDICATE/REMARK* the territorial and, where appropriate, the special (18) *COMPETENCE/JURISDICTION* of those courts.

**Article 3**

Central body

1. Each Member State shall (19) NOMINATE/DESIGNATE a central body responsible for:

- (a) supplying information to the courts;
- (b) (20) FINDING/SEEKING solutions to any difficulties which may (21) RAISE/ARISE in respect of a request;
- (c) (22) DISPATCHING/FORWARDING, in exceptional cases, at the request of a requesting court, a request to the competent court.

2. A federal State, a State in which several legal systems apply or a State with (23) AUTONOMICAL/AUTONOMOUS territorial entities shall be free to (24) NOMINATE/DESIGNATE more than one central body. [...]

**Article 13**

(25) COMPULSORY/COERCIVE measures

Where necessary, in executing a request the requested court shall apply the appropriate (26) COMPULSORY/COERCIVE measures in the instances and to the (27) MEASURE/EXTENT as are provided for by the law of the Member State of the requested court for the execution of a request made for the same (28) OBJECTIVE/PURPOSE by its national authorities or one of the parties concerned.

**Article 14**

(29) NEGATION/REFUSAL to execute

1. A request for the hearing of a person shall not be executed when the person concerned (30) ALLEGES/CLAIMS the right to (31) REFUSE/DENY to give evidence or to be prohibited from giving evidence,

- (a) under the law of the Member State of the requested court; or
- (b) under the law of the Member State of the requesting court, and such right has been specified in the request, or, if (32) NECESSITY/NEED be, at the (33) INSTANCE/SOLICITUDE of the requested court, has been confirmed by the requesting court.

2. In addition to the (34) BASES/GROUNDS referred to in paragraph 1, the execution of a request may be refused only if:

- (a) the request does not fall within the (35) SCOPE/RANGE of this Regulation as (36) DISPOSED/SET OUT in Article 1; or
- (b) the execution of the request under the law of the Member State of the requested court does not fall within the functions of the (37) MAGISTRACY/JUDICIARY; or
- (c) the requesting court does not (38) COMPLY/ABIDE with the request of the requested court to (39) ACHIEVE/COMPLETE the request pursuant to Article 8 within 30 days after the requested court asked it to do so; or
- (d) a deposit or (40) ADVANCE/LOAN asked for in accordance with Article 18(3) is not made within 60 days after the requested court asked for such a deposit or (41) ADVANCE/LOAN.

3. Execution may not be (42) NEGLECTED/REFUSED by the requested court (43) ALONE/SOLELY on the ground that under the law of its Member State a court of that Member State has (44) EXCLUSIVE/UNIQUE jurisdiction over the subject matter of the action or that the law of that Member State would not admit the right of (45) PROCESS/ACTION on it.

4. If execution of the request is (46) NEGLECTED/REFUSED on one of the (47) BASES/GROUNDS referred to in paragraph 2, the requested court shall (48) NOTIFY/NOTICE the requesting court (49) THERETO/THEREOF within 60 days of (50) RECEPTION/RECEIPT of the request by the requested court using form H in the Annex.

#### **Article 15**

(51) NOTIFICATION/NOTICE of delay

If the requested court is not in a (52) POSITION/SITUATION to execute the request within 90 days of (53) RECEPTION/RECEIPT, it shall inform the requesting court (54) THEREBY/THEREOF, using form G in the Annex. When it does so, the (55) BASES/GROUNDS for the delay shall be given as well as the (56) CALCULATED/ESTIMATED time that the requested court expects it will need to execute the request.

#### **IV. Turn the following sentences into the passive:**

1. We should improve cooperation between courts in the taking of evidence.
2. Member States cannot sufficiently achieve the objectives of the proposed action.
3. The Community may adopt measures in accordance with the principle of subsidiarity.
4. We should execute a request for the performance of the taking of evidence expeditiously.
5. The requested court should execute the request in accordance with the law of its Member State.
6. That court should not bear the fees paid to experts and interpreters.
7. The parties shall make the deposit or advance.
8. For the proper functioning of this Regulation, the Commission should review its application.
9. Each Member State shall indicate the official language or languages which is or are acceptable to it.
10. The requesting court shall inform the requested court.

#### **V. Replace the incorrect terms with the correct ones in the following passages:**

##### **Article 1**

Range

1. This Regulation shall apply in civil or commercial matters where the court of a Member State, in accordance with the dispositions of the law of that State, requests:
  - (a) the competent court of another Member State to take evidences; or
  - (b) to take proofs directly in another Member State.
2. A sollicitude shall not be made to obtain proof which is not destined for use in judicial procedures, commenced or forecasted.

**Article 10**

General dispositions on the execution of the request

1. The requested court shall execute the request without retardation and, at the latest, within 90 days of reception of the request.
2. The requested court shall execute the request in accordance with the law of its Member State.
3. The requesting court may solicit for the request to be executed in accordance with a special process provided for by the law of its Member State, using form A in the Annex. The requested court shall comply to such a requirement unless this process is incompatible with the law of the Member State of the requested court or by grounds of major practical difficulties. If the requested court does not comply to the requisite for one of these reasons it shall inform the requesting court using form E in the Annex.

**Article 18**

1. The execution of the request, in accordance with Article 10, shall not give rise to a plea for any remuneration of taxes or costs.
2. Notwithstanding, if the requested court so compels, the requesting court shall assure the remuneration, without retardment, of:
  - the salaries paid to experts and interpreters, and
  - the costs provoked by the application of Article 10(3) and(4).

The burden for the parties to convey these fees or costs shall be overseen by the law of the Member State of the requesting court.

**VI. Put in the appropriate preposition in each gap:**

CHAPTER II

TRANSMISSION AND EXECUTION (1) \_\_\_\_\_ REQUESTS

Section 1

Transmission (2) \_\_\_\_\_ the request

Article 4

Form and content (3) \_\_\_\_\_ the request

1. The request shall be made using form A or, where appropriate, form I (4) \_\_\_\_\_ the Annex. It shall contain the following details:

- (a) the requesting and, where appropriate, the requested court;
- (b) the names and addresses of the parties (5) \_\_\_\_\_ the proceedings and their representatives, if any;
- (c) the nature and subject matter (6) \_\_\_\_\_ the case and a brief statement (7) \_\_\_\_\_ the facts;
- (d) a description (8) \_\_\_\_\_ the taking of evidence to be performed;
- (e) where the request is (9) \_\_\_\_\_ the examination of a person:
  - the name(s) and address(es) (10) \_\_\_\_\_ the person(s) to be examined,



- the questions to be put (11) \_\_\_\_\_ the person(s) to be examined or a statement of the facts (12) \_\_\_\_\_ which he is (they are) to be examined,
  - where appropriate, a reference (13) \_\_\_\_\_ a right to refuse to testify (14) \_\_\_\_\_ the law of the Member State of the requesting court,
  - any requirement that the examination is to be carried out (15) \_\_\_\_\_ oath or affirmation (16) \_\_\_\_\_ lieu thereof, and any special form to be used,
  - where appropriate, any other information that the requesting court deems necessary;
- (f) where the request is (17) \_\_\_\_\_ any other form (18) \_\_\_\_\_ taking of evidence, the documents or other objects to be inspected;
- (g) where appropriate, any request pursuant (19) \_\_\_\_\_ Article 10(3) and (4), and Articles 11 and 12 and any information necessary (20) \_\_\_\_\_ the application thereof.
2. The request and all documents accompanying the request shall be exempted (21) \_\_\_\_\_ authentication or any equivalent formality.
3. Documents which the requesting court deems it necessary to enclose (22) \_\_\_\_\_ the execution of the request shall be accompanied (23) \_\_\_\_\_ a translation (24) \_\_\_\_\_ the language (25) \_\_\_\_\_ which the request was written.

# UNIT 7

## EUROPEAN ORDER FOR PAYMENT PROCEDURE

### INTRODUCTION: REGULATION (EC) NO 1896/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12 DECEMBER 2006 CREATING A EUROPEAN ORDER FOR PAYMENT PROCEDURE

#### 1. Introduction and scope of application

There are many "non-genuine disputes" when it comes to business relationships. "Non-genuine disputes" are disputes where no contentious questions of fact or law exist between the parties, nevertheless, the debtor does not settle the debt – due to lack of payment discipline, inability to pay or simply trying to delay fulfillment of the obligation. Judicial proceedings in such cases are not actually solving a dispute, they are a mere "payment service" that grants the plaintiff an enforceable title. Since practical experience regarding disputes in business relationships shows that the division of "genuine" and "non-genuine disputes" is justified, most states have integrated a specific simplified and expedited procedure into their civil procedural legislation. Although these procedures differ widely amongst themselves, they have a crucial common characteristic – immediately, without an oral hearing and *ex parte* (i.e. without a prior possibility for the defendant to be heard) they provide the claimant an enforceable title (a payment order or an order for payment) the case is referred to ordinary civil litigation only if the defendant contests the claim by filing an objection against this payment order. Although a simple objection of the defendant results in the case being referred to ordinary civil litigation, experience in numerous legal systems, where such *ex parte* debt recovery procedures are known, shows that in most cases an objection is not filed at all.

Following to a great extent instruments already available in the member states, a similar instrument has been created on the community level as well – the European Payment Order Procedure. Availability of such *ex parte* expedited debt collection procedures on the one hand benefits the economic operators for which the fact that a swift and efficient recovery of outstanding debts over which no legal controversy exists is of paramount importance. On the other hand the implementation of such expedited *ex parte* proceedings for "non-genuine" disputes enables member states to ensure efficient use of the limited resources allocated to the courts for the resolution of controversial litigation.

The Regulation applies only to cross-border cases (cases where at least one of the parties is domiciled or habitually resident in an EU country other than the country of the court hearing the action). It does not apply to Denmark. The Regulation is only optional, meaning that it does not prevent a claimant from pursuing a claim by making use of other procedures – e.g. "national" payment order or regular litigation. It applies only to uncontested pecuniary and contractual claims. There is no "ceiling" concerning the amount in controversy (value of dispute). The claim for must be for a specific amount that has fallen due at the time when the application for a European order for payment (or European Payment Order) is submitted.

If interest is sought it must, in principle, be specified concerning interest rate and the period of time for which that interest is demanded<sup>1</sup>. The Regulation applies only to civil and commercial matters. It is not applicable e.g. to revenue, customs or administrative matters, *acta iura imperii*, matrimonial relationships, wills and succession, bankruptcy, social security and – in principle – claims in tort). The court (in Hungary: a notary public) seized must have jurisdiction (which is determined predominantly on the basis of the Brussels I Regulation; e.g. domicile of the defendant, place of performance of contractual obligation, jurisdiction agreement). In this regard, protective jurisdictional regime for consumers is emphasized even to a greater extent than in the Brussels I Regulation.

## 2. Procedure

The Regulation relies heavily on use of standard forms, of which there are seven. The applicant must request the European Order for Payment (hereinafter: EOP) by using the standard form A. Representation by a lawyer is not mandatory. If the requirements set in the Regulation (e.g. scope of application, jurisdiction...) are not met, the application is rejected (standard form D). Art. 7 of the Regulation governs exhaustively the requirements to be met by an application for a EPO and the national law cannot (as the CJEU has already clarified<sup>2</sup>) pose additional requirements in this regard. Otherwise there remain several procedural issues which the Regulation is silent on and thus shall be governed by national law (e.g. court fees, subject matter jurisdiction, composition of court (judge, judicial officer, registrar...), representation, power of attorney, sanctions for deliberately false applications, extension of time-limits, referral to ordinary civil procedure...). If the form is incomplete the court invites the applicant to rectify or complete it (standard form B). The court must also warn the applicant in case if only a part of the claim falls within the Regulation's scope of application and invite him to accept or refuse a proposal for a EOP for the reduced amount specified by the court (standard form C). The applicant can then reconsider whether it is still suitable to pursue only a part of the overall claim in the procedure for EOP.

One of the most controversial issues concerning the EOP relates to the degree of the assessment as to the merits of the claim. National laws vary considerably in this regard ("documentary payment order", "prima facie review – facts (or/and) law; no review at all, review whether the claim is well founded in the substantive law examined solely on the basis of the alleged facts). This has been one of the major controversies in negotiations leading to the adoption to the Regulation and the result can be at best described as a compromise or – more likely – a "deliberately left ambiguity". In different provisions the Regulation mentions the review "*whether the claim appears to be founded*" (Art. 8), the rejection of the application if "... *the claim is clearly unfounded*" (Art. 11) whereas the defendant is (upon serving of the claim) informed that the EOP is *»issued solely on the basis of the information provided by the claimant, which is not verified by the court"* (Art. 12). In addition the applicant is only required to offer a *description* (not submission or attachment) of evidence ... so that the defendant can comprehend the basis of the claim (Art. 7). Inevitably, it will be the Court of Justice of the EU which will ultimately need to clarify the standard of review of the merits of the claim in the context of the procedure for EOP.

If the conditions set in the Regulation are met, the court issues and serves the EOP normally within 30 days of the lodging of the application (standard form E). In the EOP, the defendant shall be advised of his options to either pay the amount indicated in the order to the claimant or oppose the order by lodging with the court of origin a statement of opposition, to be sent within 30 days of service of the order on

1 The issue of specified prayer for relief concerning the interest has been dealt with in the CJEU judgment in case C215/11(Szyrocka) dated 13 December 2012.

2 *Ibidem*.

him (standard form F). If the defendant chooses to contest the EOP he can use the standard form F. The defendant must indicate that he contests the claim, without having to specify the reasons for this. In that case the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event (e.g. due to assessment that it is economically not feasible to pursue the claim in a regular litigation). The transfer to ordinary civil proceedings is governed by the national law. Failure of the defendant to contest the jurisdiction of the court in his statement of opposition does not amount to the tacit jurisdiction agreement. Hence, the defendant is not precluded from raising the plea of lack of jurisdiction after the case has been transferred to the ordinary litigation.<sup>3</sup>

If no statement of opposition is filed, the court which issued the EOP shall first review the compliance with minimum standards set in the Regulation concerning the service of EOP and information provided to the defendant. The Regulation lays down a specific and detailed definition of such minimum standards. The Regulation is aimed at providing enforceable titles only for genuinely uncontested claims. This, however, presupposes that the defendant has effectively been served with the EOP and that he has also received sufficient information as to the claim and its basis as well as instructions concerning filing of the statement of opposition. This is in order to place the defendant in a position to make a well-informed choice either to oppose the claim or to leave it uncontested. Consequently the Regulation allows only for such methods of service (listed in Articles 13 and 14) which are characterised by either complete certainty or a very high degree of likelihood that the document served has reached its addressee. It is explicitly inadmissible to use fictitious methods of service and in addition the Regulation does not apply to defendants whose whereabouts are unknown.

## 2. Enforcement

If these minimum standards are met it shall declare the EOP enforceable (standard form G). The decision is final and the defendant may only exceptionally file a request for an extraordinary review in the country of origin. Such a request may be filed in case service was not effected in *sufficient time to enable him to arrange for his defence*, without any fault on his part or if he was prevented from objecting to the claim by *reason of force majeure* or due to extraordinary circumstances without any fault on his part or if the EOP was clearly wrongly issued, or due to other exceptional circumstances (e.g. if the applicant has acted fraudulently). The EOP which has become enforceable in the Member State of origin is directly enforceable in every other MS (except Denmark) without the need for a declaration of enforceability (*exequatur*) and without any possibility of opposing its recognition. The enforcement procedures are governed by the national law of the state of enforcement. The Regulation explicitly states only two possible grounds for refusal of enforcement. The first covers the case of irreconcilable judgments whereas the second one covers the case *"if the defendant has paid the awarded amount"*. The latter provision is rather unclear since it remains doubtful whether it covers only payments effected after the issuing of the EOP (precisely: after the time limit for filing the statement of opposition has elapsed) or even those effected earlier. And if the provision should be construed so that it covers only payments of the debt effected after the issuing of the EOP, it remains unclear whether the explicit mentioning of only one ground for the extinguishment of the debt (payment) excludes the possibility for the defendant to rely on other possible means (e.g. set-off, assignment, *datio in solutum*...).

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<sup>3</sup> CJEU judgment in case C144/12 (Goldbet Sportwetten GmbH) dated 13 June 2013.

## LANGUAGE EXERCISES

### I. Reading Comprehension.

You are going to read a report regarding the application of Regulation 1896/2006 (EC) for the launching of the European Order for Payment Procedure.

(Source: European Commission, Brussels, 13.10.2015, COM(2015) 495 final)

#### REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

#### 5 on the application of Regulation (EC) 1896/2006 of the European Parliament and of the Council creating a European Order for Payment Procedure.

##### Introduction.

##### Objective and main features of the procedure

10 Regulation (EC) No 1896/2006 of 12 December 2006 created the first genuine European civil procedure, the European order for payment **procedure**. It has been applied since December 2008 in all Member States except Denmark. It is an optional procedure that can be used in cross-border cases as an alternative to domestic payment orders.

15 The **swift** and efficient recovery of uncontested outstanding **debts** is of vital importance for economic operators in the European Union. Late payments are a key cause of **insolvencies**, in particular of small and medium-sized **enterprises**, and result in numerous job losses. This has led a number of Member States to introduce a simplified order for payment procedure. A payment order procedure aims at providing a speedy and cost-effective judicial relief against a debtor to pay a sum of money, on the assumption that the claim will not be contested by the debtor. However, domestic procedures are often inadmissible or  
20 impracticable in cross-border cases and their level of performance varies substantially.

It was for these reasons that the European order for payment procedure was introduced. It allows creditors to recover uncontested civil and commercial claims according to a uniform procedure available in 27 Member States. It is a written procedure which does not require presence before the court nor the  
25 assistance of a lawyer. The claimant only has to submit his application. No documentary evidence is needed to support the application and no further actions of the claimant are required in the course of the procedure. The European order for payment is issued by courts or other judicial authorities. It can freely circulate in all Member States without any intermediate proceedings for recognition and enforcement  
30 (**exequatur**) being required in the Member State of enforcement. This means that a European order for payment can be enforced in other Member States like any local payment order issued there, i.e. without the need of a declaration of enforceability.

This **streamlined** and efficient procedure is designed only for **uncontested** claims. Therefore, in order to **safeguard** the effective right of the defence, the defendant can **lodge** a statement of opposition  
35 within 30 days of the order being issued. The defendant must only indicate that he contests the claim, without having to specify reasons for it, and does not need to be represented by a lawyer. In that case, the European order for payment procedure is terminated. The claim may, however, continue to be pursued in accordance with the rules of ordinary civil procedure which will enable the defendant's arguments to be fully considered. [...]

### General assessment of the Regulation

40 Overall, the objective of the Regulation to simplify, speed up and reduce the costs of litigation in cases concerning uncontested claims and to permit the free circulation of European payment orders in the EU without exequatur was broadly achieved, though in most Member States the procedure was only applied in a relatively small number of cases.

45 From the studies and consultation carried out, it appears that there have been no major legal or practical problems in the use of the procedure or in the fact that exequatur is abolished for the recognition and enforcement of the judgments resulting from the procedure.

### Statistical data

50 According to the available information, between 12,000 and 13,000 applications for European orders for payment are received by the courts of Member States per year. The highest numbers of applications (more than 4,000 annually) are in Austria and Germany where also most European orders for payment are issued. Between 300 and 700 applications are received annually in Belgium, the Czech Republic, France, Hungary, the Netherlands, Portugal and Finland. In the other Member States, the procedure has been **taken up** to a more limited extent. More detailed information on the actual use of the European order for payment procedure per Member State can be found in the Annex. [...]

### Jurisdiction

Five Member States have concentrated jurisdiction **to handle** European orders for payment in a single specific court/authority. In the other Member States, district and regional courts (or **notaries** for instance in Hungary) are competent for issuing European orders for payment.

60 Specialisation may have certain advantages such as ensuring specialised knowledge of the procedure and language skills. On the other hand, even if the European order for payment procedure is a written procedure, citizens, especially **consumers**, may still prefer to lodge claims with their local court having jurisdiction. Whether the advantages of specialisation **outweigh** the disadvantages may also depend on the geographical size of the Member State. [...]

### 65 Application for a European order for payment Principal and interest

70 The claim must be for a specific amount that has fallen due at the time when the application for a European order for payment is submitted. The amount of the claim includes the principal and, where applicable, interest, contractual penalties and costs. If interest on the claim is demanded, the application must state the interest rate and the period of time for which that interest is demanded. In Case C-215/11, the Court of Justice clarified that in an application a **claimant** should be able to demand interest accrued up to the date of payment of the principal. In such a case, the national court is free to determine how the order form E is to be completed, provided that the defendant is informed of the calculation of the interest. [...]

### 75 Language of the application

In most Member States, applications must be submitted in the official language(s). Some Member States accept, however, also foreign languages: the Czech Republic, Estonia, Cyprus and Sweden accept English; France accepts English, German, Italian and Spanish.

80 Translation requirements have a negative impact on costs and delays of the procedure even if the European order for payment procedure is a procedure where the parties are not required to provide and debate on evidence. The application form can be automatically translated in the official language of the Member

State where the court is sitting. As it contains **tick-boxes**, in most cases a translation is not necessary. In order to achieve the objective of a truly European procedure, all Member States should accept European payment order applications in at least one other language than their official national language(s).

#### **Issuing a European order for payment**

It appears from the available information that the obligation for courts to issue European orders for payment within 30 days of the application is generally respected only in some Member States. From those Member States that have provided relevant data, courts issue the order in time in Malta (1 week), Belgium and Ireland (2 weeks), Germany (2-3 weeks), Bulgaria and Lithuania (30 days). Courts take their decision within 1-2 months in Greece and Luxembourg, within 2 months in France and Finland, up to 4 months in Austria, the Czech Republic, Cyprus, Estonia, Poland, the Netherlands, Portugal, Sweden, Slovenia, up to 6 months in Hungary, 8 months in Spain and up to 9 months in Slovakia.

Lengthy proceedings can hardly be justified in the light of the fact that the procedure does not require any examination of evidence or hearing of parties. A reduction of this length is absolutely necessary as the quick recovery of uncontested claims has a high impact on the cash flow of companies, in particular SMEs. In addition, a systematic non-respect of the deadlines provided for in the Regulation may be considered as an infringement of the Regulation. Further work developing electronic processing of the procedure may help to address the problem. The Commission services will continue to closely monitor this area for improvements. [...]

#### **Opposing a European order for payment**

It appears that defendants oppose the European order for payment only to a limited extent, although the rate of opposition differs between Member States. For instance, opposition is marginal in Austria (4%), while it amounts to around 16% in France and Germany, and above 50% in Greece.

In general, no problems have been reported on the opposition to the European payment orders. Pursuant to Article 17(2), the effect of the opposition is the transfer of the case to ordinary proceedings. As European payment orders may concern small claims within the meaning of the European Small Claims Regulation, the Commission has proposed to make it possible, after opposition in a European order for payment procedure, to transfer the case also to the European Small Claims procedure, to the extent that this procedure may apply. [...]

#### **The Case Law of the European Court of Justice on Unfair Contract Terms and Payment Order Procedures**

The Court of Justice of the European Union has been called, in the context of the application of Directive 93/13/EEC on unfair terms in consumer contracts, to examine the application of national order for payment procedures and their enforcement in the light of the principles of equivalence and effectiveness of EU law. Questions have been raised on whether the Court's rulings have an impact on the use of payment order procedures in consumer disputes. Indeed, the very nature of payment order procedures is based on the concept that the substantive justification of a claim is – in contrast to ordinary court procedures – in principle not examined.

The Court held that in the absence of harmonisation of the national mechanisms for recovery of uncontested claims, the rules implementing national order for payment procedures are a matter for the national legal order, in accordance with the principle of the procedural autonomy of the Member States, on condition, however, that they are no less favourable than those governing similar domestic actions (principle of equivalence) and do not make it in practice impossible or excessively difficult to exercise the rights **conferred** on consumers by European Union law (principle of effectiveness).



The Court ruled specifically in Case C-618/10 referring to Case C-473/00 that the principle of effectiveness precludes national legislation which does not allow the responsible court in the case where a consumer has not lodged an objection, to assess of its own motion, even though it already has the legal and factual elements necessary for that task available to it, whether a term relating to interest on late payments contained in a contract concluded between a seller and a consumer is unfair.

According to the Court's caselaw the specific characteristics of court proceedings which take place under national law between sellers or suppliers and consumers cannot constitute a factor which is liable to affect the legal protection from which consumers must benefit under the provisions of Directive 93/13/EEC. However, the Court has also underlined in the context of the review of arbitration awards having the effect of *res judicata* that the need to comply with the principle of effectiveness cannot be stretched so far as to mean that a national court is required to make up fully for the total inertia on the part of the consumer concerned.

Other judgments of the Court on the principle of effectiveness concern the payment order procedure after an opposition is lodged, once the claim is continued in ordinary or other civil procedures. In C-618/10, Banco Español, the Court distinguishes the specific situation before an opposition in a payment order procedure clearly from the other situations. This case concerned the definition of the national court's responsibilities pursuant to the provisions of Directive 93/13/EEC, in the context of an order for payment procedure, before the consumer has lodged an objection. The Court stresses that every case in which the question arises as to whether a national procedural provision makes the application of European Union law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies.

Article 8 of the Regulation requires the court to examine whether the claim appears to be founded on the basis of the information available to it. Courts have the possibility, if they **prima facie** have doubts as to the justification of the claim or part of it (e.g. interest), to propose in accordance with Article 10 of the Regulation only a partial order to the claimant. In addition, a full appreciation of the **substance** of the claim is ensured after opposition to the European order for payment, once the claim is pursued in ordinary court proceedings. It can therefore be concluded that the features of the European order for payment procedure duly ensure compliance with the case law of the European Court of Justice.

### Conclusions

The European order for payment procedure was introduced to simplify, speed up and reduce the costs of the recovery of outstanding debts, and to provide creditors, in particular SMEs, with a swift and efficient judicial tool, a policy objective as valid today as it was when the Regulation was adopted.

Based on the above evaluation of the functioning of the procedure, it appears that the Regulation generally functions in a **sound** and satisfactory manner. The application of the Regulation has generally improved, simplified and accelerated the handling of uncontested pecuniary claims in cross-border disputes. In the light of this, it is therefore considered not appropriate at this time to change the fundamental parameters of the European procedure.

However, the European procedure is not sufficiently known among businesses, citizens, practitioners, and courts. Further awareness-raising is necessary, both at European and at Member State level. Efficient and active promotion of the Regulation should take place, providing the general public and professionals with information on the European order for payment procedure.

In addition, the operation of the Regulation may be improved through non-legislative and implementation measures. The Commission will use the cooperation mechanism of the European Judicial Network in



175 Civil and Commercial Matters in a proactive manner to improve the implementation and promote the take-up of this useful instrument. The operation of the procedure could further be improved by ensuring its electronic processing and by Member States giving further consideration to the suitability of centralisation of the handling of cases under the procedure.

**1. Explain the meaning of the terms below in your own words.**

- a) procedure (pl. -s) (line 12)
- b) swift (line 15)
- c) debt (pl. -s) (line 15)
- d) insolvency (pl. -ies) (line 16)
- e) enterprise (pl.-s) (line 17)
- f) exequatur (line 30)
- g) to streamline (line 34)
- h) to contest (line 34)
- i) to safeguard (line 35)
- j) to lodge (line 35)
- k) to take up (line 55)
- l) to handle (line 59)
- m) notary (pl.- ies) (line 60)
- n) consumer (pl. -s)(pl.-s) (line 64)
- o) to outweigh (line 65)
- p) claimant (pl. -s) (line 73)
- q) tick-box (pl. -es) (line 84)
- r) to confer (line 128)
- s) prima facie (line 154)
- t) substance (pl. -s) (line 157)
- u) sound (line 167)

**2. Numbers.**

**What do the numbers in the box mean? (see lines 25, 27, 36, 50- 57, 107).**

|        |        |     |     |    |
|--------|--------|-----|-----|----|
| 12,000 | 4,000  | 16% | 300 | 30 |
| 700    | 13,000 | 50% | 27  | 4% |

- a) 12,000 \_\_\_\_\_
- b) 4,000 \_\_\_\_\_
- c) 16% \_\_\_\_\_
- d) 300 \_\_\_\_\_
- e) 30 \_\_\_\_\_
- f) 700 \_\_\_\_\_

- g) 13,000 \_\_\_\_\_
- h) 50% \_\_\_\_\_
- i) 27 \_\_\_\_\_
- j) 4% \_\_\_\_\_

**3. Scan through the text above and answer the following comprehension questions:**

- What was the initial purpose of Regulation 1896/2006? (lines 11-12).
- How many European countries are parties to the common procedure? (lines 12-13).
- What problems may non- or missed payments cause to small- and medium-sized businesses? (lines 15-17)
- What are the benefits of exequatur in regards to the OP procedure? (lines 28-33)
- How does OPP work in practice? (lines 18-22)
- Who is entitled to issue an OPP? (lines 28-29)
- What options does a defendant have? (lines 34-40)
- Which principles are invoked to compensate for the absence of MS harmonization of uncontested claims at Union level? (lines 123-143)
- In a nutshell, why was OPP introduced? (lines 162-165).

**4. Word formation: verb to adjective.**

**Convert the verbs provided below into adjectives using the Adjective Suffix Table.**

*Verb Table*

|         |           |              |             |           |
|---------|-----------|--------------|-------------|-----------|
| act     | comply    | hope         | participate | resist    |
| amuse   | confuse   | ignore       | please      | surprise  |
| appeal  | cooperate | impress      | poison      | test      |
| attract | delight   | move         | recognize   | use       |
| bore    | enforce   | nauseate     | read        | vacate    |
| care    | excite    | nurture      | relax       | remark    |
| caution | expect    | odour        | rely        | overwhelm |
| vary    | harmonize | comfort      | number      | accept    |
| object  | alternate | substantiate |             |           |

*Adjective Suffix Table*

| <i>-ous</i> | <i>-able</i> | <i>-ant</i> | <i>-ive</i> | <i>-ful</i> | <i>-ed</i> | <i>-ing</i> |
|-------------|--------------|-------------|-------------|-------------|------------|-------------|
|             |              |             |             |             |            |             |
|             |              |             |             |             |            |             |
|             |              |             |             |             |            |             |
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|             |              |             |             |             |            |             |
|             |              |             |             |             |            |             |
|             |              |             |             |             |            |             |

**5. Confusing word-pairs**

**Go over the list of two or three terms and choose the appropriate verb to complete each sentence.**

- a) Acquire/Acquiesce  
The participants have \_\_\_\_\_ knowledge of many legal English technical terms.  
The defendant \_\_\_\_\_ to the requests indicated by the court.
- b) Adjourn/Resume  
It looks like the afternoon session is about to \_\_\_\_\_.  
The court decided to \_\_\_\_\_ to next Thursday.
- c) Advice/Advise  
My colleague gave me some common sense \_\_\_\_\_.  
I \_\_\_\_\_ you to make sure your new habitual residence is registered.
- d) Bring/Fetch  
Don't forget to \_\_\_\_\_ the documents with you.  
This time it's your turn to \_\_\_\_\_ the shopping bags in the car.
- e) Lay/Lie/Lie<sup>4</sup>  
I'm not feeling well. I'd better \_\_\_\_\_ down for a couple of hours.  
We \_\_\_\_\_ colourful designer porcelain tiles in the kitchen ourselves last summer.  
The director \_\_\_\_\_ about the actions done by staff against students.
- f) Lend/Borrow  
Could I \_\_\_\_\_ your bicycle to go to the post office?  
The traveller asked me to \_\_\_\_\_ him €48.00 to pay for a taxi.

---

4 In the infinitive form, both *To lie* (not tell the truth) and *To lie* (to be in a horizontal position), are homonyms.

## g) Proceedings/Procedure

The judge stayed the \_\_\_\_\_ due to insufficient documentation.

The \_\_\_\_\_ was long and tortuous and there appeared to be no possibility for a settlement on behalf of the parties.

## h) Raise/Rise

The unexpected \_\_\_\_\_ in electricity and gas prices made people angry.

The university is going to \_\_\_\_\_ students' tuition next year.

## i) Remember/Remind

Could you \_\_\_\_\_ me to set the alarm before going to bed this evening?

Did you \_\_\_\_\_ to lock the door before leaving the apartment?

## j) Take/Bring

I'll \_\_\_\_\_ the luggage down to the main lobby.

I'd like to \_\_\_\_\_ my colleague to our meeting tomorrow.

## II. Fill in the gaps in the text, using words deriving from those provided in each case

(Source: [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/judicial\\_cooperation\\_in\\_civil\\_matters/116023\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/116023_en.htm))

Serving a European order for payment on a defendant

A European order for payment is served on a [defend] \_\_\_\_\_ (1) in accordance with the [nation] \_\_\_\_\_ (2) law of the state in which [serve] \_\_\_\_\_ (3) is to be effected. The [regulate] \_\_\_\_\_ (4) sets out minimum [procedure] \_\_\_\_\_ (5) standards regarding service either with or without [prove] \_\_\_\_\_ (6) of receipt by the defendant.

Service with proof of receipt:

- personal service: the defendant signs an [acknowledge] \_\_\_\_\_ (7) of receipt, including the date of [receive] \_\_\_\_\_ (8);
- personal service: the [compete] \_\_\_\_\_ (9) person who effected the service signs a duly dated document stating that the defendant has received the document or refused to receive it without any legal [justify] \_\_\_\_\_ (10);
- the defendant signs and returns a [due] \_\_\_\_\_ (11) dated acknowledgement of receipt when the European order for payment is received by post or by electronic means, such as fax or e-mail.

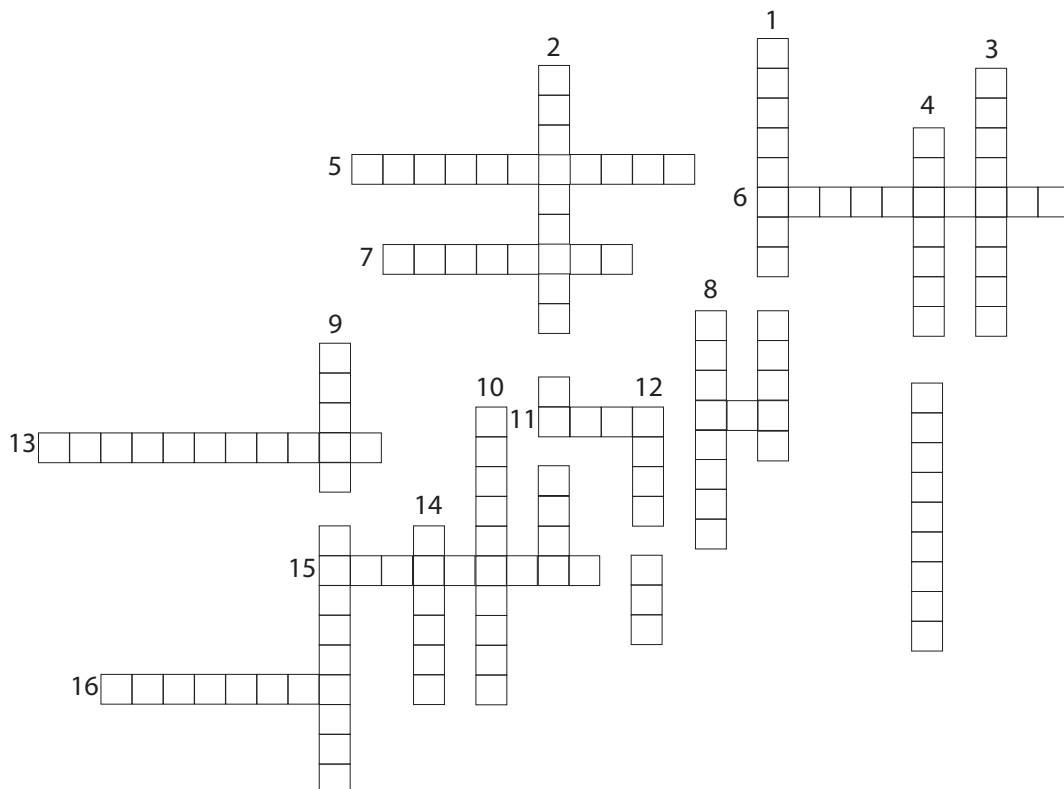
**III. Replace the words and expressions underlined in the text, using a synonym from those provided (verbs are provided in their infinitive form)**

(Source: <https://e-justice.europa.eu/dynForms.do?1360518465932>)

***annual, at least, combat, empty, in accordance with, in force,  
lay down, national, note, operation, seek, stage***

If interest is **asked for** \_\_\_\_\_ (1), this should be specified for each claim **according to** \_\_\_\_\_ (2) the codes indicated on the form. The code must contain both the relevant number (first row of the codes) and the letter (second row of the codes). For instance, if the interest rate has been agreed by contract and covers **yearly** \_\_\_\_\_ (3) periods, the code is 02A. If it is for the court to decide the amount of interest the last box [to] should be left **empty** \_\_\_\_\_ (4), and code 06E should be used. Code 01 refers to an interest rate **established** \_\_\_\_\_ (5) by statute. [...] Please **bear in mind** \_\_\_\_\_ (6) that in commercial transactions as referred to in Directive 2000/35/EC of 29 June 2000 on **fighting** \_\_\_\_\_ (7) late payments, the statutory interest rate is the sum of the interest rate applied by the European Central Bank to its most recent main refinancing **transaction** \_\_\_\_\_ (8) carried out before the first calendar day of the half-year in question ('the reference rate'), plus **a minimum of** \_\_\_\_\_ (9) seven percentage points. For a Member State which is not participating in the third **phase** \_\_\_\_\_ (10) of economic and monetary union, the reference rate referred to above is the equivalent rate set at **domestic** \_\_\_\_\_ (11) level (e.g. by the national central bank). In both cases the reference rate **applicable** \_\_\_\_\_ (12) on the first calendar day of the half-year in question will apply for the following six months (see Art. 3(1)(d) of Directive 2000/35/EC).

**IV. Complete the following crossword:**



**Down**

1. order to stop a party from disposing of money or assets pending a final decision being made by the court about distribution of that money or assets
2. recognition by a party that an amount of money is owed
3. related to money
4. situation where parties are liable only for their respective obligations
8. someone to whom money is owed
9. situation where two parties share a single liability, but each can be held liable for the whole of it
10. process of dissolving a corporation by collecting all assets and income, satisfying creditors, and distributing any net assets left
12. capital payment from one party to another
14. party owing a debt to another

**Across**

5. agreement or compromise by which a creditor or group of creditors accept partial payments from a debtor
6. situation where someone has insufficient assets to meet debts and liabilities
7. property deposited as a guarantee of the payment of a debt
11. reach the date for payment
13. execution of a law or court decision
15. right to recover from a third party the whole amount one has to pay
16. act of selling or transferring goods

**IV. Fill in the gaps in following sentences using the appropriate prepositions:**

1. The claimant shall be informed \_\_\_\_\_ any transfer to ordinary civil proceedings.
2. Where the claimant has pursued his claim \_\_\_\_\_ the European order for payment procedure, nothing \_\_\_\_\_ national law shall prejudice his position in subsequent ordinary civil proceedings.
3. The order shall be enforced in the other Member States \_\_\_\_\_ the need \_\_\_\_\_ a declaration of enforceability.
4. The defendant was prevented \_\_\_\_\_ objecting to the claim \_\_\_\_\_ reason of force majeure.
5. If the court decides that the review is justified \_\_\_\_\_ one of the reasons laid \_\_\_\_\_ in paragraphs 1 and 2, the European order for payment shall be null and void.
6. \_\_\_\_\_ no circumstances may the European order for payment be reviewed as \_\_\_\_\_ its substance in the Member State of enforcement.
7. All procedural issues not specifically dealt \_\_\_\_\_ in this Regulation shall be governed \_\_\_\_\_ national law.
8. Where a statement \_\_\_\_\_ opposition is lodged, the proceedings shall continue \_\_\_\_\_ the competent courts of the Member State of origin.

**V. Fill in the gaps in following sentences using the appropriate prepositions:**

***accept, govern, inform, issue, pursue, reject, specify***

If the court's proposal \_\_\_\_\_ (1) by the claimant, a European order for payment \_\_\_\_\_ (2) for the part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim \_\_\_\_\_ (3) by national law. If the claimant fails to reply within the time limit which \_\_\_\_\_ (4) by the court or refuses the court's proposal, the application for a European order for payment \_\_\_\_\_ (5) in its entirety.

The applicant \_\_\_\_\_ (6) of the reasons for which the claim has been rejected using form D (Annex IV). There is no right of appeal if an application \_\_\_\_\_ (7). In such cases, however, the claim may still \_\_\_\_\_ (8) by means of a new application for a European order for payment or using any other procedure available under the law of an EU country.

**VI. The following sentences are unusual, because the passive is preferred when it is the result and/or the addressee, and not the author, that matters. Transform the following sentences into the passive, following the starting prompts given, in order to give the sentences the appropriate focus and avoid unnecessary repetitions.**

1. The regulation includes a form which people are to use in order to apply for an European order of payment.  
The regulation includes a form which is to be...
2. People use the appropriate EU legislation in order to decide the jurisdiction of courts.  
The jurisdiction of courts....
3. The amount was due when they submitted the application  
The amount was due when the application...
4. The court considers whether the application has met the applicability conditions.  
The court considers whether the applicability conditions...
5. The court may propose that the applicant amend the application.  
The court may propose that the application...
6. They will ask the claimant to accept or refuse the timescale set by the Court.  
The claimant ...
7. Someone must inform the applicants of the consequences of their decision.  
Claimants...

# APPENDIX

## EXERCISE ON JURISDICTION

**I. While reading the text below, fill in the gaps with the correct forms of the words in brackets, using the clues given.**

JUDGMENT OF THE COURT (Third Chamber)

3 October 2013

In Case C386/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofijski gradski sad (Bulgaria), made by decision of 29 June 2012, received at the Court on 13 August 2012, in the proceedings initiated by

**Siegfried János Schneider,**

THE COURT (Third Chamber),

[...]

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

### Judgment

This request for a preliminary ruling concerns the interpretation of Article 22(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

The request has been made in non-contentious proceedings brought by Mr Schneider – a Hungarian national who has been placed under guardianship – for authorisation to sell his share of a property situated in the Republic of Bulgaria.

### Legal context

*European Union law*

Regulation No 44/2001

Recital 7 in the preamble to Regulation No 44/2001 states:

‘The scope of this Regulation must cover all the main civil and commercial matters apart from certain well-defined matters.’

Recital 19 of that regulation is worded as follows:

‘Continuity between the [Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32; “the Brussels Convention”)] and this Regulation should be ensured, and transitional (1) ..... (**provide, noun, pl.**) should be laid down to that end. The same need for (2) ..... (**continue, noun**) applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Communities and the 1971 Protocol [on that interpretation by the Court, as revised and amended,] should remain applicable also to cases already pending when this Regulation enters into force.’

Under Article 1(1) and (2)(a) of Regulation No 44/2001:

‘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.’



2. The Regulation shall not apply to:

(a) the status or (3) ..... (**law, adj.**) capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession’.

In Section 6 of Chapter II of Regulation No 44/2001, Article 22, entitled ‘Exclusive jurisdiction’, provides: ‘The following courts 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.

...’

#### *Bulgarian law*

Under Article 168(2) of the Family Code (Semeen kodeks), read in conjunction with Article 165(4) and Article 130(3) thereof, (4) ..... (**move, adj., neg.**) property belonging to a person who lacks full legal capacity may be disposed of, with the (5) ..... (**authorise, noun for action/event**) of the Rayonen sad (district court), in the place where that person is currently domiciled, provided that the disposal of the property does not adversely affect the person’s interests.

#### **The dispute in the main proceedings and the question referred for a preliminary ruling**

Pursuant to Hungarian (6) ..... (**legislate, noun**), a Hungarian court placed Mr Schneider under guardianship and, for those purposes, appointed as legal (7) ..... (**represent, noun**) and official guardian for him a person who is also a Hungarian national.

Following the death of his mother on 17 June 2009, Mr Schneider inherited a half-share in an apartment in Lovech (Bulgaria); his brother owns the other half-share.

Acting with the (8) ..... (**approve, noun**) of his guardian, Mr Schneider applied to the Sofiyski rayonen sad (Sofia District Court) for authorisation to sell his share of that property. In support of his (9) ..... (**apply, noun**), he claimed that the sale would help him to meet his individual needs in Hungary, in particular, the costs of constant healthcare and accommodation in a healthcare establishment.

By decision of 29 February 2012, the Sofiyski rayonen sad refused that application on the ground that (10) ..... (**dispose, noun**) of the property in question was not in the interests of a person declared to be lacking full legal capacity. That court decided that Mr Schneider’s interests as an adult under (11) ..... (**guardian, abstract noun**) would be adversely affected if his immovable property were to be sold and the money thus obtained put into a trust fund, leaving him homeless in Hungary.

Mr Schneider brought an appeal against that (12) ..... (**decide, noun**) before the Sofiyski gradski sad (Sofia City Court).

On the view that it is (13) ..... (**clear, adj., neg.**) from Article 22(1) of Regulation No 44/2001 whether that provision can be applied to non-contentious proceedings such as those pending before it, the Sofiyski gradski sad decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 22(1) of [Regulation No 44/2001] (14) ..... (**apply, adj.**) only to contentious proceedings which have as their object rights *in rem* in immovable property or does it also apply to non-contentious proceedings by which a national of a Member State who, in accordance with its (15) ..... (**nation, adj.**) law, has been declared by a court of that State to be lacking full legal capacity and for whom a guardian has been appointed (who is also a national of that Member State) seeks to dispose of immovable property belonging to him which is situated in another Member State?’

**The question referred for a preliminary ruling**

By its question, the referring court asks, in essence, whether Article 22(1) of Regulation No 44/2001 must be interpreted as applying to non-contentious proceedings by which a national of a Member State who has been declared to be lacking full legal capacity and placed under guardianship in accordance with the law of that State applies to a court in another Member State for authorisation to sell his share of a property situated in that other Member State.

**II. Explain, in your own words, the meaning of the following words and phrases used in the text:**

1. non-contentious proceedings
2. guardianship
3. transitional provisions
4. revenue
5. main proceedings

**III. Fill in the gaps with synonyms or near-synonyms of the words in brackets.**

1. The request has been made in non-contentious proceedings (1) ..... (initiated) by Mr. Schneider.
2. The Regulation is (2) ..... (phrased) in such a way that it does not leave room for interpretation.
3. The Regulation shall not apply to the status or legal capacity of natural persons, rights in property (3) ..... (emerging) out of a matrimonial relationship, wills and succession.
4. Regulation No 44/2001 contains provisions regarding (4) ..... (absolute) jurisdiction.
5. In (5) ..... (legal action) which have as their objects rights in rem in immovable property, the courts of the Member State in which the property is situated shall have jurisdiction.
6. Immovable property belonging to a person who (6) ..... (does not have) full legal capacity may be disposed of with the authorisation of the court.
7. A Hungarian court placed Mr. Schneider under guardianship and (7) ..... (designated) as legal representative and official guardian a person who is also a Hungarian national.
8. The court decided that Mr. Schneider's interests as an adult under guardianship would be (8) ..... (negatively) affected if his immovable property were to be sold.
9. Mr. Schneider (9) ..... (lodged) an appeal against the decision of before the Sofia City Court.
10. The Bulgarian court decided to (10) ..... (suspend) the proceedings and to refer the question to the Court of Justice of the European Union for a preliminary ruling.

**IV. Fill in the gaps with the appropriate particles.**

***against, before, by, for, from, in, of, on, to, under, with***

1. The courts of the Member State ..... which the property is situated shall have exclusive jurisdiction, regardless ..... domicile.
2. Under Article 168(2) of the Family Code, read in conjunction ..... Article 165(4) and Article 130(3) thereof, immovable property belonging ..... a person who lacks full legal capacity may be disposed .....
3. Pursuant ..... Hungarian legislation, a Hungarian court placed Mr. Schneider ..... guardianship.
4. Acting ..... the approval of his guardian, Mr. Schneider applied to Sofia District Court ..... authorisation to sell his share of the property.

5. In support ..... his application, he claimed that the sale would help him to meet his individual needs in Hungary, ..... particular, the costs of constant healthcare and accommodation.
6. .... decision of 29 February 2012, the Bulgarian court refused that application ..... the ground that disposal of the property in question was not ..... the interests of the person lacking full legal capacity.
7. Mr. Schneider brought an appeal ..... that decision ..... the higher court, Sofia City Court.
8. On the view that it is unclear ..... Article 22(1) of Regulation No 44/2001 whether that provision can be applied to non-contentious proceedings such as those pending before it, the Bulgarian court decided to refer the question ..... the Court of Justice ..... a preliminary ruling.

**V. Answer the following questions:**

1. Who is Mr. Schneider?
2. Why did Mr. Schneider apply to a Bulgarian court?
3. What legal issues are involved in this case?
4. What does the question referred to the Court of Justice of the European Union relate to?
5. In your opinion, does this matter fall within the scope of Regulation No 44/2001? Give arguments to support your view.

**VI. Now read the judgment of the Court of Justice. After reading it, answer the following question: Is the case about rights in rem in immovable property? Give arguments to support your answer.**

As has been argued by all the Member States which have lodged written observations and by the European Commission, an application such as that lodged before the referring court does not fall within the scope of Regulation No 44/2001.

The proceedings initiated by Mr Schneider, a Hungarian national who has been placed under guardianship, are directed to obtaining authorisation to sell his share of a property situated in the Republic of Bulgaria.

It should be noted that, as can be seen from the order for reference, Mr Schneider is applying for that authorisation because, as a person who has been placed under guardianship, he is unable to exercise his rights fully: he cannot dispose of his immovable property unless another person acts – as guardian – on his behalf, and prior authorisation must have been granted by the appropriate judicial authority.

It can also be seen from the order for reference that, pursuant to the Bulgarian Family Code, the need for judicial authorisation is a safeguard required by law for the protection of a person who has been placed under guardianship, as such a person is no longer able to dispose of his immovable property himself. As the referring court noted, that authorisation is not to be granted unless the disposal of the immovable property concerned is being undertaken in the interests of the person under protection.

It follows that an application by a person who has been placed under guardianship for authorisation to dispose of his immovable property, such as the application under consideration by the referring court, is directly linked to the legal capacity of the natural person concerned for the purposes of Article 1(2)(a) of Regulation No 44/2001: the fact that judicial authorisation is necessary for the disposal of immovable property belonging to persons under guardianship is the immediate consequence of their lack of full legal capacity, being a requirement laid down for their protection in that context. [...]

In the light of all of the foregoing, the answer to the question referred is that Regulation No 44/2001 and, in particular, Article 22(1) thereof must be interpreted as not applying to non-contentious proceedings by which a national of a Member State who has been declared to be lacking full legal capacity and placed

under guardianship in accordance with the law of that State applies to a court in another Member State for authorisation to sell his share of a property situated in that other Member State, in view of the fact that such proceedings are concerned with the 'legal capacity of natural persons' for the purposes of Article 1(2)(a) of Regulation No 44/2001, a matter which falls outside the material scope of that regulation.

On those grounds, the Court (Third Chamber) hereby rules:

**Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and, in particular, Article 22(1) thereof must be interpreted as not applying to non-contentious proceedings by which a national of a Member State who has been declared to be lacking full legal capacity and placed under guardianship in accordance with the law of that State applies to a court in another Member State for authorisation to sell his share of a property situated in that other Member State, in view of the fact that such proceedings are concerned with the 'legal capacity of natural persons' for the purposes of Article 1(2)(a) of Regulation No 44/2001, a matter which falls outside the material scope of that regulation.**

**VII. Summarise the text above, placing emphasis on the arguments in favour of the CJEU ruling.**

# ANSWER KEY

## UNIT 1

**I.** 1. exequatur procedure; 2. ad litem representative; 3. quantum meruit; 4. acta iure imperii; 5. ex parte measures; 6. forum necessitates rule; 7. lex fori; 8. lis pendens rule

**II.** 1. accession; 2. writ; 3. settlor; 4. winding-up; 5. defendant; 6. claimant; 7. jurisdiction; 8. debtor; 9. judgment; 10. mutual trust; 11. enforcement; 12. recognition; 13. provision; 14. liability; 15. proceedings; 16. domicile

**III.** 1. compulsory, immovable; 2. harmonious, concurrent; 3. competent; 4. national, sound, internal; 5. liability, harmful; 6. consecutive; 7. legal, maintenance, ancillary, participating

**IV.** 1. evict; 2. settle; 3. arbitrate; 4. obliged; 5. rescind; 6. Adjourn

**V.1.** seised, entail; 2. block, raise; 3. applies; 4. signed; 5. sued; 6. calls; 7. come; 8. bring

## UNIT 2

**I.** 1. d; 2. c; 3. b; 4. a; 5. c; 6. d; 7. b; 8. b; 9. c; 10. a; 11. d; 12. a; 13. a; 14. b; 15. b; 16. c; 17. c; 18. a; 19. b; 20. b; 21. c; 22. d; 23. b; 24. a; 25. c.

**II.** I. 1 – C; 2 – F; 3 – E; 4 – A; 5 – I; 6 – D; 7 – J; 8 – B; 9 – G; 10 – H.

**III.** 1 – E; 2 – I; 3 – A; 4 – K; 5 – L; 6 – B; 7 – O; 8 – T; 9 – C; 10 – G; 11 – M; 12 – J; 13 – U; 14 – F; 15 – S; 16 – D; 17 – N; 18 – P; 19 – H; 20 – R; 21 – Q.

**IV.** actionable; law; dissenting; tort; equitable; damage; appellate; trial; answerable; dissolution; slanderous; defamation; libellous; liability.

**V.** abided/abode, abided/abode; bound, bound; broke, broken; found, found; held, held; overrode, overridden; brought, brought; upheld, upheld; took, taken; set, set; sought, sought; lost, lost; lent, lent; paid, paid.

**VI.** infringement; dismiss; dissent; suspend; sitting; implement; appeal; defer; summing up; enforce; dissolution; regulate; trial; claim; defendant; agree; settlement; adopt; payment.

**VII.** 1 – C; 2 – H; 3 – E; 4 – G; 5 – A; 6 – L; 7 – D; 8 – K; 9 – F; 10 – I; 11 – B.

## UNIT 3

**II. 1.** (a) Tort: usually a common law concept; civil wrong or wrongful act, whether intentional or accidental, from which injury occurs to another (<http://dictionary.law.com/Default.aspx?selected=2137>); (b) Delict: In civil law jurisdictions, unlawful and intentional harm caused by others, which it calls a delict (in French, the term is *délict*). (<http://www.duhaime.org/LegalDictionary/D/Delict.aspx>); (c) Quasi-delict: An act whereby a person, without malice, but by fault, negligence or imprudence not legally excusable, causes injury to another (<http://legal-dictionary.thefreedictionary.com/Quasi+delict>); (d) Jurisdiction: the authority given by law to a court to try cases and rule on legal matters within a particular geographic area and/or over certain types of legal cases (<http://dictionary.law.com/Default.aspx?selected=1070>);

(e) Formalities: The conditions, in regard to method, order, arrangement ... or in the taking of legal proceedings, to insure their validity and regularity (<http://the-law-dictionary.org>); (f) Litigation: An action brought in court to enforce a particular right. The act or process of bringing a lawsuit in and of itself; a judicial contest; any dispute (<http://legal-dictionary.thefreedictionary.com/litigation>); (g) Irreconcilable: not compatible; incapable of being brought into harmony or adjustment (<http://www.dictionary.com/browse/irreconcilable>).

**2.** (a) Commit: carry out, perpetrate, execute; (b) Harmful: adverse, pernicious, detrimental, damaging; (c) Request: application, call; (d) Proceed: advance, continue, go ahead, go on, carry on, press on, progress; (e) Implement: carry out, carry through, complete, realize; (f) Autonomy: self-rule, independence, freedom, sovereignty; (g) Agreement: contract, accord, compromise, understanding; (h) Infringe: breach, contravene, violate, disobey; (i) Contradict: contravene, negate, disprove, gainsay; (j) Assumption: hypothesis, inference, presumption, belief, supposition, theory; (k) Hear: try, deal with; (l) At issue: in dispute; (m) Afford: give, allow, accord; (n) Ascertain: determine, find out, verify, establish, check

**3.** Within the field of judicial cooperation in civil matters, it is about international jurisdiction in matters relating to tort, delict or quasi-delict and the determination of the place where the harmful event occurred.

**4.** Mr Spoering has brought a claim for an order to cease an infringement of copyright and for compensation.

**5.** To implement provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States.

**6.** Jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor.

**7.**

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

**8.** Article 5(3) of the regulation, which forms part of Chapter II, Section 2, 'Special jurisdiction', provides:

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

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.'

**8.** (open answer)

**9.** He brought his claim before the court of first instance, which allowed his claim. The appeal by Hi Hotel was unsuccessful. The Bundesgerichtshof (Federal Court of Justice) is uncertain as to whether international jurisdiction of the German courts may be established on the basis of Article 5(3) of Regulation No 44/2001.

**10.** The Bundesgerichtshof decided to stay the proceedings and to refer a question to the CJEU for a preliminary ruling: 'Is Article 5(3) of Regulation ... No 44/2001 to be interpreted as meaning that the harmful event occurred in one Member State (Member State A) if the tort or delict which forms the subject-matter of the proceedings or from which claims are derived was committed in another Member State (Member State B) and consists in participation in the tort or delict (principal act) committed in the first Member State (Member State A)?

**11.** This case is referred to in order to determine which court has jurisdiction to hear the case bearing in mind the place where the alleged damage has occurred and also what the court has jurisdiction to determine.

**12.** (open answer)

**III.** 1b; 2b; 3a; 4a; 5a; 6b; 7b; 8a; 9b; 10b; 11a; 12b; 13a; 14a; 15b; 16b; 17b; 18b; 19a; 20a; 21b; 22b; 23a, 24b; 25a; 26b; 27b; 28a; 25b; 26a; 27b; 27b; 28b; 29a; 30a; 31b; 32a; 33b; 34a; 35a; 36b; 37b; 38a; 39b; 40a; 41b; 42a; 43a.

## UNIT 4

### II.

**1.** a) True; b) True; c) False; d) False; e) True; f) False; g) True; h) False; i) False; j) True; k) False; l) True; m) True; n) False; o) False; p) True;

**2.** (open answers)

**3.** a) *to modify - to vary*: not synonyms and not similar in meaning; b) *to apply - to find*: not synonyms and not similar in meaning; c) *spouse*: synonyms; d) *husband - partner*: similar in meaning; e) *solicitor - witness*: not synonyms and not similar in meaning; f) *maintenance - alimony*: synonyms; g) *to withdraw the application - to strike out the application*: not synonyms and not similar in meaning; h) *sexual abuse - abuse of process*: not synonyms and not similar in meaning; i) *financial statement - financial order*: not synonyms and not similar in meaning; j) *nullity of marriage - dissolution of marriage*: not synonyms and not similar in meaning; k) *substantive law - European law*: not synonyms and not similar in meaning; l) *directions - directive*: not synonyms and not similar in meaning; m) *to have jurisdiction - to enforce*: not synonyms and not similar in meaning; n) *the only way - the only route*: synonyms; o) *permissible - admissible*: not synonyms and not similar in meaning.

**4.** a) The case /VERB MISSING: is; was/ concerning an application by a German national; b) The parties had divorced AT /WRONG PREPOSITION: in / Germany in 2000; c) The wife received court papers required / WRONG VERB FORM: requiring/ her to file a finances statement; d) The legal representative of the wife invited the former husband to withdrew /WRONG VERB FORM: withdraw/ his apply; e) The English Court issued the application ordered /WRONG VERB FORM: ordering/ the wife to fill of / WRONG VERB CHOICE: file/ a detailed financial statement; f) The wife claimed that an application to modification /PREPOSITION MISSING: of/ maintenance may only be make /WRONG VERB FORM: made/in direct connection with or after an application related directly to divorce proceedings; g) She claimed that the English court could only issued /WRONG VERB FORM: ordering/ such an orders /ARTICLE NOT COMPLEMENTING THE NOUN: such an order/ under Chapter VII of the Maintenance Regulation entitled 'Cooperation between Central Authorities'.

**5.** a) Past tense: e.g.: *moved, received, sent*; b) Future simple tense e.g.: *will provide*; c) Present perfect tense e.g.: *have led, has given rise*; d) Reported speech e.g.: *The former wife also argued, as an alternative, that the application should be struck*; e) Past perfect e.g.: *had divorced, had filed*; f) Passive voice e.g.: *was brought, be made*; g) Conditional construction e.g.: *...a considered letter inviting the former husband to withdraw his application, failing which he would himself apply to dispose of the application by striking it out ...*; h) Modal verb followed by a perfect infinitive e.g.: *...may have gone*.

**6.** He might *have confessed*.

**7.** a) active; b) passive; c) active; d) active; e) passive; f) active; g) passive; h) active.

**8.** b), c), e) and h) are cases of reported speech.

**UNIT 5****II.**

1. Mr. and Mrs. Alder
2. recovery of a debt
3. Polish court, the Sąd Rejonowy w Koszalinie, or District Court of Koszalin
4. asked to comply with Article 1135 of the Polish Code of Civil Procedure and to appoint "a representative authorized to accept service of documents in the Republic of Poland
5. their judicial documents addressed to them would have been placed in the case file and would have been treated as having been effectively served
6. it means the document is presumed served even if not actually having been received by the addressee
7. The Alders did not appoint any representative, and a notice was placed in the case file without having been sent to their address in Germany
8. judgement against the party who fails to attend the hearing as a result of such party's failure to attend or respond within the proceedings
9. the case was referred to ECJ and ECJ found such regulation and such procedure unlawful
10. Court of First Instance - the Regional court Sąd Rejonowy w Koszalinie
11. Whether Article 1(1) of Regulation ... No 1393/2007 ... and Article 18 TFEU are to be interpreted as meaning that it is permissible to place in the case file, deeming them to have been effectively served, judicial documents which are addressed to a party whose place of residence or habitual abode is in another Member State, if that party has failed to appoint a representative who is authorized to accept service and is resident in the Member State in which the court proceedings are being conducted?
12. The ECJ ruled that 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000 must be interpreted as precluding legislation of a Member State from such course of action.
13. to protect the plaintiff which in the instant case would have been deprived of the right to real access to justice
14. No, it does not.
15. No, it does not.

**III.** 1. shall be transmitted; 2. may be carried out; 3. is; 4. be transmitted; 5. shall be completed; 6. shall indicate; 7. are transmitted; 8. wishes; 9. shall be advised; 10. refuse; 11. using; 12. be fulfilled; 13. shall be returned; 14. shall serve; 15. served



## IV.

| VERB        | NOUN                          | ADJECTIVE                      |
|-------------|-------------------------------|--------------------------------|
| acknowledge | acknowledgement               | acknowledged/<br>acknowledging |
| administer  | administration                | administered/<br>administering |
| amend       | amendment                     | amended/<br>amending           |
| annul       | annulment                     | annulled                       |
| appeal      | appeal                        | appealed/<br>appealing         |
| apply       | application                   | applied/<br>applicable         |
| arrange     | arrangement                   | arranged                       |
| assist      | assistance                    | assisted/<br>assisting         |
| authorise   | authorisation                 | authorized/<br>authorising     |
| certify     | certificate/<br>certification | certified                      |
| claim       | claim                         | claimed                        |
| conclude    | conclusion                    | concluded                      |
| cooperate   | cooperation                   | cooperative                    |
| concern     | concern                       | concerned                      |
| construe    | construction                  | construed                      |
| defend      | defence                       | defended                       |
| deprive     | deprivation                   | deprived                       |
| designate   | designation                   | designated                     |
| disclose    | disclosure                    | disclosed                      |
| dismiss     | dismissal                     | dismissed                      |

| VERB      | NOUN                   | ADJECTIVE                   |
|-----------|------------------------|-----------------------------|
| judge     | judgment/<br>judgement | judged                      |
| notify    | notification           | notified/<br>notifying      |
| omit      | omission               | omitted                     |
| prevent   | prevention             | prevented                   |
| prohibit  | prohibition            | prohibiting                 |
| propose   | proposal               | proposed                    |
| protect   | protection             | protective                  |
| prove     | proof                  | proved/proving              |
| provide   | provision              | provided/<br>providing      |
| pursue    | pursuance              | pursued/<br>pursuing        |
| receive   | receipt                | received/<br>receiving      |
| recognize | recognition            | recognized/<br>recognizable |
| refer     | referral               | referred                    |
| refuse    | refusal                | refused                     |
| rely      | reliance               | relying/relied/<br>reliable |
| remove    | removal                | removed                     |
| report    | report                 | reported                    |
| request   | request                | requested/<br>requesting    |
| require   | requirement            | required/<br>requiring      |
| respond   | response               | responsive                  |

| VERB     | NOUN           | ADJECTIVE                |
|----------|----------------|--------------------------|
| dispose  | disposal       | disposed                 |
| enforce  | enforcement    | enforced/<br>enforceable |
| exceed   | excess         | exceeding                |
| execute  | execution      | executed/<br>executable  |
| hear     | hearing        | heard                    |
| impose   | imposition     | imposed                  |
| infringe | infringement   | infringed                |
| inform   | information    | informed                 |
| intend   | intention      | intended/<br>intending   |
| issue    | issue/issuance | issued/issuing           |

| VERB     | NOUN                      | ADJECTIVE                      |
|----------|---------------------------|--------------------------------|
| revoke   | revocation                | revoked                        |
| retain   | retention                 | retained                       |
| rule     | rule/ruling               | ruled                          |
| serve    | service                   | serviceable/<br>serving/served |
| sign     | signature/<br>signatory   | signed                         |
| submit   | submission                | submitted/<br>submitting       |
| sue      | suit                      | sued                           |
| transfer | transference/<br>transfer | transferred/<br>transferrable  |
| transmit | transmission              | transmitted/<br>transmissible  |
| update   | update                    | updated/<br>updating           |

**V.** 1. for; 2. with; 3. to; 4. for; 5. under; 6. until; 7. by; 8. by; 9. for; 10. in; 11. upon; 12. to; 13. by; 14. for; 15. in; 16. in; 17. in; 18. by; 19. than; 20. since; 21. through; 22. in; 23. with; 24. to; 25. to; 26. over; 27. in; 28. by; 29. to; 30. from; 31. with; 32. to; 33. to; 34. between; 35. of; 36. to.

**VI.** 1. d; 2. a; 3. b; 4. c; 5. a; 6. d; 7. a; 8. c; 9. c; 10. b; 11. d; 12. a; 13. c; 14. d; 15. b; 16. d; 17. a; 18. b; 19. c; 20. d; 21. b; 22. a; 23. b; 24. a; 25. c; 26. b; 27. c; 28. b; 29. d; 30. a

## UNIT 6

**I.** 1. c; 2. a; 3. b; 4. d; 5. b; 6. c; 7. b; 8. a; 9. d; 10. c; 11. a; 12. c; 13. c; 14. b; 15. a; 16. d; 17. b; 18. a; 19. c; 20. d; 21. b; 22. a; 23. a; 24. d; 25. c; 26. a; 27. c; 28. a; 29. b; 30. c

**II.** 1. transmission; 2. execution; 3. requests; 4. transmission; 5. request; 6. content; 7. request; 8. proceedings; 9. representatives; 10. statement; 11. description; 12. taking; 13. request; 14. examination; 15. statement; 16. reference; 17. requirement; 18. examination; 19. affirmation; 20. taking; 21. request; 22. information; 23. application; 24. request; 25. authentication; 26. execution; 27. translation; 28. request; 29. communications; 30. taking; 31. completion; 32. receipt; 33. request; 34. receipt; 35. request; 36. acknowledgement; 37. receipt.

**III.** 1. shall; 2. where; 3. accordance; 4. provisions; 5. requests; 6. made; 7. obtain; 8. intended; 9. proceedings; 10. contemplated; 11. transmission; 12. hereinafter; 13. hereinafter; 14. hereinafter; 15. performance; 16.

draw up; 17. indicate; 18. jurisdiction; 19. designate; 20. seeking; 21. arise; 22. forwarding; 23. autonomous; 24. designate; 25. coercive; 26. coercive; 27. extent; 28. purpose; 29. refusal; 30. claims; 31. refuse; 32. need; 33. instance; 34. grounds; 35. scope; 36. set out; 37. judiciary; 38. comply; 39. complete; 40. advance; 41. advance; 42. refused; 43. solely; 44. exclusive; 45. action; 46. refused; 47. grounds; 48. notify; 49. thereof; 50. receipt; 51. notice; 52. position; 53. receipt; 54. thereof; 55. grounds; 56. estimated.

**IV.** 1. Cooperation between courts in the taking of evidence should be improved; 2. The objectives of the proposed action cannot be sufficiently achieved by the Member States; 3. Measures in accordance with the principle of subsidiarity may be adopted by the Community; 4. A request for the performance of the taking of evidence should be executed expeditiously; 5. The request should be executed by the requested court in accordance with the law of its Member State; 6. The fees paid to experts and interpreters should not be borne by that court; 7. The deposit or advance shall be made by the parties; 8. For the proper functioning of this Regulation, its application should be reviewed by the Commission; 9. The official language or languages which is or are acceptable to each Member State shall be indicated by it; 10. The requested court shall be informed by the requesting court.

#### **V. Article 1**

##### Scope

1. This Regulation shall apply in civil or commercial matters where the court of a Member State, in accordance with the provisions of the law of that State, requests:

- (a) the competent court of another Member State to take evidence; or
- (b) to take evidence directly in another Member State.

2. A request shall not be made to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

##### Article 10

##### General provisions on the execution of the request

1. The requested court shall execute the request without delay and, at the latest, within 90 days of receipt of the request.

2. The requested court shall execute the request in accordance with the law of its Member State.

3. The requesting court may call for the request to be executed in accordance with a special procedure provided for by the law of its Member State, using form A in the Annex. The requested court shall comply with such a requirement unless this procedure is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties. If the requested court does not comply with the requirement for one of these reasons it shall inform the requesting court using form E in the Annex.

##### Article 18

1. The execution of the request, in accordance with Article 10, shall not give rise to a claim for any reimbursement of taxes or costs.

2. Nevertheless, if the requested court so requires, the requesting court shall ensure the reimbursement, without delay, of:

- the fees paid to experts and interpreters, and

- the costs occasioned by the application of Article 10(3) and(4).

The duty for the parties to bear these fees or costs shall be governed by the law of the Member State of the requesting court.

**VI.** (1) of; (2) of; (3) of; (4) in; (5) to; (6) of; (7) of; (8) of; (9) for; (10) of; (11) to; (12) about; (13) to; (14) under; (15) under; (16) in; (17) for; (18) of; (19) to; (20) for; (21) from; (22) for; (23) by; (24) into; (25) in

## UNIT 7

**1.** a) Procedure = series of steps made by way of a set of established methods employed by an organization/organized body to reach its objective or to carry out its own affairs; b) Swift = fast, quick; c) Debt= something owed (e.g. services, money); d) Insolvency = condition in which an enterprise/individual lacks sufficient assets to meet debt or cancel liability; e) Enterprise = business undertaking such as a company/corporation; f) Exequatur = (international law) decision, made by a national court authorizing the cross-border enforcement of a judgment; g) To streamline = to simplify (e.g. to reduce red tape); h) To contest = to challenge; i) To safeguard = to guarantee, to protect; j) To lodge = to register a claim before a court; k) To take up = to tighten; l) To handle = to manage; m) Notary = *aka* notary public. Person vested with legal capacity to verify the authenticity of documents; n) Consumer = person that buys goods and services for personal use/consumption; o) To outweigh = to compensate or exceed in value; p) Claimant = person that makes a claim/starts legal action; q) Tick box = box/boxes on printed material (e.g., a form; a questionnaire) provided to facilitate the selection of items or questions; r) To confer = to bestow; s) Prima facie = at first sight/authentic at first glance; t) Substance = core, essence; u) Sound = solid, unshakable

**2.** a) 12,000 = lowest per year figure for European payment order applications received by MS courts each year; b) 13,000 = highest per year figure for European payment order applications received by MS courts each year; c) 4, 000 = highest annual European payment order application figures (Austria & Germany); d) 16% = opposition rate to European payment orders in France and Germany; e) 50% = opposition rate to European payment orders in Greece; f) 4% = opposition rate to European payment orders in Austria; g) 300 = lowest per year figure for European payment orders received in Belgium, Czech Republic, France, Hungary, the Netherlands, Portugal and Finland; h) 700 = highest per year figure for European payment orders received in Belgium, Czech Republic, France, Hungary, the Netherlands, Portugal and Finland; i) 30 = time the defendant has to file a statement of opposition to the European payment order; j) 27 = number of MSs in which the European payment order procedure is available to creditors.

**3.** a) The creation of the first European civil procedure for cross-border payment orders; b) 27; c) Answer: Insolvency and loss of occupation; d) It provides a quicker, cost-effective judicial relief against a debtor for sums owed; e) MS courts and other judicial authorities; f) It allows payment orders to be directly enforceable as with local payment orders g) The defendant has 30 days in which to lodge an opposition statement; h) The principle of procedural autonomy together with the principles of equivalence and effectiveness; i) To provide a useful judicial tool for small and middle size enterprises to recover outstanding debt in a swifter and less costly manner.

## 4.

| <b>-ous</b> | <b>-able</b> | <b>-ant</b> | <b>-ive</b>   | <b>-ful</b> | <b>-ed</b> | <b>-ing</b>  |
|-------------|--------------|-------------|---------------|-------------|------------|--------------|
| harmonious  | movable      | pleasant    | active        | useful      | amused     | boring       |
| poisonous   | recognizable | ignorant    | attractive    | careful     | excited    | confusing    |
| odorous     | comfortable  | compliant   | cooperative   | delightful  | nurtured   | nauseating   |
| cautious    | enforceable  | vacant      | impressive    | hopeful     | relaxed    | appealing    |
| numerous    | remarkable   | resistant   | alternative   |             | surprised  | overwhelming |
| various     | reliable     | expectant   | objective     |             |            |              |
|             | readable     |             | substantive   |             |            |              |
|             | testable     |             | participative |             |            |              |
|             | acceptable   |             |               |             |            |              |

5. a) acquired, acquiesced; b) resume, adjourn; c) advice, advise; d) bring, fetch; e) lie, laid, lied; f) borrow, lend; g) proceedings, procedure; h) rise, raise; i) remind, remember; j) take, bring.

I. 1. defendant; 2. national; 3. service; 4. regulation; 5. Procedural; 6. proof; 7. acknowledgement; 8. receipt; 9. competent; 10. justification; 11. duly

II. 1. sought; 2. in accordance with; 3. annual; 4. blank; 5. laid down; 6. note; 7. combat(t)ing; 8. operation; 9. at least; 10. stage; 11. national; 12. in force.

III. Down: 1. freezing order; 2. admission of debt; 3. pecuniary; 4. several liability; 8. creditor; 9. joint liability; 10. winding-up; 12. lump sum; 14. debtor. Across: 5. composition; 6. insolvency; 7. security; 11. fall due; 13. enforcement; 15. indemnity; 16. disposal

IV. 1. of; 2. through, under; 3, without, for; 4. from, by; 5. for, down; 6. under, to; 7. with, by; 8. of, before

V. 1. is accepted; 2. is issued; 3. are governed; 4. has been specified; 5. is rejected; 6. is informed; 7. is rejected; 8. be pursued

VI. 1. The regulation includes a form which is to be used in order to apply for an European order of payment.

2. The jurisdiction of courts is decided using the appropriate EU legislation.

3. The amount was due when the application was submitted.

4. The court considers whether the applicability conditions have been met.

5. The court may propose that the application be amended.

6. The claimant will be asked to accept or refuse the timescale set by the court.

7. Claimants must be informed of the consequences of their decision.

## APPENDIX

**I.** (1) provisions; (2) continuity; (3) legal; (4) immovable; (5) authorisation; (6) legislation; (7) representative; (8) approval; (9) application; (10) disposal; (11) guardianship; (12) decision; (13) unclear; (14) applicable; (15) national.

**II.** (1) non-contentious proceedings – proceedings/legal action not involving differences between contending parties; (2) guardianship – the position of being legally responsible for the care of someone who is unable to take care of him/herself or of his/her own affairs; (3) transitional provisions – statements within legal documents which are subject to change; (4) revenue – income from taxation; (5) main proceedings – proceedings brought before the national/referring court

**III.** (1) brought; (2) worded; (3) arising; (4) exclusive; (5) proceedings; (6) lacks; (7) appointed; (8) adversely; (9) brought; (10) stay.

**IV.** (1) in, of; (2) with, to, of; (3) to, under; (4) with, for; (5) of, in; (6) by, on, in; (7) against, before; (8) from, to for.

**V.** (1) Mr. Schneider is a Hungarian national who applied to Sofia District Court for authorisation to sell his (share of) immovable property in Bulgaria. (2) Mr. Schneider inherited a half-share in an apartment in Lovech, Bulgaria. As he was placed under guardianship by a Hungarian court, he needed the authorisation of the Bulgarian court to sell his property. Mr. Schneider had to apply to the Bulgarian court because, according to Regulation No 44/2001, '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' has exclusive jurisdiction, regardless of domicile. (3) This case involves the following: Scope of application of the Regulation on jurisdiction, recognition and enforcement of judgments in civil and commercial matters (Regulation (EC) No 44/2001), the legal capacity of natural persons, exclusive jurisdiction in matters relating to rights in rem in immovable property. (4) The question refers to non-contentious proceedings concerning the right of a person who has been placed under guardianship and is domiciled in a Member State to dispose of immovable property situated in another Member State.

**VI.** No, the case does not concern rights in rem in immovable property, since Mr. Schneider's right to the immovable property is not questioned. What is questioned is his right to dispose of that property given that he was placed under guardianship under Hungarian law and lacks full legal capacity which would allow him to sell his property.

# GLOSSARY

**abduction:** illegal carrying or enticing away of a person; usually applied to children removed from a country without permission from one of their parents

**access to justice:** one of three priorities set out by the EU to enable individuals and companies to exercise their rights in an EU country other than their own. Other priorities are mutual recognition of judicial decisions and increased convergence in procedural law

**acknowledgment of receipt:** recognition by an addressee that a letter or notification has been received

**accession:** becoming a member of an organization (e.g. of the EU) by formally subscribing to its treaties and instruments

**acknowledgement of service:** document a person returns to the court when they have received a notification

**acquiesce:** to consent or agree to something

**acta iure imperii:** acts and omissions in the exercise of State authority

**ad litem:** for a suit, for specific proceedings (e.g. “representative ad litem”)

**admissibility:** criterion whereby evidence may be considered by a judge in deciding the merits of a case

**admission of debt:** recognition by a party that an amount of money is owed

**ADR: Alternative Dispute Resolution:** extra-judicial procedures used for resolving civil or commercial disputes

**affidavit:** sworn statement of evidence in writing; in some jurisdictions it may be replaced by “statement of truth”

**ancillary:** supplementary, additional (e.g. “ancillary measures”)

**annulment:** court declaration that something has been void from the very beginning or *ab initio* (e.g. “marriage annulment”)

**appeal:** transfer of a case to a higher court for a new hearing; request for a new hearing

**appellate court:** court where appeals are heard

**applicable law:** national law that governs a given question of law in an international context

**applicant:** anybody filing an application

**arbitration:** Legal technique for out-of-court dispute resolution whereby the parties refer the issue to a person or persons known as the arbitrator, arbiter or arbitral tribunal, whose decision is binding

**attestation:** act of certifying in an official capacity

**authentic instrument:** document recording a legal act or fact whose authenticity is certified by a public authority. Certain authentic instruments are enforceable

**award:** decision by a court, an arbitrator or an arbitration tribunal

**award an amount:** to decide (e.g. a court) that an amount must be paid

**bankruptcy:** legal proceedings and decision whereby which a person or enterprise is held unable to pay debts

**binding:** obligatory (e.g. “binding instrument”, “binding legislation”)

**bond:** obligation which is made binding by an amount of money pledged; the amount of money pledged

**breach of contract:** failure to carry out what was agreed in a contract

**Brussels I:** Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

**Brussels IIa:** Council Regulation (EC) No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility. The Regulation lays down rules governing international jurisdiction and the recognition and enforcement of judgments in cases concerning divorce, separation and annulment of marriage and judgments concerning parental responsibility

**case law:** rules of law flowing from a set of convergent decisions of the courts. The case-law of the Court of Justice of the European Unions is particularly rich in decisions on the interpretation of the Union treaties, directives and regulations. It is a source of Union law

**cause of action:** legal grounds and alleged facts enabling a party to start legal proceedings against another

**choice of court agreement:** also called “forum selection agreement” or “prorogation agreement”, it is an agreement whereby parties to a contract agree which court should decide in case of conflict arising from such contract

**civil partnership/union:** legally recognized form of partnership similar to marriage. In some countries where same-sex marriage is not legal, it is the only option open to same-sex couples

**claimant:** person initiating a lawsuit; in some jurisdictions it is called “plaintiff”

**composition:** agreement or compromise by which a creditor or group of creditors accepts partial payment from a debtor

**conflict of jurisdiction:** see “international jurisdiction”

**conflict of laws:** see “applicable law”

**contact:** visitation by a parent who does not have residence; it has tended to replace the term “visit” in some jurisdiction

**contact order:** order by a court establishing when a parent without residence will see a child

**contest:** challenge, oppose something (e.g. “contest a claim”)

**copyright:** rights given to a creator for his or her literary and artistic work

**copyright infringement:** unauthorized use of material protected by copyright

**counterclaim:** claim brought by a defendant in response to the claimant’s claim; it is usually included in the same proceedings

**court cost/fees:** fees for expenses which must be paid by the parties to a suit, or in some cases, by the losing party

**creditor:** someone to whom money is owed

**cross-examination:** witness questioning by a party other than the party who has produced such witness

**cross-border case:** one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised

**curator:** in some jurisdictions (e.g. Scotland), the guardian of a child

**custody:** now referred to as “residence” in some countries; arrangement establishing who lives with the children and provides daily care. It may also be “joint” or “shared”, if the children live part of the time with one parent and part of the time with the other parent

**damages:** sum of money awarded by a court as compensation to a claimant

**debtor:** party owing a debt to another party. EU measures relating to insolvency proceedings having cross-border effects make it more difficult for a debtor to escape obligations

**decision:** in EU law, a legislative instrument that is binding in its entirety on all those to whom it is addressed

**declaration:** also called “declaratory judgment”, a type of court judgment which states that something is the case (e.g. declaration of enforceability)

**decline:** refuse (e.g. decline jurisdiction)

**deed of separation:** a contract, usually drafted by a legal expert, containing an agreement regarding financial matters following separation

**default:** failure in duty or performance (e.g. default of appearance, person in default, etc.)

**defence:** factual denial or assertion of facts or law that counters or negates a claim made by the other part in proceedings (e.g. “defence of res judicata”)

**defendant:** person against whom civil proceedings are initiated

**desertion:** intentional abandonment of a spouse or children

**disclosure:** process whereby one party is required to inform the other of documents relevant to the claim

**dispense:** to allow someone not to do something which the law or a regulation usually requires (e.g. “dispense with the production of a document”)

**disposal:** act of selling or transferring goods (e.g. “disposal of property”)

**dissolution:** legal process which ends a contract of marriage or civil partnership

**divorce:** legal process which terminates a marriage

**domicile:** in principle, where a person actually lives, although in some jurisdictions (e.g. Britain) it may be a complex concept, ruled by case law

**effect:** to carry out (e.g. “effect service”)

**emancipation:** legal state by which a child acquires the rights of an adult before he or she is 18 (or otherwise legally of age)

**enforcement:** execution of a law or a court decision

**EU acquis:** also known as “acquis communautaire”, the entire body of legislation of the EU, of which a signifi-



cant part relates to justice, which must be accepted by countries before they can join the EU

**European Order for Payment:** procedure that may help someone to obtain quickly the repayment of the sums owed by a debtor, without the debtor being given opportunity to be heard

**evidence:** something accepted by a court with a view to determining the truth in proceedings

**evidence in chief:** evidence given by a witness for the party who has called such witness

**examination-in-chief:** questioning of a witness by the party for whom he or she is acting as a witness

**exemption:** release from an obligation, a duty, or a liability which is binding upon others

**exequatur:** also called "declaration of enforceability", decision of a national court verifying that a judgment issued by a foreign tribunal may be executed

**expeditiously:** in an accelerated manner

**ex parte measures:** temporary orders issued by the court based on one party's request, without hearing the other side

**fall due:** reach the date for payment

**force majeure:** cause(s) that are beyond the control of the parties

**forum:** a specific concept of private international law, lit means the courts of a given country in which an action is brought. The concept of forum underlies the concepts of lex fori and forum-shopping

**forum necessitates rule:** rule that ensures that where no court of a MS has jurisdiction pursuant to Regulation (EC) 4/2009, the courts of the MS may hear the case if proceedings cannot reasonably be brought or conducted or would be impossible in a third MS with which the dispute is closely connected

**forum selection agreement:** see "choice of court agreement"

**forum-shopping:** attempts by litigants to have their case heard before the court which they deem most likely to issue a favourable judgment

**foster family:** family with whom a child lives because, for some reason, the child cannot live with his or her family

**freezing order:** an order to prevent a party from disposing of money or assets until a final decision is issued by the Court regarding how such money or assets are to be distributed

**guardian:** person responsible for making major decisions about such things as what kind of education, health care or religious training the children will receive, and how to manage anything the children may own, such as property or money. Like custody, guardianship can be handled by one parent only, or shared between the parents - which means that both parents will remain involved in making important decisions about the children's future

**hearing:** session during which witness give testimony or parties submit oral arguments

**indemnity:** right to recover from a third party the whole amount someone is liable to pay

**infringe:** act in a way that violates law or the rights of another (e.g. "infringes somebody's parental responsibility")

**injunction:** court order ordering a party to do something or preventing them from doing something (selling assets, approaching or contacting someone, etc.)

**insolvency:** situation (as declared by a court) where someone has insufficient assets to meet debts and liabilities

**international jurisdiction:** international jurisdiction refers to the fact that the courts of a given country will be the most appropriate to hear and determine a case that has an international dimension. A dispute has an international dimension where, for example, the parties have different nationalities or are not resident in the same country. In such a situation the courts of several countries might have jurisdiction in the case, and we have what is known as a conflict of jurisdiction. The rules of international jurisdiction lay down criteria for determining the country whose courts will have jurisdiction in the case

**irreconcilable:** something for which a solution is not possible (e.g. "irreconcilable differences") or which cannot be made compatible (e.g. "irreconcilable judgments")

**issue:** to make, to publish (e.g. "issue an order", "issue a judgment")

**joint:** shared with other people, belonging to or made by more than one person (e.g. "joint ownership", "joint application")

**joint liability:** situation where two parties share a single liability, but each party can be held liable for the whole of such liability

**judgment:** decision by a court; in this meaning, it is most usually spelled without the -e-, although the spelling *judgement* may also be found

**judicial separation:** legal process whereby the spouses remain married, but separated, in such a way that applications can be made to a court about financial matters in case of disagreement

**landmark judgment:** a judgment that is notable and often cited because it significantly changes, consolidates, updates or effectively summarizes the law on a particular topic; a decision that establishes a new precedent

**legal aid:** type of funding which may be available to people who are currently receiving benefits or possess very low income, towards meeting the costs of some court proceedings

**legal person:** group of natural persons which has legally created a legal entity, acting as a single individual for certain purposes. It also applies to single persons having a separate legal personality other than their own

**legalisation:** authentication (e.g. of a document) so that it is acceptable by a court

**lex causae:** law governing the substance of the case, designated by the rules of conflict of laws. See "applicable law."

**lex fori:** law of the court in which the action is brought. Where an action is brought in a court and has an international dimension, the court must consider the law applicable to the case. In certain circumstances, the *lex fori* will apply. Traditionally the *lex fori* governs questions of procedure, regardless of the *lex causae*

**lex loci delicti:** law of the country where, in terms of non-contractual obligations, the harmful event occurred

**limitation period:** period within which a court proceedings must be initiated if a right is to be enforced against another party

**liquidated debt:** in bankruptcy cases, situation where the existence and amount of debt is not disputed

**lis pendens:** suit pending. It may refer to any proceedings which have not been settled by a court

**lis alibi pendens:** suit which has not been decided in a different jurisdiction or before a different court

**litigation:** conduct of a lawsuit

**lodge:** to submit (e.g. "lodge an application", "lodge a complaint")

**lump sum provision:** single payment of money (as opposed to periodical payments) from one party to the other

**maintenance:** mutual assistance on the basis of family solidarity: parents must feed, educate and maintain their children. In some EU countries children must assist their parents in case of need. A divorced spouse is obliged to pay maintenance to a former spouse who has custody of their children. This obligation is generally discharged by a monthly payment known as maintenance

**mandatory:** obligatory

**matrimonial:** related to matrimony or a married couple (e.g. matrimonial home, matrimonial property, etc.)

**member state of enforcement:** Member State in which enforcement is sought

**member state of origin:** Member State in which a decision, an instrument or an order is issued

**merits:** substantive part of a claim (as opposed to matters of procedure); also called "substance"

**non-contractual obligations:** where a person who is responsible for loss sustained by another person is required to compensate the victim in cases not linked to the performance of a contract, such as traffic accidents, environmental damage or defamation

**nullity:** court proceedings to void a marriage contract

**occupation order:** order of a court granting a spouse the right to occupy a property to the exclusion of the other

**oppose a claim:** to contest a claim

**outstanding:** still in existence; not settled or resolved (e.g. "outstanding debt")

**overturn:** annul, lift, repeal, revoke, reverse (e.g. "overturn a judgment")

**parental responsibility:** rights, duties and obligations that each parent has towards his/her child(ren) and their child(ren)'s property

**parenthood:** quality of being somebody's father or mother (e.g. "establishment of parenthood")

**party:** person or group involved in a contract or proceedings as a litigant

**pecuniary:** related to money (e.g. "pecuniary damages", "non-pecuniary loss")

**periodical payments:** regular maintenance payments from one party to the other (as opposed to "lump sum")

**petitioner:** in some countries (e.g. common law jurisdictions), the person who files divorce proceedings

**placement:** arrangement whereby a child is put under the care of a family other than the child's parents, so that the child's needs and protection are ensured

**premises:** land and buildings, seen as a property

**pre-nuptial agreement:** contract between future spouses in contemplation of marriage, towards the regulation of money and assets division in case of later separation or divorce

**principal:** capital sum of a loan or a debt (as opposed to "interest")

**private international law:** in its broad sense, it means the set of legal rules governing international relations between private individuals

**proof of service:** evidence that proves that a document has been served upon its addressee; it may be a certificate, an acknowledgement of receipt, etc.

**public international law:** set of legal rules governing international relations between public bodies such as states and international organisations. Conventions and uniform laws are common instruments of public international law

**public policy:** the fundamental principles, which the legal system of a state is based on, e.g. human rights (of substantive and procedural character), an obstacle for recognition of a foreign judgment; also: *ordre public*

**pursue a claim:** to file a claim, to start legal proceedings

**recognition:** recognising a judgment given in one EU country in another means agreeing that it may have effect there

**rectify:** to set right what is wrong, to remedy a defect (e.g. "rectify a certificate", "rectify an application")

**regulation:** instrument of general scope that is binding in its entirety and directly applicable in all EU countries

**removal:** act of moving a person or thing from one place (usually a country) to another (e.g. "wrongful removal")

**residence:** place (usually a country) where a person habitually lives

**respondent:** person who responds to proceedings issued at court; also, name given to defendant in common law divorce proceedings

**retention:** action of keeping something in one's own hands or under one's own control; continued possession of something

**review:** re-examination of a decision, usually by a higher court

**right of appeal:** right to challenge a decision by a court or tribunal

**Rome I:** Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations

**Rome II:** Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations

**security:** property deposited or pledged by or on behalf of someone as a guarantee of the payment of a debt, which may be forfeited in the event of default

**seize:** place a case before a court so that it can hear the case (usually in the passive, e.g. "the court is seized")

**self-employed:** person who works for him/herself instead of for an employer, and who operates his/her own trade or business

**separation:** situation where two spouses remain married but live apart, either by mutual agreement or as a result of a court decision

**service:** formal/official delivery of a document or a notification (e.g. "postal service")

**several liability:** situation where each party is liable for only its respective obligations

**shared custody:** arrangement approved by a court whereby the child is to live with both parents after a separation or divorce, usually in specific periods (e.g. Monday to Thursday, Friday to Sunday, or alternating weeks)

**small claims:** cases concerning sums under certain threshold (e.g. EUR 2000 in the EU regulation), excluding interest, expenses and disbursements (at the time when the claim form is received by the competent court)

**spouse:** husband or wife

**statutory:** governed by a written law, e.g. "statutory interest"

**stay:** court order which either forbids or postpones an action until a specific event takes place, or until such order is lifted by the court (e.g. "stay of enforcement", "stay of proceedings")

**submission:** allegation made by one of the parties

(e.g. make submissions to the court)

**submit:** file, lodge (e.g. "submit an application")

**substance:** merits of a case

**succession:** act or process of someone's becoming entitled to the estate of a deceased person

**summons:** notice ordering somebody to appear in court

**suspension:** temporary stop of proceedings

**tort:** civil wrong, consisting in a breach of duty towards other fellow citizens not related to any contractual obligations, entitling the injured party to claim damages in compensation

**tortious or delictual obligations:** see non-contractual obligations

**transcript:** certified copy of the proceedings that occurred in a court, especially if they took place

**true copy:** certified copy

**uncontested claim:** claim which has not been opposed by the other party

**undertaking:** promise to do, or not to do something

**unequivocal:** clear, leaving no doubt for doubt or dispute (e.g. "in an unequivocal manner")

**unfounded claim:** claim for which there is no justification

**will:** legal document which, subject to specific restrictions in some jurisdictions, allows a person to leave his or her assets to a beneficiary or beneficiaries of their choice

**winding-up:** process of dissolving a corporate body by collecting all assets and outstanding income, satisfying all the creditors' claims, and distributing whatever remains (the net assets)

**writ:** written order issued by a court or tribunal

**writ of summons:** document issued by a court whereby a party is ordered to respond to a complaint within a given time, or to appear in court

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