

A short overview of the EU Regulation

Available at: <http://europa.eu/scadplus/leg/en/s22003.htm>

European order for payment procedure (Regulation)

This Regulation establishes a procedure for European orders for payment. The procedure simplifies, speeds up and reduces the costs of litigation in cross-border cases concerning uncontested pecuniary claims in civil and commercial matters. The European order for payment is recognised and enforced in all Member States except Denmark without the need for a declaration of enforceability.

ACT

Regulation (EC) No [1896/2006](#) of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

SUMMARY

The Regulation, which will apply from 2008, establishes a European procedure for orders for payment. The procedure simplifies, speeds up and reduces the costs of litigation in cross-border cases concerning uncontested pecuniary claims. The Regulation permits the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

Application of the procedure in civil and commercial matters

The European order for payment procedure applies to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. A "cross-border case" is 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 hearing the action. The Regulation applies to all Member States except Denmark, in conformity with the Protocol on the position of Denmark annexed to the Treaty on the European Union and the Treaty establishing the European Community.

The procedure does not extend to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii").

The following are also excluded:

- matrimonial property regimes;

- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- social security;
- claims arising from non-contractual obligations, unless they have been the subject of an agreement between the parties or there has been an admission of debt or they relate to liquidated debts arising from joint ownership of property.

Applying for a European order for payment

The Regulation includes a form, standard form A set out in Annex I, to be used to apply for a European order for payment, which must include the following details:

- the names and addresses of the parties and their representatives;
- the name and address of the court to which the application is made;
- the amount of the claim, including the principal and, where applicable, interest, contractual penalties and other costs;
- the cause of the action, including a description of the circumstances invoked as the basis of the claim and of the interest demanded;
- the cross-border nature of the case.

The signed application may be submitted in paper form or by any other means of communication (including electronic ones) accepted by the Member State in which the European order for payment is issued ("the Member State of origin") and available to the court issuing the European order for payment ("the court of origin").

A pecuniary 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 jurisdiction of courts is decided using the appropriate Community legislation, especially [Regulation \(EC\) No 44/2001](#). If a claim relates to a contract concluded by a consumer for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled have jurisdiction (Article 59 of Regulation (EC) No [44/2001](#)).

Accepting or rejecting an application for a European order for payment

The court to which an application for a European order for payment has been made considers whether the applicability conditions have been met (the cross-border nature of the case in civil and commercial matters, the jurisdiction of the court in question, etc.) as soon as possible, and examines the well-foundedness of the claim.

If the application form is not complete, the court gives the claimant an opportunity to complete or rectify the application by a certain date, unless the claim is clearly unfounded or the application inadmissible. Annex II of the Regulation contains a form for this purpose (form B).

If the requirements are met for only part of the claim, the court may propose that application be amended. Annex III of the Regulation contains a form for this purpose (form C). The claimant is asked to accept or refuse the proposed European order for payment for the amount

specified by the court within a certain timescale. Claimants must be informed of the consequences of their decision. They are to reply by returning the standard form.

If the claimant accepts the court's proposal, the court issues a European order for payment for the part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim are governed by national law. If the claimant fails to reply within the time limit specified by the court or refuses the court's proposal, the court rejects the application for a European order for payment in its entirety.

The court rejects applications if:

- they fail to meet the necessary conditions;
- they are not founded;
- applicants fail to return a completed or modified application in time;
- applicants fail to reply within the time limit, or refuse the court's proposed amendment.

The court informs the applicant of the reasons for which the claim has been rejected using form D (Annex IV). There is no right of appeal if an application is rejected. The rejection of an application does not, however, prevent a claimant from pursuing a claim by means of a new application for a European order for payment or using any other procedure available under the law of a Member State.

Issuing a European order for payment within 30 days

If the conditions for applying for a European order for payment are met, the court issues the order as soon as possible and normally within 30 days of the lodging of the application. The 30-day period does not include the time taken by the claimant to complete, rectify or amend his or her application. Applications are made using the form in Annex V (form E).

A European order for payment informs a defendant that he or she may either pay the claimant the amount of the claim, or contest it. If the claim is to be contested, the defendant must lodge a statement of opposition with the court that issued the European order for payment (the "court of origin"). The statement of opposition must be sent within 30 days of the service of the order on the defendant.

A European order for payment is issued solely on the basis of the information provided by the claimant, and is not verified by the court. The order becomes enforceable unless the defendant lodges a statement of opposition with the court of origin.

The Regulation abolishes the exequatur, i.e. a European order for payment is recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition. Enforcement procedures are governed by the national law of the Member State in which the enforcement of the European order for payment is requested (the "Member State of enforcement").

Serving a European order for payment on a defendant

A European order for payment is served on a defendant in accordance with the national law of the State in which service is to be effected. The Regulation sets out minimum procedural

standards regarding service either with proof of receipt by the defendant (Article 13) or without (Article 14).

A European order for payment may be served on a defendant using one of the following methods:

Service with proof of receipt:

- personal service: the defendant signs an acknowledgement of receipt, including the date of receipt;
- **personal service:** the competent 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 justification;
- the defendant signs and returns a duly dated acknowledgement of receipt when the European order for payment is received, by post or by electronic means such as fax or e-mail;

Service without proof of receipt:

- **personal service:** at the defendant's personal address on persons who are living in the same household as the defendant or are employed there;
- **personal service:** at the defendant's business premises on persons who are employed by the defendant, in the case of a self-employed defendant or a legal person;
- **deposit of the order in the defendant's mailbox;**
- deposit of the order at a post office or with competent public authorities and the placing in the defendant's mailbox of written notification of that deposit stating the legal character of the document;
- by electronic means attested by an automatic confirmation of delivery, provided that the defendant has accepted this method of service in advance.

A defendant's address must be known with certainty for a European order for payment to be served. Service may also be effected on a defendant's representative.

Protecting a defendant's rights: opposing a European order for payment

The person who receives a European order for payment, i.e. the defendant, may lodge a statement of opposition with the court that issued the order for payment (the "court of origin"). The statement of opposition must be sent within 30 days of the order being served on the defendant. Statements of opposition are lodged using the form in Annex VI (form F), which defendants receive with the European order for payment. Defendants indicate in their statement of opposition that the claim is contested, without having to specify their reasons.

When a defendant lodges a statement of opposition, the proceedings continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure, unless the claimant has requested that the proceedings be terminated in that event.

The Regulation authorises the defendant to apply for a review of the European order for payment before the competent court after the expiry of the 30-day time limit for lodging a statement of opposition, provided that:

- the order for payment was served without acknowledgement of receipt by the defendant (Article 14), and service was not effected in time to enable him or her to prepare a defence;
- the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances;
- the order for payment was wrongly issued.

If the court rejects the defendant's application, the European order for payment remains in force. If, on the other hand, the court decides that there is a case for a review, the European order for payment becomes null and void.

Enforcement is also refused by the competent court in the Member State of enforcement if the European order for payment is irreconcilable with an earlier decision or an order previously given in any Member State or in a third country, upon application from the defendant. The decision must involve the same cause of action between the same parties, and must have been recognised in the Member State of enforcement.

Informing the public about practical arrangements

By 12 June 2008, Member States must communicate to the Commission information about which courts have jurisdiction to issue a European order for payment, review procedures, the means of communication, and languages accepted. The Commission will make the information publicly available through publication in the Official Journal of the European Union and through any other appropriate means.

By 12 December 2013 at the latest, the Commission will present a detailed report reviewing the operation of the European order for payment procedure.

REFERENCES

Act	Entry into force and expiry date	Deadline for transposition in the Member States	Official Journal
Regulation (EC) No 1896/2006	Entry into force 31.12.2006 Applicable from: 12.12.2008 (for Articles 28-31: 12.06.2008)	-	OJ L 399 of 30.12.2006.

Please visit the following European Commission websites for further information:

- Directorate-General (DG) for Justice, Freedom and Security: [judicial cooperation in civil matters](#) ;
- [European Judicial Atlas in civil matters](#) .

Last updated: 10.1.2007

European enforcement order for uncontested claims

The Regulation creates a European enforcement order for uncontested claims. Thanks to the introduction of minimum standards, the instrument allows the free movement of judgments , out-of-court settlements or authentic instruments concerning uncontested claims in all the Member States. It is no longer necessary to use an intermediate procedure in the Member State of enforcement prior to recognition and enforcement.

ACT

Regulation (EC) No [805/2004](#) of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims [[see amending acts](#)].

SUMMARY

The Regulation creates a European enforcement order for uncontested claims. It lays down minimum standards to ensure that judgments, court settlements and authentic instruments on uncontested claims can circulate freely. This entails the abolition of exequatur, i.e. the automatic recognition and enforcement, without any intermediate proceedings or grounds for refusal of enforcement, of judgments handed down in another Member State.

Scope

The Regulation applies in civil and commercial matters. It does not, in particular, cover revenue, customs or administrative matters. It is applicable in all Member States with the exception of Denmark.

European enforcement order

A judgment on an uncontested claim is certified as a European enforcement order by the Member State of origin in accordance with certain conditions. Certification is carried out by means of the standard form. The certification may apply to only parts of the judgment, in which case the order will be known as "partial European enforcement order".

A judgment that includes an enforceable decision on the amount of costs related to the court proceedings may also be certified with regard to the costs unless the debtor has specifically objected to his obligation to bear such costs. The certificate can also be rectified if there is a discrepancy between the judgment and the certificate, or withdrawn where it was clearly wrongly granted. Nor is there any appeal against the judgment relating to certification. The certificate takes effect only within the limits of the enforceability of the judgment.

Minimum standards

The court proceedings in the Member State of origin must meet certain procedural requirements for a judgment on an uncontested claim to be certified as a European enforcement order.

The Regulation lays down minimum standards with regard to the service of documents (the document instituting proceedings and, where applicable, the summons to a court hearing) to ensure that the rights of the defence are respected. Only the document service methods listed in the Regulation are allowed if the judgment is to be certified as a European enforcement order.

Furthermore, the document instituting proceedings must give details of:

- the claim (personal details of parties, amount of the claim, whether or not interest is incurred and for what period, etc.);
- the procedural arrangements required for contesting the claim (deadline for contesting the claim, consequences of failing to object, etc.).

The Regulation allows non-compliance with these requirements to be remedied, subject to certain conditions. For a judgment to be certified as a European enforcement order, the Member State of origin must provide for review in exceptional cases.

Enforcement

Enforcement procedures are governed by the law of the Member State of enforcement. The creditor must supply the authorities responsible for enforcement in the enforcing Member State with:

- a copy of the judgment;
- a copy of the European enforcement order certificate;
- where necessary, a transcription of the European enforcement order certificate or a translation thereof into the official language of the Member State of enforcement or into another language accepted by the Member State of enforcement.

No security, bond or deposit can be required of creditors on the ground either that they are foreign nationals or are not domiciled or resident in the Member State of enforcement.

The competent court in the enforcing Member State may, subject to certain conditions, refuse to enforce a judgment if it is irreconcilable with an earlier judgment given in any Member State or in a third country. In certain cases, it can also stay or limit enforcement.

Final and general provisions

All the information needed to apply the Regulation will be communicated by the Member States to the Commission, which will publish it. In addition, in order to facilitate access to enforcement procedures and related information, the Member States undertake to provide the general public and professional circles with relevant information within the framework of the [European Judicial Network](#) in civil and commercial matters.

Creditors remain free to seek recognition and enforcement of a judgment under Regulation (EC) No [44/2001](#). Moreover, this Regulation does not prejudice the application of [Regulation](#) (EC) No 1348/2000.

The Regulation is applicable from 21 October 2005. Following the accession of the new Member States on 1 May 2004, the annexes to the Regulation were replaced by Regulation (EC) No [1869/2005](#) so as to adapt the standard forms for use in those Member States.

Key terms used in the act
<ul style="list-style-type: none"> • Judgment: any judgment given by a court or tribunal of a Member State, whatever the judgment may be called. • Claim: a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment. • Uncontested: the debtor has not objected to the claim in the course of court proceedings or has not appeared in court or has expressly agreed that the claim exists and is justified in the course of court proceedings, including by means of a settlement or in an authentic instrument. • Authentic instrument: a document formally drawn up as an authentic instrument or an arrangement relating to maintenance obligations. • Member State of origin: the Member State in which the judgment to be certified as a European enforcement order has been given. • Member State of enforcement: the Member State in which enforcement of the judgment certified as a European enforcement order is sought.

REFERENCES

Act	Entry into force - Date of expiry	Deadline for transposition in the Member States	Official Journal
Regulation (EC) No 805/2004	21.01.2005	-	OJ L 143, 30.04.2004
Amending act(s)	Entry into force	Deadline for transposition in the Member States	Official Journal
Regulation (EC) No 1869/2005	24.11.2005	-	OJ L 300, 17.11.2005

For further information, see the following websites:

Directorate-General for Justice, Freedom and Security of the European Commission:

- [Mutual recognition of judgments in civil and commercial matters](#) - the foundations of the European area of justice;

- [European Judicial Atlas](#) in Civil Matters: Serving Documents.

Last updated: 25.4.2005

Jurisdiction, recognition and enforcement of judgments in civil and commercial matters ("Brussels I")

The Regulation lays down rules governing the jurisdiction of the courts and the recognition and enforcement of judgments in civil and commercial matters in the Member States of the EU.

ACT

Council Regulation (EC) No [44/2001](#) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [[see amending acts](#)].

SUMMARY

The Regulation lays down rules governing the jurisdiction of the courts in civil and commercial matters. A judgment given in a Member State is to be recognised automatically, no special proceedings being necessary unless recognition is actually contested. A declaration that a foreign judgment is enforceable is to be issued after purely formal checks of the documents supplied. The Regulation lists grounds for non-enforcement, but the courts are not to raise these of their own motion. The Regulation does not cover revenue, customs or administrative matters. It does not apply to:

- the status or legal capacity of natural persons, matrimonial matters, wills and succession;
- bankruptcy;
- social security;
- arbitration.

Rules of jurisdiction

The basic principle is that jurisdiction is to be exercised by the Member State in which the defendant is domiciled, regardless of his or her nationality. Domicile is determined in accordance with the domestic law of the Member State where the matter is brought before a court. If a party is not domiciled in the Member State of the court considering the matter, then, in order to determine whether the party is domiciled in another Member State, the court is to apply the law of that other Member State. In the case of legal persons or firms, domicile is determined by the country where they have their statutory seat, central administration or principal place of business. In the case of trusts, domicile is defined by the judge of the Member State whose court is considering the case; the court applies its own rules of private international law (Article 60(3)).

Suing the defendant in another Member State

Although the basic principle is that the courts with jurisdiction are those of the Member State in which the defendant is domiciled, a defendant may in certain circumstances be sued in the courts of another Member State. The Regulation lists areas of jurisdiction where this is so: special jurisdiction, jurisdiction in matters relating to insurance, jurisdiction over consumer contracts, jurisdiction over individual contracts of employment, and exclusive jurisdiction.

The courts' special jurisdiction includes the following (Article 5):

- matters relating to a contract: as a general rule, these will be dealt with by the courts for the place of performance of the obligation in question;
- matters relating to maintenance: as a general rule, these are to be brought before the courts for the place where the maintenance creditor is resident;
- matters relating to liability for wrongful acts - tort, delict or quasi-delict: these will be decided by the courts for the place where the harmful event occurred or may occur.

In matters relating to insurance, an insurer may be sued in the courts of the Member State where the insurer is domiciled or in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled. In respect of liability insurance or insurance of immovable property, the insurer may, in addition, be sued in the courts for the place where the harmful event occurred.

The Regulation also lays down rules on jurisdiction in matters relating to contracts concluded by consumers. "Consumers" are defined as persons who conclude a contract with a professional for a purpose which can be regarded as being outside their own trade or profession. All contracts concluded with a person who pursues commercial or professional activities in the Community are covered, with the exception of contracts of transport, other than those providing for a combination of travel and accommodation for an inclusive price. The consumer is protected in the way described below if the contract is a contract for the sale of goods on instalment credit terms or a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; but, for the consumer to enjoy this protection in other cases, the contract must have been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State. A consumer may bring proceedings either in the courts of the Member State in which the defendant is domiciled or in the courts for the place where the consumer (the plaintiff) is domiciled. But proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled

In matters relating to individual contracts of employment, employees may sue their employer either in the courts of the Member State where the employer is domiciled or in another Member State in the courts for the place where the employee habitually works. An employee who does not habitually work in any one country may sue the employer in the courts for the place where the business which engaged the employee is situated. An employer who is not domiciled in any Member State but has a branch, agency or other establishment in one of the Member States is deemed to be domiciled in that Member State. An employer may bring proceedings against an employee only in the courts for the place where the employee is domiciled.

A court has exclusive jurisdiction, regardless of domicile, in the following cases:

- rights in rem in immovable property or tenancies of immovable property: the courts of the Member State in which the property is situated;
- the validity of the constitution, the nullity or the dissolution of companies or other legal persons, or of the validity of the decisions of their organs: the courts of the Member State in which the legal person has its seat;

- the validity of entries in public registers: the courts of the Member State in which the register is kept;
- the registration or validity of patents, trade marks, designs or other similar rights: the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of a Community instrument or an international convention deemed to have taken place;
- the enforcement of judgments: the courts of the Member State in which the judgment has been or is to be enforced.

If the parties, one or more of whom is domiciled in the Community, have concluded a choice of jurisdiction clause *, the agreed court will have jurisdiction. The Regulation lays down a number of formalities that must be observed in such choice of jurisdiction agreements: the agreement must be in writing, or 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 aware.

Similarly, there are provisions for rules regarding co-defendants, actions on a warranty or guarantee or other third-party proceedings, counterclaims and matters relating to a contract if the action may be combined with an action relating to rights in immovable property.

The Regulation also provides a mechanism to handle cases pending elsewhere (*lis pendens*) and related actions.

Recognition and enforcement

A judgment given in a Member State is to be recognised in the other Member States without any special procedure being required. "Judgment" means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution. Under no circumstances may a foreign judgment be reviewed as to its substance.

A judgment will not be recognised:

- if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;
- if the defendant was not served with the document which instituted the proceedings in sufficient time and in such a way as to enable the defendant to arrange for his or her defence;
- 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.

A court in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

A judgment is to be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. The parties may appeal against a decision on an application for a declaration of enforceability.

Superseding the Brussels Convention of 1968

The Regulation applies in the Member States of the European Union. It supersedes the Brussels Convention of 1968, which was applicable between the Member States before the Regulation entered into force; but the Convention continues to apply with respect to those territories of Member States which fall within the territorial scope of the Convention and which are excluded from the Regulation pursuant to Article 299 of the Treaty. The Regulation lists in Article 69 a number of conventions and treaties between Member States which it supersedes such as the 1930 Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters and the 1959 Convention between Poland and Hungary on Legal Assistance.

Even after the Regulation entered into force, questions of jurisdiction between Denmark and the other Member States continued to be governed by the Brussels Convention of 1968. This Danish opt-out was based on the 1997 Protocol No 5 on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community [Official Journal C 340 of 10.11.1997]. On 19 October 2005 the Community concluded an agreement ([PDF](#)) with Denmark on jurisdiction and the recognition and enforcement of judgements that extended the provisions of the Regulation to that country. The agreement was approved on behalf of the Community by a Council Decision of 27 April 2006 [Official Journal L 120 of 5.5.2006]. The Agreement has not yet entered into force, and the Brussels Convention continues to apply to Denmark. The agreement will enter into force on 1 July 2007 [Official Journal L 94 of 4.4.2007].

As provided for in Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, these two countries have indicated their wish to take part in the adoption and application of the Regulation.

Key terms used in the act

- "Private international law" governs the international element in matters of private law, i.e. family law, law of contract etc. It is the branch of the domestic law of States that indicates which law, domestic or foreign, is to be applied in a particular case.
- "Choice of jurisdiction" is a general principle of private international law under which the parties to a contract are free to designate a court to rule on any disputes even though that court might not have had jurisdiction on the basis of the factors objectively connecting the contract with a particular place.

REFERENCES

Act	Entry into force	Final date for implementation in the Member States	Official Journal
Regulation (EC) No 44/2001	1.3.2002	-	OJ L 12, 16.1.2001

Amending act(s)	Entry into force	Final date for implementation in the Member States	Official Journal
Regulation (EC) No 1496/2002	29.8.2002	-	OJ L 225, 22.8.2002
Regulation (EC) No 1937/2004	17.11.2004	-	OJ L 334, 10.11.2004
Regulation (EC) No 2245/2004	4.1.2005	-	OJ L 381, 28.12.2004
Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the treaties on which the European Union is founded	1.5.2004	-	OJ L 236, 23.9.2003

RELATED ACTS

Council Regulation (EC) No [2201/2003](#) of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility [Official Journal L 338 of 23.12.2003].

This Regulation applies in civil matters relating to divorce, legal separation and the annulment of marriage, and all aspects of parental responsibility. It does not apply in civil matters relating to maintenance obligations, which are covered by the Regulation discussed here, Regulation (EC) No [44/2001](#).

Statement by the United Kingdom (Council Regulation (EC) No [44/2001](#) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) [Official Journal C 13 of 16.1.2001].

Council document 7998/2000 of 19 April 2000 states that decisions taken by an authority in

Gibraltar must be directly enforced by a court or other enforcement authority in another Member State in accordance with the relevant provisions of the Regulation. In accordance with the Council text cited above, documents containing such decisions will be certified as authentic by the United Kingdom Government/Gibraltar Liaison Unit for EU Affairs of the Foreign and Commonwealth Office, based in London. To this effect, the authority in Gibraltar will make the necessary request to the Unit. Certification will take the form of a note.

For further information please visit the following websites:

- European Commission, Directorate-General (DG) for Justice, Freedom and Security: [judicial cooperation in civil matters](#) ;
- [European Judicial Network in civil and commercial matters](#) ;
- [European Judicial Atlas in civil matters](#) .

Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility (Brussels II)

The Union has brought together in a single legal instrument the provisions on divorce and parental responsibility with a view to facilitating the work of judges and legal practitioners and to regulating the exercise of cross-border rights of access. This Regulation represents a major step forward in the fight against abductions of children.

ACT

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](#).

SUMMARY

The purpose of this Regulation is to bring together in a single document the provisions on divorce and on parental responsibility [*](#). Among other matters, it establishes the automatic recognition of judgments on rights of access [*](#), which formed part of an initiative presented by France in 2000. This Regulation replaces Regulation (EC) No [1347/2000](#).

Prioritising children's rights

The Union gives priority to the child's right to maintain normal relations with both parents. The child will have the right to make his or her views known on all aspects of parental responsibility, having regard to his or her age and degree of maturity.

Scope, definitions and jurisdiction

The Regulation applies to civil proceedings relating to divorce, separation and marriage annulment, and to all aspects of parental responsibility. Parental responsibility refers to the full set of rights and obligations in relation to a child's person or property. In order to ensure equality for all children, the Regulation covers all judgments on parental responsibility, including measures to protect the child, independently of any matrimonial proceedings.

The Regulation does not apply to civil proceedings relating to maintenance, which are covered by [Council Regulation \(EC\) No 44/2001](#) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The following are also excluded from the scope of the Regulation:

- establishing and challenging paternity;
- judgments on adoption and the related preparatory measures, and annulment or revocation of adoption;
- the child's first and last names;
- emancipation;
- trusts and inheritance;
- measures taken following criminal infringements committed by children.

The Regulation establishes a full system of rules on jurisdiction. As regards divorce, it takes over the rules on jurisdiction of [Council Regulation \(EC\) No 1347/2000](#) .

Matters relating to parental responsibility generally come under the jurisdiction of the courts of the Member State that is the habitual residence of the child. But there are exceptions. In certain cases of relocation, that is of a lawful change of residence of a child, where the courts of the Member State of the former residence of the child have already issued a judgment on parental responsibility (particularly as concerns rights of access), this matter continues to come under the jurisdiction of the courts of that State. Moreover, the spouses may accept the jurisdiction of the divorce court to also decide on matters of parental responsibility. In certain cases, the parents may also agree to bring the case before the courts of another Member State with which the child has a close connection. Such a connection may, for instance, be based on the nationality of the child.

Where a child's habitual residence cannot be established, then the Member State in which the child is present will assume jurisdiction by default. This provision applies, for instance, to cases of refugee children or children internationally displaced because of disturbances occurring in their countries of origin. Where it is not possible to define jurisdiction on the basis of the specific provisions laid down by the Regulation, each Member State may apply its national legislation. And the case may be referred to the court best placed to hear the case in exceptional circumstances where this is in the best interests of the child.

The courts are required to verify of their own motion whether they have jurisdiction for the purposes of this Regulation. If a court of a Member State has no jurisdiction in a matter submitted to it, it must declare of its own motion that it has no jurisdiction. Where proceedings are brought against a respondent who is habitually resident in another Member State, the courts must verify whether the respondent received the document instituting the proceedings in sufficient time to enable him to arrange for his defence. The courts may also take interim protective measures relating to persons and property in urgent cases.

Rules on child abduction

The Regulation also lays down rules on child abduction (unlawful removal or retention of the child [*](#)). The purpose is to combat child abduction in the European Union.

A holder of rights of custody [*](#) may apply for the return of an abducted child to a central authority or to a court.

The general rule of jurisdiction is that the courts of the Member State in which the child was habitually resident immediately before the abduction continue to have jurisdiction until the child is habitually resident in another Member State (subject to the assent of all persons holding rights of custody and a minimum period of one year of residence).

The court in question must issue its judgment within six weeks of the case being submitted to it. The child is heard during the proceedings unless this appears inappropriate due to his or her age and degree of maturity. Return of the child cannot be refused if the person demanding return has not been heard.

The courts of the Member State to which the child has been abducted can only refuse return of the child if there is a serious risk that return would expose the child to physical or

psychological harm (under Article 13(b) of the Hague Convention of 1980). The Regulation lays down that the judge must also order return in the latter case if it is established that adequate arrangements have been made to ensure the protection of the child after his or her return.

If a court rules that a child is not to be returned, it must transfer the case file to the competent court of the Member State in which the child was habitually resident prior to removal. This court takes the final decision as to whether or not the child is to be returned. The judge must give the child and the parties concerned the opportunity of being heard and must also take into account the reasons and the evidence based on which the first judge ruled that the child was not to be returned. If the judge in the Member State of origin reaches a different decision, i.e. that the child should be returned, this judgment is automatically recognised and enforceable in the other Member State without the need for a declaration of enforceability ("abolition of exequatur"). Provided the judge in the Member State of origin has issued a certificate (see Annex IV), his judgment cannot be challenged.

Recognition and enforcement

The rules on recognition and enforcement are those laid down by Council Regulation (EC) No [1347/2000](#) on this matter.

As regards recognition, the Regulation provides for automatic recognition of all judgments without any intermediary procedure being required and restricts the grounds on which recognition of judgments relating to matrimonial matters and matters of parental responsibility may be refused to the following:

- recognition is manifestly contrary to public policy;
- the respondent was not served with the document which instituted the proceedings in sufficient time to arrange for his or her defence;
- recognition is irreconcilable with another judgment.

For judgments in matters of parental responsibility there are two further grounds for non-recognition:

- the child was not given an opportunity to be heard;
- a person claims that the judgment infringes his or her parental responsibility, if it was issued without such person having been given an opportunity to be heard.

A judgment on the exercise of parental responsibility can be declared to be enforceable in another Member State on the application of an interested party (and, in the case of the UK, after it has been registered for enforcement). The decision on the application for a declaration of enforceability may be appealed against.

20. With regard to judgments on matrimonial matters and parental responsibility, the competent court must, at the request of any interested party, issue a certificate using the standard form set out in Annexes I and II.

All judgments on rights of access and return of children taken in accordance with the Regulation will be automatically recognised and enforced in all the Member States without the need for special procedures (abolition of exequatur), provided they are accompanied by a

certificate. Standard forms for certificates concerning rights of access and return of children are set out in Annexes III and IV.

A certificate issued to facilitate enforcement of a judgment is not subject to appeal. However, proceedings for rectifying the certificate can be initiated if it does not correctly reflect the judgment.

The enforcement procedure is governed by the domestic law of the Member State of enforcement.

A distinction has to be made between a judgment acknowledging rights of access and the practical arrangements for exercising such rights. The judge in the Member State of enforcement can determine the practical arrangements for exercising rights of access if the necessary procedures have not been specified in the judgments by the courts of the other Member State in which rights of access were granted. In determining these practical arrangements, the judge must at all times comply with the basic elements of the judgment conferring the right.

Cooperation between central authorities

Each Member State designates one or more central authorities to exercise several functions, in particular to:

- promote exchanges of information on national legislation and procedures;
- facilitate communication between courts;
- provide assistance to holders of parental responsibility seeking to recognise and enforce decisions;
- seek to resolve disagreements between holders of parental responsibility through alternative means to mediation.

The central authorities are brought together regularly in the European Judicial Network in [civil and commercial matters](#) .

All holders of parental responsibility can request free assistance from the central authority in the Member State in which the child is habitually resident.

As a general rule the Regulation replaces the existing conventions between two or more Member States that concern the same matters, and it will prevail over certain multilateral conventions on relations between Member States that concern matters governed by the Regulation: the Hague Convention of 1961 (law applicable to protection of minors), the Luxembourg Convention of 1967 (recognition of decisions on marriage), the Hague Convention of 1970 (recognition of divorces), the European Convention of 1980 (custody of children), and the Hague Convention of 1980 (civil aspects of international child abduction).

With regard to relations with the [Hague convention](#) of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, this Regulation is fully applicable if the child in question is habitually resident in a Member State. The rules on recognition and enforcement also apply if the competent court in a Member State issues a judgment, even if the child in question is habitually resident in a non-Member State that is a party to this Convention.

Special provisions are applicable to:

- relations of Finland and Sweden with Denmark, Iceland and Norway as regards the application of the "Nordic Marriage Convention" of 6 February 1931;
- relations between the Holy See and Portugal, Italy and Spain.

Final provisions

A committee of representatives of the Member States is to assist the Commission in giving effect to the Regulation.

By 1 January 2012 at the latest and every five years thereafter, the Commission will submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the Regulation, based on information supplied by the Member States, accompanied by any proposed amendments.

The United Kingdom and Ireland wish to take part in the application of this Regulation. Denmark is not taking part in the adoption of the Regulation and is therefore not required to apply it.

This Regulation will come into force on 1 August 2004 and will apply from 1 March 2005.

Background

The Tampere European Council expressed the wish of the Member States to reinforce mutual recognition of court judgments, particularly in civil matters (point 34 of the conclusions). Initially, judgments were to be automatically recognised in certain areas such as family rights, in particular maintenance claims and rights of access.

In compliance with the Tampere conclusions:

- In May 2000 the Council adopted [Regulation \(EC\) No 1347/2000](#) ("Brussels II");
- In July 2000 France submitted an initiative regarding cross-border [rights of access](#) ;
- In September 2001 the Commission submitted a proposal regarding [parental responsibility](#) .

The provisions of the Commission's proposal of 20 September 2001 were included in the proposal for this regulation and were formally withdrawn on 6 June 2002. The same applies to the initiative submitted by France in July 2000.

Key terms of the act
<ul style="list-style-type: none">• Parental responsibility: all the rights and obligations of a natural or legal person with regard to the person or the property of a child. These rights and obligations may be acquired by a court judgment, by operation of law or by an agreement in force. The term relates in particular to right of custody and rights of access.• Right of custody: the rights and obligations relating to care of a child, in particular the right to determine the child's place of residence.• Rights of access: the right to take the child for a limited period to a place other than

Key terms of the act

- that of the child's habitual residence.
- Unlawful removal or retention of a child: abduction, violation of a right of custody acquired by a court judgment, by operation of law or by an agreement in force in the Member State in which the child is habitually resident.

REFERENCES

Act	Entry into force	Transposition in the Member States	Official Journal
Regulation (EC) No 2201/2003 [adoption: consultation CNS/2002/0110]	Entry into force: 1.8.2004 Application: 1.3.2005	-	JO L 338, 23.12.2003

RELATED ACTS

[Proposal of 17 July 2006 for a Council Regulation](#) amending Regulation (EC) No [2201/2003](#) as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters [[COM\(2006\) 399](#) final - Not published in the Official Journal].

In view of the increasing number of "international" marriages and divorces, the European Commission intends to provide a clear and comprehensive legal framework in matrimonial matters ensuring legal certainty, predictability, flexibility and access to court. The proposal therefore provides for:

- harmonised conflict-of-law rules in matters of divorce and legal separation to enable spouses to easily predict which law that will apply to their matrimonial proceeding;
- a limited degree of choice for the spouses regarding which law is applicable and which court is competent in proceedings concerning divorce and legal separation.

The proposal follows the Green Paper on applicable law and jurisdiction in divorce matters of 14 March 2005 [[PDF](#)].

Adoption: Consultation procedure [CNS/2006/0135](#)

For further information please visit the following websites:

- The European Commission's Directorate-General for Justice and Home Affairs website: Divorce and parental responsibility: [EN mutual recognition of decisions on family rights throughout the European Union](#) ;
- [European judicial network in civil and commercial matters](#) : Practice Guide ([PDF](#)) on the application of Regulation (EC) No [2201/2003](#).

Last updated: 28.8.2006

Insolvency proceedings

In the event of a debtor becoming insolvent, be it a company, a trader or an individual, this Regulation establishes common rules regarding the court competent to open insolvency proceedings, the applicable law and the recognition of the court's decisions. The intention of this Regulation is to dissuade the debtor from transferring his assets or the judicial proceedings from one State to another in order to improve his legal position.

ACT

Council Regulation (EC) No [1346/2000](#) of 29 May 2000 on insolvency proceedings [See amending acts [[See amending acts](#)].

SUMMARY

This Regulation establishes a common framework for insolvency proceedings in the European Union, except for Denmark (in accordance with Articles 1 and 2 of the protocol on the position of Denmark, attached as an appendix to the Treaty on European Union and to the Treaty establishing the European Community). The purpose of harmonised arrangements regarding insolvency proceedings is to avoid assets or judicial proceedings from being transferred from one Member State to another in order to obtain a more favourable legal position to the detriment of creditors ("forum shopping"). The Regulation applies to insolvency proceedings opened after the Regulation came into force on 31 May 2002. The annexes to the Regulation list in detail the insolvency proceedings referred to in the Member States (Annex A), the winding up procedures (Annex B) and the liquidators (Annex C).

It should be noted that one quarter of cases of insolvency in the European Union are associated with [late payments](#) .

Avoiding assets and judicial proceedings being transferred from one state to another

Cases of insolvency with cross-border effects affect the proper functioning of the internal market. With a view to developing more uniform procedures that will avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another in order to obtain a more favourable legal position ("forum shopping"), the proposed solutions rely on the principle of proceedings with universal scope, while retaining the possibility of opening secondary proceedings within the territory of the Member State concerned.

The Regulation applies to "collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator" (Article 1). It applies equally to all proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. A liquidator is a person or body that administers or liquidates the assets of which the debtor has been divested or supervises the administration of his affairs. Annex C of the Regulation lists the persons or bodies who are authorised exercise this function in each Member State.

However, it does not apply to insolvency proceedings concerning:

- [insurance undertakings](#) ;

- [credit institutions](#) ;
- [investment undertakings](#) which provide services involving the holding of funds or securities for third parties;
- [collective investment undertakings](#) .

Determining the courts with jurisdiction and applicable law

The Regulation interprets the concept of "court" in the wide sense: it may include a person or body authorised in national law to open proceedings. The courts with jurisdiction to open the **main proceedings** are those of the Member State where the debtor has his centre of main interests. This should be the place where the debtor usually administers his interests and should be verifiable by third parties. In the case of a company or legal person, this is the place of the registered office, in the absence of proof to the contrary. In the case of a natural person, in principle it is the place where their work is domiciled or is their place of usual residence.

Secondary proceedings may be opened subsequently in another Member State if the debtor has an establishment in the territory of this State. Establishment means any place of operations where the debtor carries out a non-transitory economic activity with human resources and goods. The effects of the winding up proceedings must be limited to the assets of the debtor located in the territory. It is the liquidator of the main proceedings who may request for such proceedings to be opened, or other persons or authorities who may do so according to the law of the State in which the opening of the proceedings is requested. In some cases, such territorial proceedings may be opened independently before the main proceedings if the local creditors and the creditors of the local establishment request it or where main proceedings cannot be opened under the law of the Member State where the debtor has his centre of interests. However, these proceedings will become secondary proceedings after the main proceedings have opened.

The law of the Member State in which proceedings are opened determines all the effects of those insolvency proceedings: the conditions for the opening of the proceedings, their conduct and their closure, as well as practical rules such as the definition of debtors and assets, the respective powers of the debtor and the liquidator, the effects of proceedings on contracts, individual creditors, claims, etc.

There are provisions throughout the Community guaranteeing the rights in rem of third parties, the right of a creditor to demand a set-off and that of a seller based on reservation of title, such that these rights are not affected by the opening of the proceedings. Rights to immovable property are governed solely by the law of the Member State where the property is situated. Similarly, employment contracts and relationships, and the rights and obligations of parties to a payment or settlement system or to a financial market are governed solely by the law of the Member State which is applicable to them (for further details, see the [Council Directive of 19 May 1998](#) on settlement finality in payment and securities settlement systems).

Recognition of insolvency proceedings

Decisions by the court with jurisdiction for the **main proceedings** are recognised immediately in the other Member States without further scrutiny, except:

- where the effects of such recognition would be contrary to the State's public policy;

- in the case of judgments which might result in a limitation of personal freedom or postal secrecy.

However, restrictions on creditors' rights (a stay or discharge) are possible only in the case of those who have given their consent.

If a court of a Member State decides to open insolvency proceedings, the decision is recognised in all the other Member States, even if the debtor would not be the subject of such proceedings in the other States. The effects of the decision are those provided for by the law of the State in which proceedings are opened and they come to an end in the event of secondary proceedings being opened in another Member State. The **effects of the secondary proceedings**, admissible only if the debtor has an establishment in the territory of this other state, are limited to the assets in that Member State.

The liquidator appointed by a court with jurisdiction may act in the other Member States in accordance with his powers provided for by the law of the Member State where the proceedings are opened, but respecting the law of the State on whose territory he is acting. He may in particular have the debtor's assets removed and may bring any action to set aside which is in the interests of the creditors if assets were removed from the State of the main proceedings to another Member State after the opening of the proceedings, subject to rights in rem of third parties or reservation of title.

A creditor domiciled in the Community who obtains total or partial satisfaction of his claim on the assets belonging to the debtor must return what he has obtained to the liquidator (subject to rights in rem or reservation of title). A consolidated account of dividends for the Community is drawn up to ensure that creditors receive equivalent dividends.

Publication measures may be taken in any other Member States at the request of the liquidator (publication of the decision opening the insolvency proceedings, registration in a public register). Publication may be mandatory, but in any event it is not a prior condition for recognition of the foreign proceedings.

Some of the persons concerned may not be aware that proceedings have been opened and may act in good faith in a way that conflicts with the new rules (payment to the debtor when they should have made payment to the liquidator in another Member State). If such a payment is made before publication of the decision opening proceedings, the persons concerned are considered to have been unaware of the opening of proceedings. On the other hand, if a payment is made after publication of the decision, the persons concerned are assumed to have been aware unless there is proof to the contrary.

Limitation of the applicability of the Regulation

The Regulation does not apply:

- in Denmark;
- in any Member State, to the extent that it is irreconcilable with the obligations in respect of winding-up resulting from a convention concluded prior to its entry into force by this State with one or more third countries;
- in the United Kingdom, to the extent that it is irreconcilable with existing arrangements with the Commonwealth.

The Regulation applies to insolvency proceedings opened after its entry into force on 31 May 2002. It replaces existing bilateral and multilateral conventions between two or more Member States.

Follow-up

No later than 1 June 2012, and every five years thereafter, the Commission will present to the European Parliament, the Council and the Economic and Social Committee a report on the application of the Regulation.

Amendments subsequent to the Regulation

Acting by a qualified majority, the Council may amend the annexes to this Regulation, on the initiative of one or more of its members or on a proposal from the Commission.

Council Regulation (EC) No [603/2005](#) of 12 April 2005 amended the lists of insolvency proceedings, winding up proceedings and liquidators detailed in Annexes A, B and C of Regulation (EC) No [1346/2000](#), in order to take into account changes in legislation in a number of Member States (namely: Belgium, Spain, Italy, Latvia, Lithuania, Malta, Hungary, Austria, Poland, Portugal and the United Kingdom). Regulation (EC) No [694/2006](#) amended Annex A (insolvency proceedings referred to in Article 2 of Regulation (EC) No [1346/2000](#)) and Annex C (the liquidators referred to in the same article) concerning France.

Following the [enlargement of the EU](#) on 1 May 2004, this regulation was amended by the act concerning the conditions of accession to the EU of ten new Member States [Official Journal L 236 of 23.09.2003]. Regulation (EC) No [1791/2006](#) adjusted the provisions of this Regulation to the accession of Bulgaria and Romania, on 1 January 2007.

Council Regulation (EC) No [681/2007](#) of 13 June 2007 amended the lists of insolvency proceedings, winding up proceedings and liquidators detailed in Annexes A, B and C for the following Member States: the Czech Republic, Romania, Italy, Sweden, the United Kingdom and Ireland.

Context

The winding-up of insolvent companies, compositions and analogous proceedings are excluded from the scope of the [1968 Brussels Convention](#). Work has been carried out at various levels since 1963 with a view to formulating a Community instrument in the field. A convention on insolvency proceedings was concluded on 23 November 1995.

This convention could not enter into force, because one Member State failed to sign the convention within the time limit. The Amsterdam Treaty, signed on 2 October 1997, lays down [new provisions](#) for judicial cooperation in civil matters. It was on this basis that this Regulation on insolvency proceedings was adopted.

REFERENCES

Act	Entry into force - Date of expiry	Deadline for transposition in the Member States	Official Journal
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Act	Entry into force - Date of expiry	Deadline for transposition in the Member States	Official Journal
Regulation (EC) No 1346/2000	31.05.2002	-	OJ L 160 of 30.06.2000
Amending act(s)	Entry into force	Deadline for transposition in the Member States	Official Journal
Regulation (EC) No 603/2005	21.04.2005	-	OJ L 100 of 20.04.2005
Act concerning the conditions for accession to the European Union of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Republic of Slovakia, and on the adjustments of the treaties on which the European Union is founded.	01.05.2004	-	OJ L 236 of 23.09.2003
Regulation (EC) No 694/2006	07.05.2006	-	OJ L 121 of 06.05.2006
Regulation (EC) No 1791/2006	01.01.2007	-	OJ L 363 of 20.12.2006
Regulation (EC) No 681/2007	21.06.2007	-	OJ L 159 of 20.06.2007

RELATED ACTS

Declaration by Portugal concerning the application of Articles 26 and 37 of Council Regulation (EC) No [1346/2000](#) of 29 May 2000 on insolvency proceedings

Converting territorial proceedings opened prior to the main proceedings into winding-up proceedings should be interpreted as meaning that such conversion does not exclude judicial application of the state of the local proceedings by the judge (Article 36) or of the application of the interests of public policy (Article 26).

Winding-up of companies:

European Parliament and Council Directive [2001/17/EC](#) on the reorganisation and winding-up of insurance undertakings [Official Journal L 110 of 20/04/2001].

European Parliament and Council Directive [2001/24/EC](#) on the reorganisation and winding-up of credit institutions [Official Journal L 125 of 05.05.2001].

Additional information: [COMPANY LAW](#)

For further information, see the following European Commission website: Directorate-General Justice, Freedom and Security:

- [Improving cross-border insolvency proceedings](#)

Last updated: 4.7.2007

Alternative dispute resolution: mediation

The purpose of this Commission proposal is to encourage the use of mediation as a method of settling disputes on civil and commercial matters. The proposed Directive also lays down rules on the interaction between mediation and civil court proceedings.

PROPOSAL

Proposal for a Directive of the European Parliament and of the Council of 22 October 2004 on certain aspects of mediation in civil and commercial matters [[COM\(2004\) 718 final](#) - Not published in the Official Journal].

SUMMARY

Through this proposal the Commission encourages the use of mediation ^{*} as a means of settling disputes on civil and commercial matters, in the interests of better access to justice, which is one of the key objectives of the policy for establishing an [area of freedom, security and justice](#) .

In the light of reactions to the Green Paper of 2002 on alternative dispute resolution, and following the [code of conduct](#) for mediators drawn up in 2004 and approved by European experts, this draft Directive points out the advantages of using a means of resolving conflicts that is more economical and simpler than judicial or quasi-judicial remedies (such as arbitration, the intervention of a mediator, consumer complaints and expert decisions).

Referral to mediation

After defining the terms "mediation" ^{*} and "mediator" ^{*} , the proposal goes on to provide that Member States should authorise the courts to suggest mediation to the litigants, without, however, compelling them to use it. Mediation is not treated as an alternative to court proceedings, but as one of the methods of dispute resolution available in modern society.

Enforcement of settlement agreements reached through mediation

Although the settlement agreements reached through mediation are generally more likely to be implemented voluntarily, the proposal requires all the Member States to establish a procedure whereby an agreement may, at the request of the parties, be confirmed in a judgment, decision or authentic instrument by a court or public authority.

This will allow mutual recognition and enforcement of settlement agreements throughout the EU under the same conditions as those for court judgments and decisions.

Suspension of limitation periods

To encourage more effectively the use of mediation, after the dispute has arisen the period of limitation regarding the claim that is the subject matter of the mediation must be suspended from the time when:

- the parties agree to have recourse to a mediator,

- mediation is ordered by a court, or
- an obligation to use mediation arises under national law.

If the mediation ends without a settlement agreement, the period resumes running from the time when one or both of the parties, or the mediator, declares that mediation has ended. This period may not last for less than a month from that time, unless it is necessary to bring an action to prevent a provisional measure from expiring.

Confidentiality and mediation

If civil proceedings are brought after termination of the mediation, the mediator * may not give testimony or other evidence * concerning:

- the fact that a party was willing or invited to participate in mediation;
- views expressed by a party in respect of a possible settlement of the dispute;
- statements or admissions made by a party in the course of the mediation, including acceptance of a proposal for settlement by the mediator;
- proposals made by the mediator;
- any document prepared solely for the purposes of the mediation.

This information may not be given as evidence in a civil court proceeding unless it is judged necessary to implement or enforce a settlement agreement reached as a result of the mediation or for reasons of public policy, or unless the parties and the mediator agree to it.

Quality of mediation

Both the Commission and the Member States are to encourage the training of mediators and the development of and adherence to voluntary codes of conduct by mediators and organisations offering mediation services. Effective mechanisms for quality control of the services provided should also be encouraged.

For further information, see:

the Freedom, Security and Justice site of Directorate-General JLS of the European Commission:

- [Settling out of court - developing alternative methods to resolve civil and commercial disputes in the European Union](#) .

The site of the European Commission's European Judicial Network in Civil and Commercial Matters:

- [Alternative dispute resolutions - General Information](#) .

Key terms used in the act
Mediation: any procedure entered into on private initiative, ordered by a court or provided for in national law whereby two or more parties are helped by a third party to arrive at an agreement on the resolution of a dispute.

Key terms used in the act

Mediator: any third party conducting a mediation for the parties to the dispute, irrespective of his profession or title.

Evidence: information or document allowing the truth of an alleged act or fact to be established.

REFERENCES AND PROCEDURE

Proposal	Official Journal	Procedure
Proposal for a Directive on certain aspects of mediation in civil and commercial matters	-	COD/2004/0251

Last updated: 31.5.2006

The 1996 Hague Convention - Parental responsibility and protection of children

With the signing and ratification by the Member States of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, the Union is contributing to the protection of children at international level.

ACT

Council Decision 2003/93/EC of 19 December 2002 authorising the Member States, in the interest of the Community, to sign the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children.

SUMMARY

At the Tampere European Council, the Member States issued a clear call for the principle of mutual recognition of judicial decisions to be applied throughout the European Union (EU). With regard to parental responsibility, various decisions have since been adopted, including:

- [Regulation \(EC\) No 1347/2000](#) , which provided for the mutual recognition of certain judgments on parental responsibility issued at the time of divorce or separation (this Regulation is no longer in force);
- [Regulation \(EC\) No 2201/2003](#) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, which repeals and replaces Regulation No [1347/2000](#) with effect from 1 March 2005.

Protecting children at international level

The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children ("the Convention") was concluded on 19 October 1996 at the Hague Conference on Private International Law. The signatories have acknowledged its valuable contribution to the protection of children at international level.

Signing the Convention in the interest of the Community

In line with the [judgment on external powers](#) delivered by the Court of Justice of the European Communities in EART ("European Agreement on Road Transport") - Case 22/70, Member States are no longer free to approve the 1996 Convention on their own, given the adoption of Regulation No [1347/2000](#) and the resulting sharing of [power](#) between the Community and the Member States. But the Convention does not allow for accession by the Community. By way of exception, therefore, the Council has authorised those Member States that are bound by Community provisions in the field to sign the Convention in the interest of the Community.

The Member States signed the Convention on 1 April 2003, except the Netherlands, which signed on 1 September 1997. At the same time they made a declaration aimed at ensuring that the Community rules on recognition and enforcement would be applied consistently. The Decision authorising the signature was followed by a proposal on ratification (see below).

Pursuant to the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not bound by Regulation (EC) No [1347/2000](#); nor does it participate in Regulation (EC) No [2201/2003](#). It consequently remains free to approve or reject the 1996 Hague Convention. The United Kingdom and Ireland opted to participate in Regulation (EC) No [2201/2003](#). This was also the case for the previous Regulation.

REFERENCES

Act	Entry into force	Transposal in Member States	Official Journal
Council Decision 2003/93/EC	-	1.6.2003	Official Journal L 48, 21.2.2003

RELATED ACTS

Proposal for a Council Decision authorising the Member States to ratify, or accede to, in the interest of the European Community the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention) [[COM\(2003\) 348](#) - Not published in the Official Journal].

In June 2003 the Commission put forward a proposal for a Council Decision authorising the Member States (with the exception of Denmark) to accede to the Convention and providing for them to deposit the instruments of ratification of, or accession to, the Convention before 1 January 2005.

The Decision of 19 December 2002 authorises the Member States to sign the Hague Convention in the interest of the Community. The Council and the Commission took this opportunity to agree that the Decision would be followed by a Commission proposal for a Council Decision authorising the Member States to ratify or to accede to the Convention in the interest of the Community at the appropriate time.

Consultation procedure: [CNS/2003/0127](#)

For further information, please consult the following websites:

- European Commission, Directorate-General for Justice, Freedom and Security: [Divorce and parental responsibility](#) : mutual recognition of decisions on family rights throughout the European Union;
- European Judicial Network in civil and commercial matters: [parental responsibility](#) ;
- [The Hague Conference on Private International Law](#) : the 1996 Hague Convention - [text](#) and the [state of ratification](#) by the signatory States.

Last updated: 11.12.2006