

# Judicial cooperation in civil matters - history

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# Judicial cooperation in civil matters

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- ❑ Part of the Community legal system
  - ❑ The principle of free movement of goods, services and people has encouraged mobility among European citizens and in commercial activities
  - ❑ Situations involving people who live in different states have proliferated and so have the possibility for disputes
  - ❑ Establishment of a European judicial area is necessary
  - ❑ European judicial area should include
    - Uniform rules of international jurisdiction
    - Simple recognition and enforcement of foreign judgements
    - Unification of conflict of law rules
    - Better collaboration between the authorities of Member States
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# History

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- Article 220 (293) TEC
    - First step towards the judicial cooperation in civil matters
    - Member States agreed to enter into negotiations with each other -> simplifications of formalities governing the reciprocal recognition and enforcement of judgements of courts
    - EC didn't have competence -> international convention
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# History

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- Brussels Convention
    - 1959 – the Commission invited the Member States to commence negotiations
    - 1964 – Preliminary Draft Convention was adopted -> it was submitted to the Governments for comments
    - 27th September 1968 – Convention on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters was signed by then six Member States
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# History

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- 1st February 1973 – Brussels Convention entered into force
  - The first general multilateral instrument on the recognition of judgements which directly regulated the jurisdiction of the contracting states
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# History

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- 3rd June 1971 – Protocol on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgements in civil and commercial matters was adopted
  - > entry into force – 1st September 1975
  - > jurisdiction of ECJ to interpret the Convention if so requested by national courts
  - > wealth of case law – interpretations remain valid even for Brussels Regulation
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# History

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- Brussels Convention was amended several times – with the successive waves of enlargement of the EC
    - > 1978 – accession of Denmark, UK, Ireland
    - > 1982 – accession of Greece
    - > 1989 – accession of Spain and Portugal
    - > 1996 – accession of Austria, Finland, Sweden
- ! Czech Republic is not a contracting state.
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# History

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- Rome Convention
    - Established the law applicable to contractual obligations
    - Opened for signature in 1980
    - Entry into force – 1991
    - 25 Member States including the Czech Republic are bound by the Convention
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# History

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- Lugano Convention
    - Brussels Convention was designated only for Member States
    - It was suitable to enlarge the rules contained in the Brussels Convention to other states economically connected with the EC
    - 1988 – Lugano Convention was concluded between the EC Member States and then EFTA countries
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# History

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- Parallel convention to the Brussels Convention – almost identical texts
  - 1997 – the Council decided that the conventions should be revised and instructed a group of experts
  - 1999 – revised versions were submitted
  - proposed draft was never enacted as a new version of the Brussels convention – it was incorporated into the new regulation
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# History

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- 2002 – the Council delegated the negotiation of adopting of the new Lugano Convention on the Commission
  - The Council didn't consider the question of competence of the EC to conclude the convention
  - 2003 – the Council submitted the application for the response to this question to the ECJ
  - February 2006 – the ECJ gave the opinion – the EC has the exclusive competence to conclude the new Lugano Convention
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# History

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- October 2007 - the new Lugano Convention was signed by the EC and Denmark on one side and Norway, Iceland and Switzerland on the other side
  - New Lugano Convention should enter into force in 2009
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# History

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- Maastricht Treaty
    - The beginning of a new stage in the construction of judicial cooperation in civil matters
    - The cooperation was included among the objectives to be achieved within the framework of the EU
    - Judicial cooperation in civil matters was identified as an area of common interest
    - The cooperation was included into the third (intergovernmental) pillar
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# History

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## □ Amsterdam Treaty

- Created the area of freedom, security and justice
  - The area has two parts – civil and criminal
  - The civil part was transferred to the EC Treaty – communitarisation of this area
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# History

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- New Title IV was added to the EC Treaty – Visas, Asylum, Immigration and Other Policies related to Free Movement of Persons
  - The judicial cooperation in civil matters is regulated in Article 65
  - Article 65 presumes adoption of measures in the field of judicial cooperation in civil matters having cross-border implications so far as necessary for the proper functioning of the internal market
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# History

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- Measures shall include:
    - >improving and simplifying
    - The system for cross-border service of judicial and extrajudicial documents
    - Cooperation in taking evidence
    - The recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases
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# History

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- > promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction
  - > eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States
  - The EC has the competence to issue instruments in the form of Community legislation
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# History

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## □ Vienna Action Plan

- Council and Commission Action Plan of 3 December 1998 on how best to implement the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice
  - adopted at the summit of the European Council in Vienna
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# History

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- Schedule of measures for implementing the Amsterdam Treaty – achieving the area of freedom, security and justice
  - Main objective of judicial cooperation in civil matters – improvement of collaboration between the authorities of the Member States -> to make life easier for European citizens
  - Measures planned:
    - > modernisation of the existing conventions (Brussels, Lugano, Rome)
    - > the preparation of an instrument on the law applicable to non-contractual obligations
    - > the creation of a European judicial network
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# History

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- > to draft legal instruments governing
    - the law applicable to divorce
    - jurisdiction and the law applicable to matrimonial property regimes and to succession
    - the compatibility of civil procedures
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# History

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## □ Tampere

- > summit of the European Council in Tampere (October 1999)
  - > main idea: individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States
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# History

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- > three priorities of judicial cooperation in civil matters
  - Better access to justice in Europe
  - Mutual recognition of judicial decisions
  - Greater convergence in civil law
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# History

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- The principle of mutual recognition – the cornerstone of judicial cooperation within the EU
  - 2000 – the Council approved Programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters
    - Objectives and stages for the work to be undertaken to implement the principle of mutual recognition
    - Measures concerning recognition and enforcement
    - Jurisdiction rules
    - Measures relating to harmonisation of conflict of law rules
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# History

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- Council Regulation (EC) No 734/2002 establishing a General Community Framework of activities to facilitate the implementation of judicial cooperation in civil matters
    - Established a general framework for Community activities for the period from 2002 to 2006
    - Objectives:
      - Promote judicial cooperation
      - Improve mutual knowledge of legal and judicial systems between the Member States
      - Ensure the sound implementation and application of Community instruments
      - Improve information to the public on access to justice, judicial cooperation and the legal systems of the Member States
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# History

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## □ Hague Programme

- Adopted at the European Council of 4 and 5 November 2004
  - Priorities for the EU with a view to strengthening the area of freedom, security and justice
  - Continued implementation of the programme of measures on mutual recognition must be a main priority in the coming years to ensure its completion by 2001
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# Overview of instruments

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- Conflict of law rules
    - 1) 1980 Rome on the law applicable to contractual obligations
    - 2) 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 (Rome II)
    - 3) Proposal for a Regulation of the Parliament and Council on the Law Applicable to Contractual Obligation (Rome I)
    - 4) Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
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# Overview of instruments

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- 5) Proposal for the Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters
  - 6) Green Paper on Succession and Wills
  - 7) Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition
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# Overview of instruments

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## □ Jurisdiction

- 1) Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I)
  - 2) 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 (Brussels IIbis)
  - 3) Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
  - 4) Brussels Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
  - 5) „New“ Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
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# Overview of instruments

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- 6) Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
  - 7) Green Paper on Succession and Wills
  - 8) Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition
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# Overview of instruments

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- Recognition and enforcement
  - 1) Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I)
  - 2) 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 (Brussels IIbis)
  - 3) Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
  - 4) Brussels Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
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# Overview of instruments

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- 5) Regulation (EC) No 805/2004 of the European Parliament and the Council creating a European enforcement order for uncontested claims
  - 6) Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
  - 7) Green Paper on Succession and Wills
  - 8) Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition
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# Overview of instruments

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- Simplified and accelerated procedures
  - 1) Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
  - 2) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
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# Overview of instruments

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- Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings
  - Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters
  - Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters
  - 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
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# Overview of instruments

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- 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
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