

REGULATION 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

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SCOPE

Judgments from a court or tribunal, whatever the judgment may be called, including determination of costs and protective measures (2 (a)) and whatever the nature of the court and tribunal (1.1 and 3).

Court settlements (2 (b)), only rules on enforcement apply.

Authentic instruments (2 (c) only rules on enforcement apply.

In or from a State bound by the Regulation (including Denmark).

In proceedings proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded **on or after 10 January 2015** (66)

Judg. 21 June 2012 C-514/10 *Wolf Naturprodukte*:

it is necessary that at the time of delivery of that judgment the regulation was in force both in the Member State of origin and in the Member State addressed (21 June 2012 Romania)

On **civil and commercial matters**, but not all of them.

Matters that are excluded:

- Administrative matters (revenue, customs) and liability of the State when it exercises public authority (art. 1)
- personal status and legal capacity (1 (a)). RBII bis on divorce and parental responsibility
- matrimonial property (1 (a))
- social security (1(b)) but individual employment contract are not excluded (art. 20)
- arbitration (1(d))
- insolvency proceedings (1 (b) and R 1346/2000)
- maintenance obligations (R 4/2009)
- successions (R 605/2012)

A convention in relation to particular matters to which Member States are party may apply with preference to this Regulation (71)

JURISDICTION

Rules of BI Regulation on jurisdiction are applicable where the defendant has its domicile or seat in a Member State, even if the plaintiff is domiciled in a non-member country (judgment of the ECJ of 13 July 2000, case 'Josi'). National rules on international jurisdiction may only apply if the defendant is not domiciled in a Member State (and is not "the weaker party" in insurance, consumer and employment contracts (6).

General rule

The general rule for determining jurisdiction is the **defendant's domicile** (4). Persons domiciled in another Member State may be sued in the courts of a Member State only by virtue of the rules set out in Sections 2 to 7 (5). In case of several defendants, where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments (8.1).

National rules of the court determine jurisdiction if the defendant is not domiciled in a Member State, except in matters of exclusive jurisdiction (24), and in case of prorogated jurisdiction, consumers and employees (6 and recital 14).

In order to determine whether a party is domiciled in the Member State whose courts are seized of a matter, the court shall apply its internal law. In order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State. (62).

A legal person is domiciled at the place where it has its statutory seat, central administration, or principal place of business (63).

In order to determine whether a trust is domiciled in the Member State whose courts are seized of the matter, the court shall apply its rules of private international law 63.3).

An insurer (1.2), a party sued by a consumer (17.2) or an employer (20.2) who has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, shall be deemed to be domiciled in that Member State.

Special rules on jurisdiction.

Section 2, (7):

Alternatives grounds of jurisdiction are provided for in certain cases:

1) **contract**: place of performance of the obligation (where the goods were delivered or the services were provided (7(1)). If the action is combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, where the property is situated (8.4).

2) maintenance matters are subject now to Regulation 4/2009

3) **tort, delict or quasi-delict**, the place where the harmful event occurred or may occur (7(2)): both the place where the damage occurred and the place of the event giving rise to it, at the option of the applicant (judgment of 19-04-12 in C-523/10, *Wintersteiger*, par. 19);

4) civil claim for damages or restitution which is based on an act giving rise to **criminal proceedings**, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law (7(3));

5) dispute arising out of the operations of a **branch, agency** or other establishment: the place in which it is situated (7(5));

6) as settlor, trustee or beneficiary of a **trust**: where the trust is domiciled (7(6));

7) payment of remuneration claimed in respect of the **salvage** of a cargo or freight: where it has been arrested, or could have been so arrested but bail or other security has been given (7(7)).

Bib has added (7(4) the recovery, based on ownership, of a **cultural object** as defined in point 1 of Article 1 of Directive 93/7/EEC the place where the object is situated at the time when the court is seised.

In some matters, in order to protect and favour the weaker party, his domicile is chosen to determine jurisdiction, even when that party is the claimant. These are the matters related to insurance, consumer contracts and individual contracts of employment, sometimes referred to as “protected contracts”.

8) **insurance** (Section 3):

- domicile of the policy holder, the insured, a beneficiary, or the injured party (11.b, 13 and 14)

- 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 (12)

These provisions may be departed from only by an agreement (15,16):

1. which is entered into after the dispute has arisen, or
2. which allows the policyholder, the insured or a beneficiary to bring proceedings in other courts, or
3. which is concluded between a policyholder and an insurer which has the effect of conferring jurisdiction on the courts of the State where both of them are domiciled or habitually resident, or
4. which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State, or
3. which relates to a contract of insurance in so far as it covers loss or damage to ships, installations offshore or aircrafts and goods carried by them except baggage, or any liability arising out of their use other than bodily injury to passengers or loss or damage to their baggage.

9) **consumer** contracts (Section 4):

A consumer may bring proceedings in the courts of the Member State in which any of the parties is domiciled, but proceedings may be brought against a consumer only where he is domiciled (18).

These provisions may be departed from only by an agreement (19):

1. which is entered into after the dispute has arisen, or
2. which allows the consumer to bring proceedings in other courts, or
3. which confers jurisdiction on the courts of the State where both of them are domiciled or habitually resident.

10) individual contracts of **employment** (Section 5, 20-22):

where the employee is domiciled, but an employer may be sued too where he is domiciled or where the employee habitually carries out his work or the last place where he did so or where the business is or was situated.

These provisions may be departed from only by an agreement (23):

1. which is entered into after the dispute has arisen, or
2. which allows the employee to bring proceedings in other courts.

Exclusive jurisdiction Section 6 (24):

1) rights *in rem* in or tenancies of **immovable property**, where the property is situated; if tenancies are concluded for temporary private use for a maximum period of six consecutive months, the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State, its courts shall also have jurisdiction;

2) validity of the constitution, the nullity or the dissolution of legal persons, or the validity of the decisions of their organs, where the legal person has its seat, according to its rules of private international law;

3) validity of entries in public registers, where the register is kept;

4) registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, where 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. Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State;

5) in proceedings concerned with the enforcement of judgments, where the judgment has been or is to be enforced.

Where another court is seized, it shall declare **of its own motion** that it has no jurisdiction (27).

Where actions come within the **exclusive jurisdiction** of several courts, any court other than the court first seized shall decline jurisdiction in favour of that court (31)

Prorogated jurisdiction

Art. 25 allows parties to conclude agreements on the court of a Member State to settle disputes except if they are contrary to rules of exclusive jurisdiction, jurisdiction in protected contracts or a trust instrument. Such jurisdiction shall be exclusive unless the parties have agreed otherwise.

Where a defendant enters an appearance, except to contest jurisdiction or in matters of exclusive jurisdiction, that court shall have jurisdiction (26.1). In protected contracts, the court shall ensure that the weaker party is informed of his right to contest the jurisdiction of the court and of the consequences of not entering an appearance (26.2).

Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, it shall declare **of its own motion** that it has no jurisdiction (28.1).

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end; if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to Regulation [1393/2007] or to The Hague Convention of 15 November 1965, on the Service Abroad of Judicial and Extrajudicial Documents, its articles 19 or 15 shall apply instead: judgment shall not be given until it is established that the document was served by a method prescribed by the internal law of the Member State addressed or was actually delivered to the defendant or to his residence by another method provided for by the Regulation or the Convention (28.2).

Counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending (8.3).

Provisional, including protective, measures: Application may be made to the courts of a Member State for such measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter (35).

Lis pendens.

Where proceedings involving the same cause of action between the same parties are brought in the courts of different Member States, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established (29.1).

In case an agreement confers exclusive jurisdiction, any court of another Member State shall stay proceedings until it declares that it has no jurisdiction (31.2).

33 provides for a similar rule if proceedings are pending before a court of a **third State** and it is expected that this court will give a judgment capable of recognition and enforcement and the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

Where the jurisdiction of the court first seized or the court designated in the agreement is established, any court other than this one shall decline jurisdiction in favour of that court (29.3 and 31.3).

A court shall be deemed to be seized at the time when the document instituting the proceedings or an equivalent document is lodged with the court or, if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, always provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant (32).

Related actions

30: "Actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings". Any court other than the court first seized may stay its proceedings or, on the application of one of the parties, decline jurisdiction if the court first seized has jurisdiction over the actions in question.

Art. 34 provides for staying the proceedings in case of proceedings pending before the court of a **third State** if it is expected that this court will give a judgment capable of recognition and enforcement and the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

RECOGNITION AND ENFORCEMENT

A claimant who needs to **ENFORCE** A JUDGMENT in another Member State must follow these steps:

1.- Request the court to issue the certificate using the form set out in Annex I (53) that certifies that the judgment is enforceable and contains an extract of the judgment (42.1.b)

2.- a copy of the judgment which satisfies the conditions to establish its authenticity (42.1.a)

3.- Apply for enforcement according to the law of the Member State in which enforcement is sought without any prior declaration of enforcement (39, 41.1), producing the foretold documents (42.1). No security shall be required on the ground that that he is not a national, domiciles or resident in that State (56).

The proceedings are conducted under the rules of that Member State with certain specialities:

1.- The certificate shall be served on the person against whom enforcement (or recognition) is sought, and the judgment too, if not already served on that person (43.1).

2.- If that person is domiciled in the Member State where enforcement (or recognition) is sought, he may request a translation of the judgment if it is not written in or translated into (by a person qualified to do translations in one of the Member States, 57.3) a language which he understands or an official language of the place where he is domiciled, unless the judgment has been already served (by the State of origin) in one of those languages (43.2).

3.- No measures of enforcement may be taken before the certificate is served (43.1) or the translation has been provided in case it has been requested (43.2).

4.- The person against whom enforcement is sought may apply for refusal of enforcement on one of the grounds referred to in Article 45 (46) to the court which the Member State has communicated to the Commission (47.1).

In this event, he may apply for (44.1)

- a. limiting the enforcement proceedings to protective measures
- b. making enforcement conditional on the provision of a security
- c. suspending the enforcement proceedings.

He may apply for suspension, too, where the enforceability is suspended in the State of origin (44.2)

5.- The certificate shall be served on the person against whom enforcement (or recognition) is sought, and the judgment too, if not already served on that person (43.1).

6.- If that person is domiciled in the Member State where enforcement (or recognition) is sought, he may request a translation of the judgment if it is not written in or translated into (by a person qualified to do translations in one of the Member States, 57.3) a language which he understands or an official language of the place where he is domiciled, unless the judgment has been already served (by the State of origin) in one of those languages (43.2).

7.- No measures of enforcement may be taken before the certificate is served (43.1) or the translation has been provided in case it has been requested (43.2).

The procedure and grounds for refusal of recognition will be examined later.

WHERE NO ENFORCEMENT IS NEEDED OR IS POSSIBLE (the judgment declares a legal situation but does not contain an enforceable obligation) THE JUDGMENT SHALL BE RECOGNISED.

RECOGNITION “must ‘have the result of conferring on judgments the authority and effectiveness accorded to them in the State in which they were given’ (Hoffmann, paragraph 10) ... a foreign judgment ... must in principle have the same effects in the State in which recognition is sought as it does in the State of origin” (15 November 2012, C-456/11, *Gothaer Allgemeine Versicherung*).

As a general principle, a judgment given in a Member State shall be recognised in another without any special procedure being required (36.1).

An interested person may **invoke a judgment** in private relations (as an owner, a creditor ...), before an authority (to register a situation, or together with any administrative application) or before a court in order to support his action or an exception. The only condition to invoke a judgment before a court or authority is to produce a copy of the judgment and the certificate (37.1 = 42.1). There is no need to apply for recognition and the grounds for refusal of recognition should not be examined by the competent authority.

That court or authority may

1.- require the party to provide a translation of the contents of the certificate or of the judgment if it is unable to proceed without it

2.- suspend the proceedings if (38)

- a) the judgment is challenged in the Member State of origin
- b) an application has been submitted for a decision that there are no grounds for refusal of recognition
- c) or for a decision that the recognition is to be refused.

These two applications are foreseen in Art. 36.2 and 45.5, and must be decided according to the grounds of Art. 45 and the procedure established by the Regulation in Arts. 46 seq.

If the outcome of the proceedings in a court depends on the determination of an **incidental question of refusal of recognition**, that court shall have jurisdiction over that question (36.3).

PROCEDURE FOR REFUSAL OF ENFORCEMENT OR RECOGNITION

The Regulation states only some specialities to the law of the State addressed (47.2):

a) The applicant shall provide the court with a copy of the judgment and, where necessary, a translation, unless the court already possesses them or it is unreasonable to require the applicant (47.2).

b) It is not required that the applicant has a postal address or a representative unless it is mandatory irrespective of the nationality or the domicile of the parties (47.3)

3.- Appeal, before the court which the Member State has communicated to the Commission (49), that may stay the proceedings if an ordinary appeal has been lodged in the Member State of origin or the time has not yet expired (51).

4.- Further appeal (50). Art. 51 applies.

GROUND FOR REFUSAL OF ENFORCEMENT OR RECOGNITION Art. 45.

1. if such recognition is manifestly contrary to **public policy**;
2. where judgment was given **in default** of appearance, if the defendant was not served with the document which instituted the proceedings in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. it is **irreconcilable** with a judgment given in a dispute between the same parties **in the Member State** in which recognition is sought (in matters of parental responsibility, only with a later judgment);
4. or with an earlier judgment given **in another Member State or in a third State** involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition;
5. if it conflicts with provisions on **exclusive jurisdiction** or jurisdiction in matters relating to insurance, consumer contracts or employment contracts. Otherwise the jurisdiction of the court of the Member State of origin may not be reviewed.

Where an authentic instrument or a court settlement is enforced, certificate in Annex II applies (60) and enforcement may be refused only if it is manifestly contrary to public policy (58-59).

PROVISIONAL MEASURES

A court **without jurisdiction** as to the substance of the matter may order provisional measures

- a) before judgment is delivered, according to Art. 35
- b) once an enforceable judgment has been delivered, in the Member State where enforcement may be sought (Art.49).

A provisional measure ordered by a court **with jurisdiction** as to the substance of the matter may be enforced.

But, if it has been ordered without summons, only if it has been served former to enforcement (2 (a) second paragraph.) and proof of service has to be provided (42.2).

Rules in Art 43 about service of the certificate and the judgment do not apply (43.3)

Art. 54 provides for adaptation of a a measure or an order which is not known in the law of the Member State addressed.