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Legal Bulletin



Banking Law

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1. Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the “Regulation”)

Novelties brought by Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Starting 10 January 2015, the Regulation is to repeal Regulation (EC) No. 44/2001. Below is a presentation of the main amendments provided by the Regulation in terms of jurisdiction, recognition and enforcement of judgments in civil and commercial matters.

1. Extending the scope of the Regulation to the clause conferring jurisdiction

As a difference from Regulation (EC) No. 44/2001, Article 25 (1) of the Regulation extends the application of the provisions pertaining to the clause conferring jurisdiction, removing the requirement for at least one of the parties to be domiciled in another Member State.

2. Independence of the clause conferring jurisdiction

Article 25 (5) of the Regulation provides that a clause conferring jurisdiction included in an agreement is considered to be independent from the other clauses of the agreement and its validity cannot be challenged merely on ground that the agreement is not valid.

3. Waiver to the requirement for a judgment given in a Member State to be declared enforceable with a view to being enforced in another Member State

Article 39 of the Regulation provides that a judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required (as was previously required under Article 38 of Regulation (EC) No. 44/2001).

For a judgment given in a Member State to be enforced in another Member State, the plaintiff shall provide the competent enforcing authority with a copy of the judgment which satisfies the conditions necessary to establish its authenticity, as well as a certificate issued by the court that issued the judgment and which confirms that the judgment is enforceable and contains a summary of the judgment, as well as, if applicable, relevant information on the recoverable court costs and the calculation of interest.

4. Protection granted to parties' agreement on the jurisdiction to settle the dispute

Regulation (EC) No. 44/2001 provided at Article 27 that where proceedings involving the same subject matter and the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established. According to Regulation (EU) No. 1215/2012, this provision is still applicable, including if, by filing a proceeding in another State than the one agreed, the parties' agreement on the jurisdiction to settle the dispute is breached.

Under Article 31 (2), the Regulation provides that where a court of a Member State on which an agreement between the parties confers exclusive jurisdiction is seized, any court of another Member State shall stay the proceedings until such time as the court seized on the basis of the agreement declares that it has no jurisdiction under the agreement.

5. New rules on actions *pending* before a court of a third State

The Regulation introduces, at Article 34, the possibility for a court of a Member State to stay an action if another related action is pending before a court of a third State at the time when the court of the Member State is seized, if the following requirements are cumulatively met:

- It is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings,
- It is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State,
- The court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

According to the same article, the court of the Member State may dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.

Also, the court of the Member State may continue the proceedings at any time if:

- It appears to the court of the Member State that there is no longer a risk of irreconcilable judgments;

- The proceedings in the court of the third State are themselves stayed or discontinued;
- It appears to the court of the Member State that the proceedings in the court of the third State;
- Are unlikely to be concluded within a reasonable time;
- Or the continuation of the proceedings is required for the proper administration of justice.

6. Rules on conflict of law

The Regulation provides that the law of the Member State referred to in the choice-of-court agreement is the law governing the fulfilment of the essential requirements of the agreement.

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Editors

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