

Position Paper

UEAPME¹ position on the Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters

Introduction

UEAPME would like to thank the European Commission for the opportunity to comment on the above mentioned regulation.

These comments will deal with some of the points contained in the consultation that we deem closer to the interests of SMEs, such as the abolition of exequatur, the operation of regulation in the international legal order and the choice of court agreement.

1. Abolition of exequatur

In our opinion² the abolition of exequatur is nowadays necessary and logic. As the European Union gets closer to the internal market, it is necessary that the abolition of borders becomes a reality in all the fields. As the green paper rightly states, it is difficult to justify in an internal market without frontiers that citizens and businesses have to undergo expenses in terms of costs and time to assert their rights abroad.

It is necessary that in the European Union each country recognises the judicial decisions of the judicial administration of the other EU countries and is confident in the correctness of the procedures.

Moreover, as stated in the green paper, applications for declarations of enforceability are almost always successful and recognition and enforcement of foreign judgments is very rarely refused.

The abolition of the exequatur would make the procedures shorter and would reduce the costs of procedures. This is very important for SMEs. Nevertheless, in our opinion adequate safeguards should be adopted together with the abolition of exequatur.

The safeguards we believe should be put in place are:

- that the debtors have an adequate right of appeal,
- when the judgement has been issued by default, to ensure that the debtors were correctly called,

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

² This paragraph does not reflect the opinions of our member organisations WKÖ (Austria) and ZDH (Germany).

- that the judgement has been declared enforceable.

2. The operation of the Regulation in the international legal order

The green paper asks whether the Regulation should be applied to third State defendants.

In our opinion, the Commission should focus on the cross-border aspects of the internal market, taking into account the Community's limited competence in this area under Article 65 of the EC Treaty.

The scope of application of the Brussels I Regulation appears to be sufficient. If it were extended, the risk of proceedings against European companies in third countries would considerably rise with the danger of forum shopping.

3. Choice of Court Agreement

UEAPME agrees with the option of the green paper where the court designated by the agreement would have priority to determine its jurisdiction and any other court seized would stop proceedings until the jurisdiction of the chosen court is established.

This option should be accompanied by cooperation between courts combined, for instance, with a deadline for the court designated by the agreement to decide on the question of jurisdiction and an obligation to regularly report to the court second seized on the progress of the proceedings.

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