

Civil Justice

Screening Chapter 24

January 23-25, 2006



Screening Chapter 24 Justice, Freedom and Security

January 23-25, 2006

Olivier Tell
European Commission
DG Justice, Freedom and Security
Unit C.1 – Civil Justice

Towards a true European area of civil justice



- Maastricht Treaty
- Article 65 of the EC Treaty
- European Councils of
Tampere and Hague

Community acquis in civil matters

- Access to justice

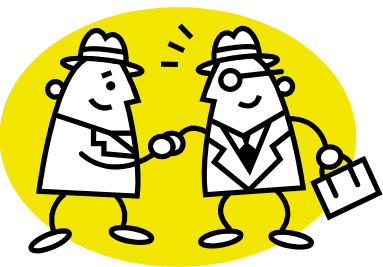


- EU Council Directive concerning legal aid of 27 January 2003
- Directive concerning compensation to crime victims
- Commission's proposal for a directive concerning civil mediation

Community acquis in civil matters (cont')

• Principal of mutual recognition

- EC regulation No 44/2001 « Brussels I »
- EC regulation No 1347/2000 « Brussels II »
- EC regulation No 2201/2003 « Brussels II bis »
- EC regulation No 1346/2000 « Insolvency Procedures »
- EC regulation No 805/2004 « European Enforcement Order »



Community acquis in civil matters (cont')

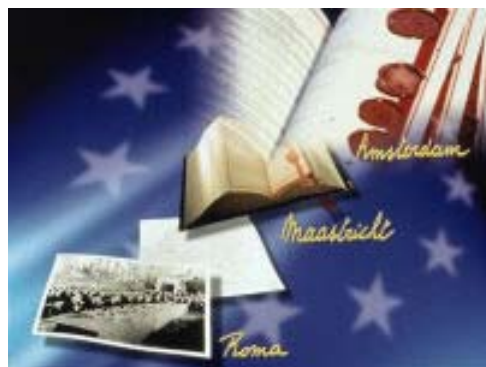
- **Aucillary measures**



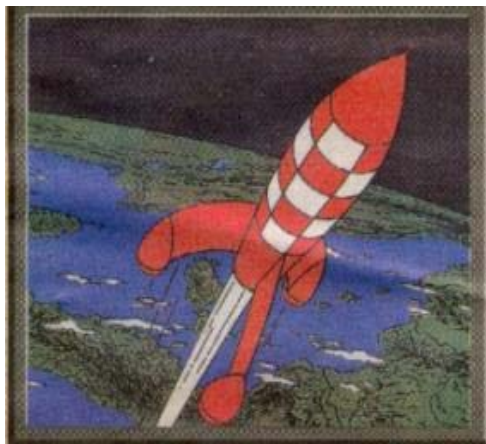
- Regulation No 1348/2000 « Service of documents »
- Regulation No 1206/2001 « Taking of evidence »
- European Judicial Network in civil and commercial matters
- Regulation No 743/2002 establishing a General Community Framework of activities to facilitate the implementation of judicial cooperation in civil matters

Civil European Judicial Network

- Council Decision of 28 May 2001
- Into force on 1st December 2002
- Since then 14 meetings of the contact points and 4 annual meetings of the Network



What are the objectives of the civil EJN?



1 - Facilitate access to justice for the citizens → EJN website

- Simplify exchanges between judicial systems
- Accelerate cross-border procedures

2 - Better judicial cooperation

Who are the members of the civil EJN?

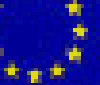


- a) Contact_points
(Article 2 § 1 a)
- b) Central bodies and authorities
(Article 2 § 1 b)
- c) Liaison judges
(Article 2 § 1 c)
- d) Other members (judges...)
(Article 2 § 1 a)



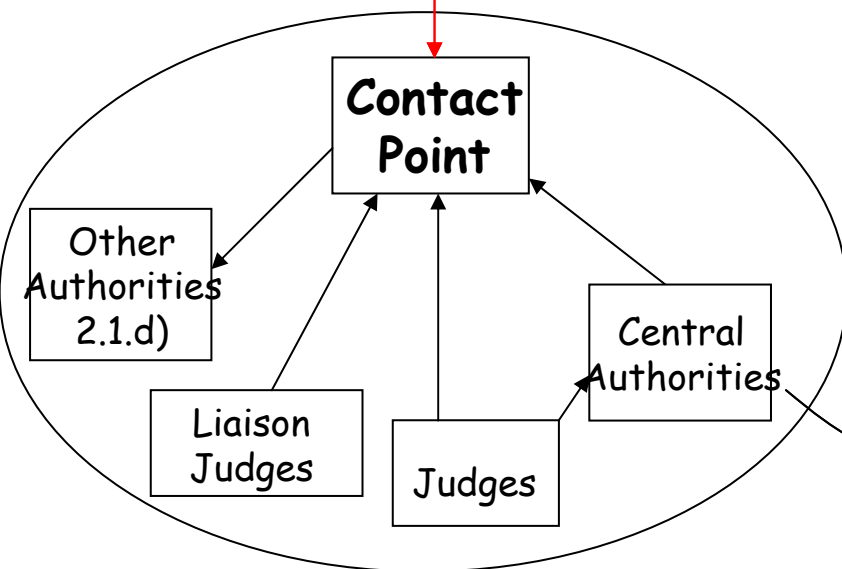
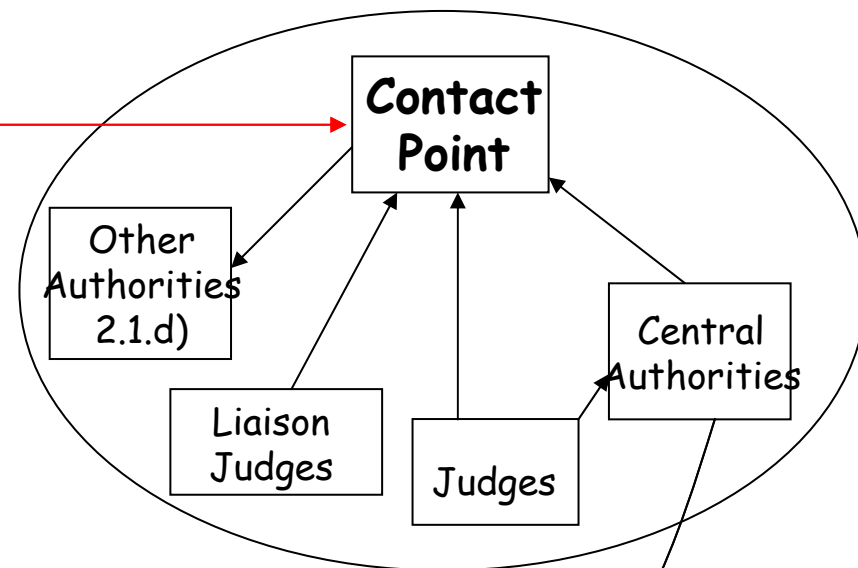
What is the structure of the civil
EJN?





European Judicial Network in civil and commercial matters

Member State B

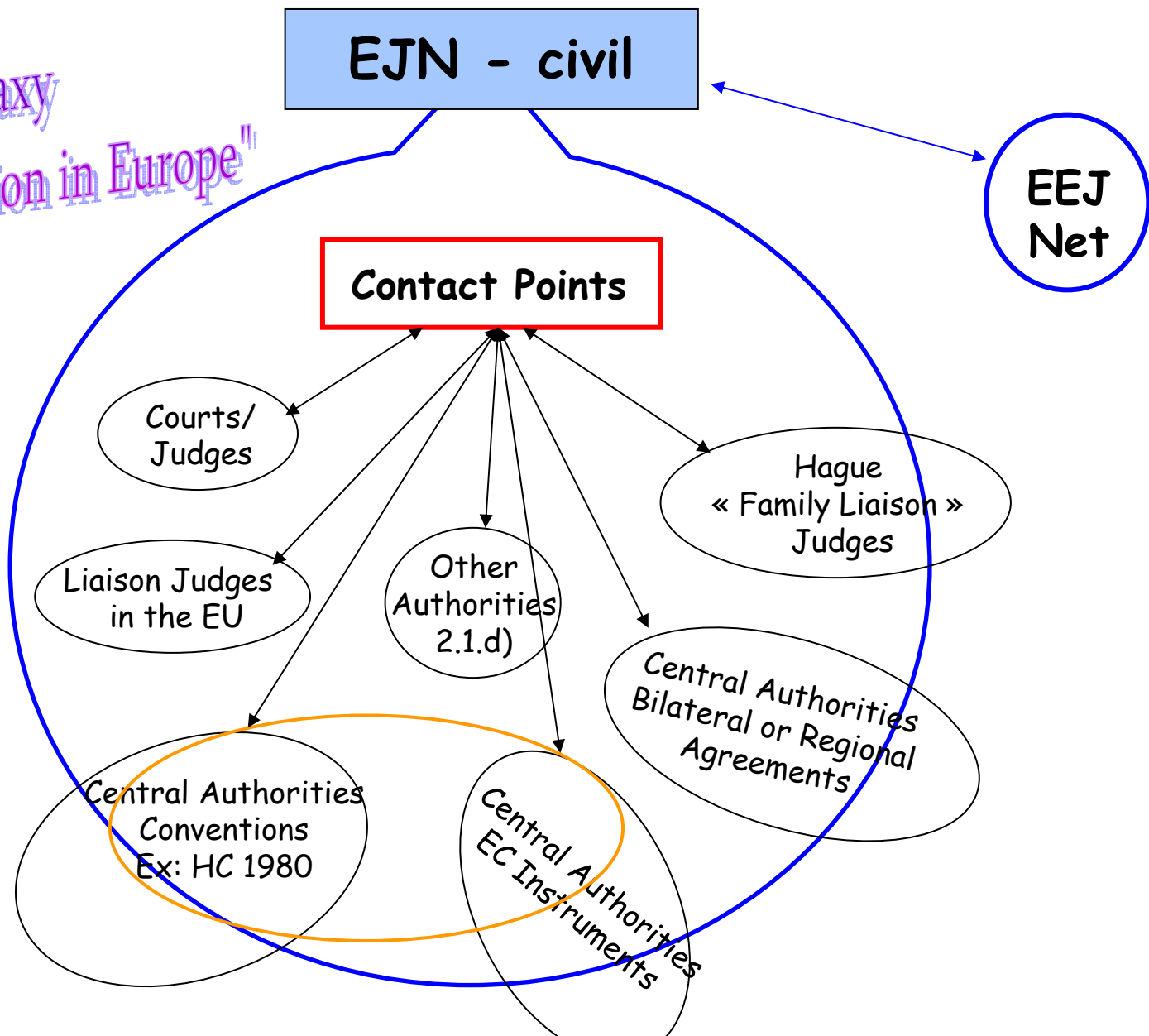


Member State A

***Need for coordination
within the Member States
=> Contact Points***

European Judicial Network in civil and commercial matters

*The Galaxy
"Judicial Cooperation in Europe"*





What is the role of
the civil EJN?

1) Facilitate access to justice for the citizen of the European Union

- **Internet site**
(<http://europa.eu.int/civiljustice>)
- **European Judicial Atlas in civil matters**
(http://europa.eu.int/comm/justice_home/judicialatlascivil/html/index_en.htm)
- **Poster**
- **Brochures**





European Judicial Network in civil and commercial matters

EUROPA - EJM - European Judicial Network in Civil and Commercial Matters - Microsoft Internet Explorer provided by Justice, Fre



Edit View Favorites Tools Help

http://europa.eu.int/comm/justice_home/ejm/



European Judicial Network
in civil and commercial matters

Important legal notice

EUROPA > European Commission > Justice and Home Affairs > EJM



European Judicial Network in civil and commercial matters

es cs da de et el **en** fr it lv lt hu mt nl pl pt sk sl fi sv

en





EMES

al order

organisation of justice

al professions

al aid

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ROPEAN JUDICIAL

AS IN CIVIL

MATTERS

Community law



Community law affects your daily life more and more.

In the internal market, trade between Member States has intensified and people are moving more and more to settle, work, marry, do business or simply spend their holidays in other Member States.

Situations involving people who live in different States have proliferated, and so have the possibilities for disputes. The establishment of a European justice area is now acutely necessary.

The Amsterdam Treaty of 1996 established a link between judicial cooperation in civil matters and free movement of persons. The possibility of relying on Community legislation is not a negligible quantity for the citizen, who can plead a Community Regulation in support of his action in the courts.

The mutual recognition of judgments is the cornerstone of the whole system. A [mutual recognition programme](#) has been adopted by the Council and the Commission to determine the main measures that need taking here.

In this context, a number of instruments have already been adopted, including:

- ▶ Council Regulation (EC) No 44/2001 of 22 December 2000 on **jurisdiction and the recognition and enforcement of judgments** in civil and commercial matters, sometimes known as the [Brussels I Regulation](#) (a modification of two of its annexes ([annexes I and II](#)) has taken place; also, the Council and the Commission have made a [declaration](#) (70 KB pdf) on its Articles 15 and 73). This Regulation replaces the [Brussels Convention of 1968](#). It provides the answers to two vital questions that arise in the event of a dispute between two people living in different States: which courts have jurisdiction, and what rules apply to decide whether a judgment given in a Member State will be recognised?

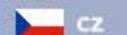
- ▶ Council Regulation (EC) No 1347/2000 of 29 May 2000, sometimes known as the [Brussels II Regulation](#) (a



EU



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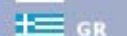
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ES



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IT



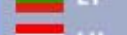
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LU



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MT



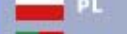
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AT



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SI



SK



FI



SE



UK



INT



European Judicial Network in civil and commercial matters

EUROPA - Judicial Atlas - Home - Microsoft Internet Explorer provided by Justice, Freedom and Security DG

Edit View Favorites Tools Help

http://europa.eu.int/comm/justice_home/judicialatlascivil/html/index_en.htm



EUROPEAN JUDICIAL ATLAS IN CIVIL MATTERS

Important legal notice

English

PA > European Commission > Judicial Atlas > Home

Contact | Search on EUROPA

What's new?

Competent Courts
Legal Aid
Serving Documents
Taking Evidence
Recognising and Enforcing Judgements
Filling in Forms
Links

EUROPEAN JUDICIAL ATLAS IN CIVIL MATTERS

Welcome to the European Judicial Atlas in Civil Matters

This Atlas provides you with a user-friendly access to information relevant for judicial cooperation in civil matters. With the Atlas you can easily identify the competent courts or authorities with which you can apply for certain purposes. Furthermore, you can fill in the forms that exist for some of these purposes on-line, change the language of the form once you have filled it in and before printing it (so that the person receiving the form can read it in his own language), and transmit the forms electronically.



European Judicial Network in civil and commercial matters

EUROPA - Judicial Atlas - Evidence - Information - Microsoft Internet Explorer provided by Justice, Freedom and Security DG



Edit View Favorites Tools Help

EUROPEAN JUDICIAL ATLAS IN CIVIL MATTERS

Important legal notice

English

PA > European Commission > Judicial Atlas > Taking Evidence

Contact | Search on EUROPA

What's new?

Home

Competent Courts

Legal Aid

Serving Documents

Taking
Evidence

Recognising and Enforcing
Judgements

Filling in Forms

Links

Taking Evidence >>> **Information**

Information

Courts & bodies

Central body

Requested courts

(form A)

Competent

Authority (form I)

Communications of

Member States

(forms A to J)

Documents

Convention of

0

INFORMATION

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 seeks to improve, simplify and accelerate cooperation between courts in the taking of evidence.

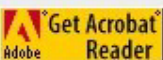
The Regulation applies between all Member States of the European Union with the exception of Denmark. Between Denmark and the other Member States the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 1970 applies.

The Regulation provides for two ways of taking of evidence between Member States: direct transmission of requests between the courts and the direct taking of evidence by the requesting court.

The Requesting Court is the court before which the proceedings are commenced or contemplated. The Requested Court is the competent court of another Member State for the performance of the taking of evidence. The Central Body is responsible for supplying information and seeking solutions to any difficulties which may arise in respect of a request.

The Regulation provides for ten forms.

The ATLAS provides you with information concerning the application of the Regulation and a user-friendly tool for filling in the forms.



SUMMARY: Council Regulation (EC) No. 1206/2001





European Judicial Network in civil and commercial matters

EUROPA - Judicial Atlas - Evidence - Forms A - Microsoft Internet Explorer



Edit View Favorites Tools Help

Courts & bodies
Central body
Requested courts
(form A)
Competent
Authority (form I)
Communications of
Member States
Forms (A to J)
Documents
Hague Convention of
1900

A - REQUEST FOR THE TAKING OF EVIDENCE

Article 4 of Council Regulation (EC) N. 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 (OJ L 174, 27.6.2001, p. 1)

1. REFERENCE OF THE REQUESTING COURT

2. REFERENCE OF THE REQUESTED COURT

3. REQUESTING COURT

3.1. Name :

3.2. Address :

3.2.1. Street and Nr./PO
box :

3.2.2. Place and code :

3.2.3. Country :

3.3. Tel.:

3.4. Fax:

3.5. E-mail:

4. REQUESTED COURT

4.1. Name :

4.2. Address :

4.2.1. Street and Nr./PO
box :

4.2.2. Place and code :

4.2.3. Country :

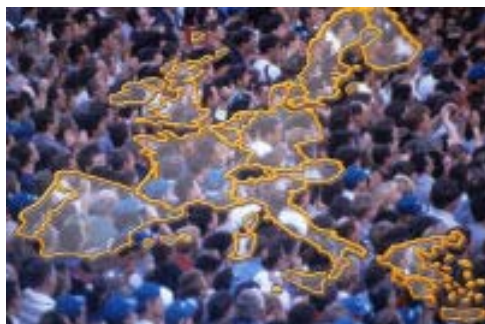
4.3. Tel.:

4.4. Fax:



2) Facilitate cross-border judicial cooperation

Numerous contacts



- with the contact points of the other Member States
- with the central and judicial authorities of one's own country

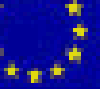


National
Contact
Point

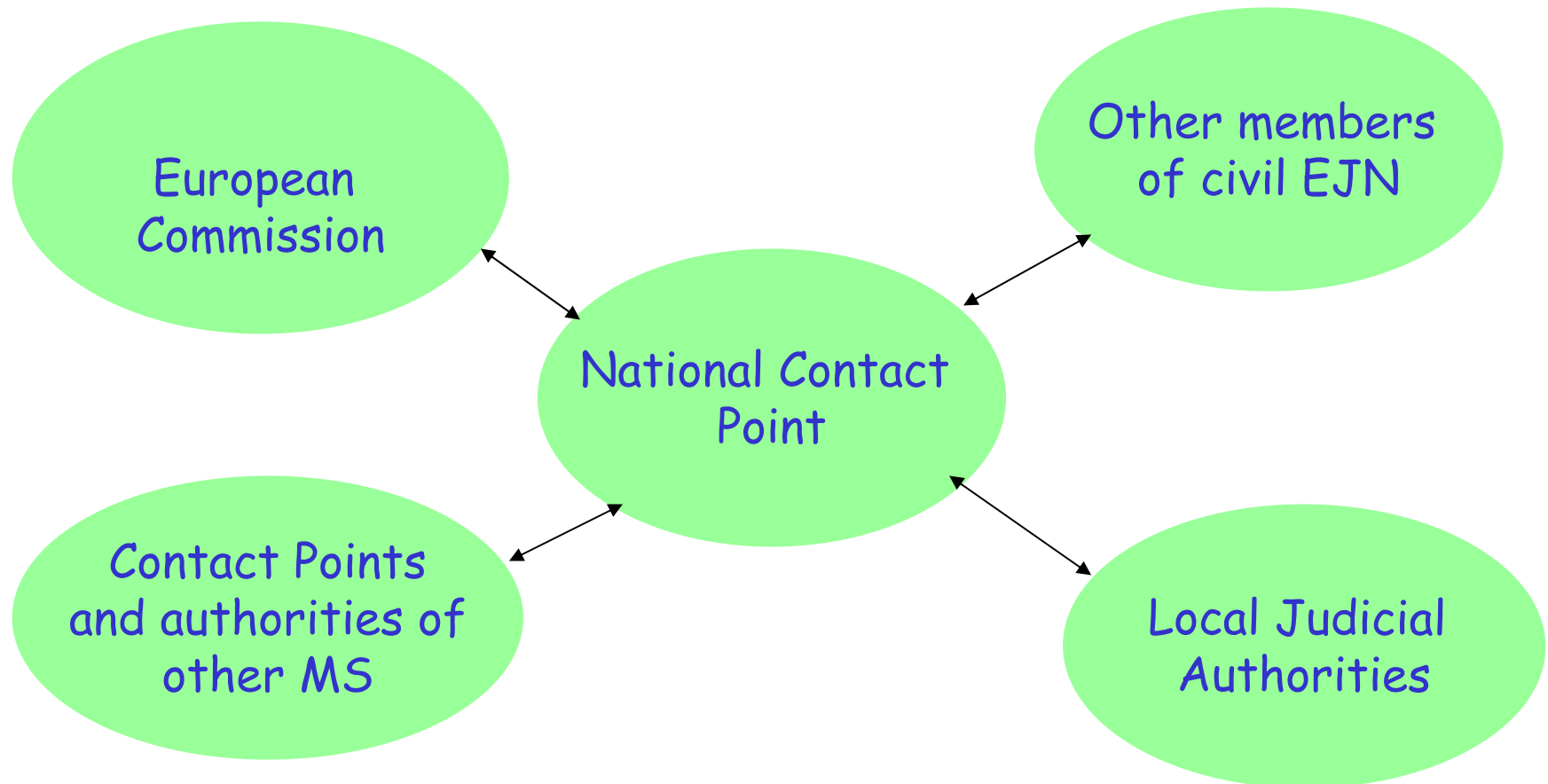
- Exchange
of
information →

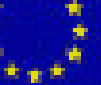
← - Cross-
border
cases

Contact
Point
of
other
MS



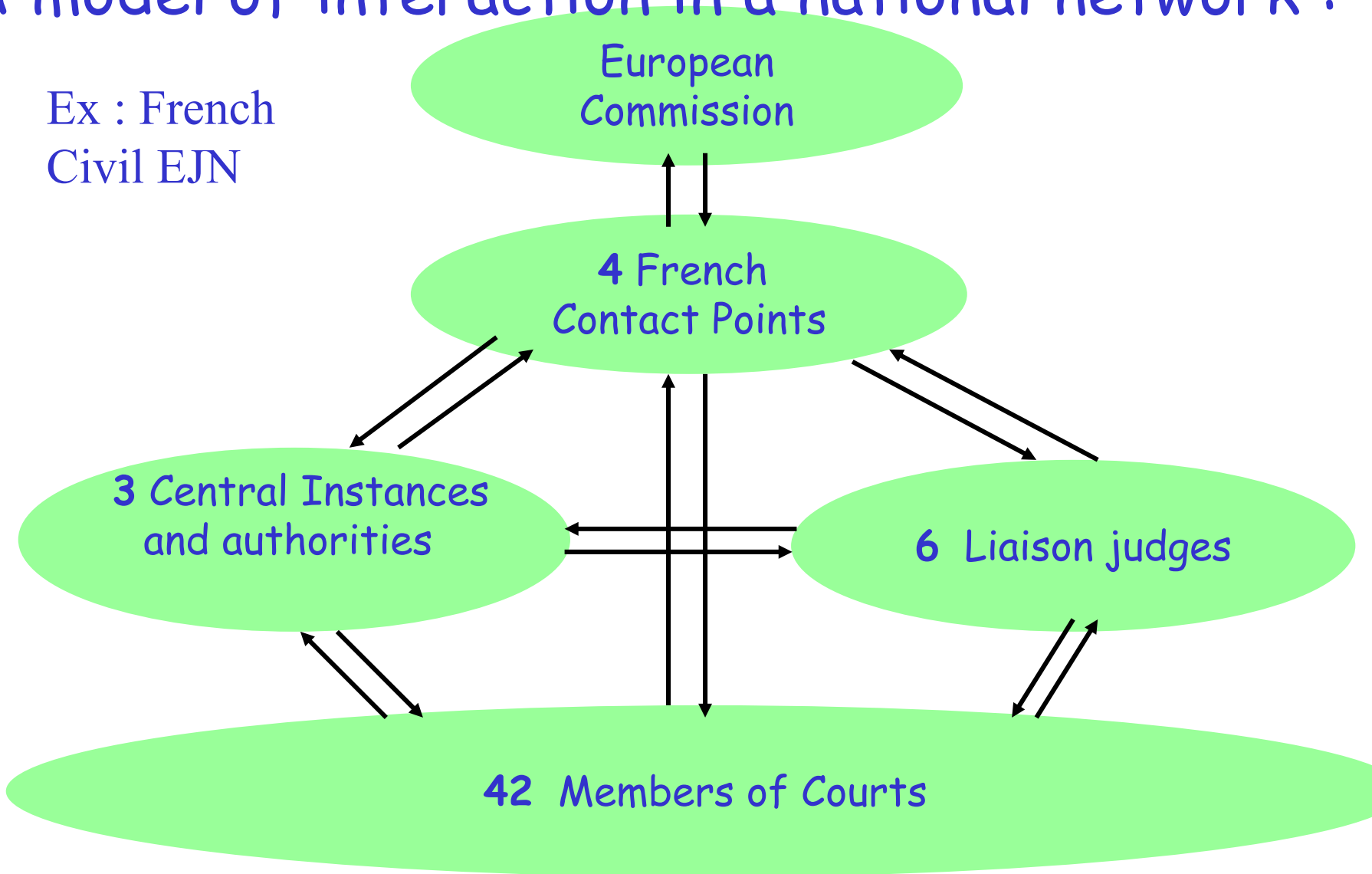
Main contacts





A model of interaction in a national network :

Ex : French
Civil EJM



How does the civil EJM function?



- Direct Actions
- Informal Actions
- Quick Actions



Judicial cooperation in civil and commercial matters

Regulation 44/2001 of 22 December 2000
On jurisdiction and the recognition and
enforcement of judgments in civil and
commercial matters

Karen Vandekerckhove
European Commission
DG Justice, Freedom and Security
Unit C.1 – Civil Justice

Background

- Replaces between Member States the Brussels Convention of 1968 except vis-à-vis Denmark and certain overseas territories

Scope

- Civil and commercial matters
- Exceptions
 - revenue, customs or administrative matters
 - status or legal capacity of natural persons,
 - Rights in property arising out of a matrimonial relationship
 - Wills and successions
 - Bankruptcy

Jurisdiction - Main Rules

1. General rule: Domicile of the defendant

- For natural persons: domicile determined by national law of the Member State of the court seized
- For legal persons: domicile is defined:
 - statutory seat
 - central administration or
 - principal place of business

Jurisdiction - Main Rules (ctd.)

2. Alternative special rules

- Place of performance of contractual obligations
- Place where harmful event occurred in action for damages
- Domicile of the maintenance creditor
- Domicile of the consumer, insured and employee in certain matters relating to consumer, insurance and employment contracts

Jurisdiction - Main Rules (ctd.)

3. Exclusive jurisdiction

- ownership or tenancy of immovable property
- Registration and validity of patents or trademarks
- Exclusive choice of court agreements

Lis pendens

- Proceedings concerning the same dispute and between the same parties are brought in two Member States
- Court first seized gets priority
- Court second seized must decline jurisdiction once the first court has considered itself competent

Recognition of a foreign judgment

- No special procedure required
- Limited grounds of refusal of recognition inly upon request)
 - public policy
 - Default judgment without adequate notice
 - Irreconcilable with earlier judgment
- No review of the substance!

Enforcement of a foreign judgment

Declaration of enforceability requires

- application to competent court
- Completion of certain formalities
- service to the other party which can appeal against the decision on same grounds as for refusal of recognition

Lugano Convention

- Applicable in relation to Norway, Island and Switzerland
- Substantive rules correspond to a large extent to the Brussels Convention
- Is in the process of revision to adapt it to the Brussels Regulation

Towards and Area of Freedom, Security and Justice

Regulation 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims

**Karen Vandekerckhove
European Commission
DG Justice, Freedom and Security
Unit C.1 – Civil Justice**

European Enforcement Order (I)

Background

- Context: **Programme of mutual recognition**
- Main objective of programme: **Abolition of exequatur**
- EEO abolishes exequatur for judgments on **uncontested** claims

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security
and justice

European Enforcement Order (II)

Mechanism

- Exequatur is abolished for judgments on **uncontested claims** in proceedings that comply with certain **minimum standards**
- Such judgments can be **certified** as EEO by a court of the **MS of origin** of the judgment
- **Effect** of EEO: Judgments are recognised and enforced
 - without need for declaration of enforceability and
 - without possibility of opposing recognition

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European Enforcement Order (III)

Relationship with Regulation 44/2001

- EEO: **Alternative option** for enforcement abroad (Regulation 44/2001 applies to **all judgments**, both on contested and on uncontested claims).
- **Advantages** of EEO:
 - Judgment considered **equivalent** to judgment rendered in requested MS
 - **No** need for **additional approval** by courts of requested MS
 - Enforcement **cheaper and faster**

European Enforcement Order (IV)

Scope

- **Civil and commercial matters**
- **Claims for payment of a specific sum of money** that have fallen due or for which the due date is indicated in the judgment
- Not only court **judgments**, but also **court settlements** and **authentic instruments**

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European Enforcement Order (V)

Uncontested claim

- Defendant has **expressly agreed** to claim (in court proceedings, settlement or authentic instrument)
- Defendant has **never objected** to claim in course of court proceedings
- Defendant has **not appeared** or been represented at **court hearing** regarding claim

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European Enforcement Order (VI)

General requirements for certification

- Judgment must be **enforceable** in MS in which it was issued
- Judgment must **not conflict** with certain jurisdiction rules of Regulation 44/2001
- In **consumer matters**, judgment must have been issued by a court of the MS where defendant is domiciled.

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European Enforcement Order (VII)

Minimum standards

Minimum standards to ensure that rights of defence are respected concern:

- Rules on **service of documents** on debtor
- Provision to the debtor of **due information** about
 - the claim,
 - the procedural steps necessary to contest the claim
 - the consequences of an absence of objection

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European Enforcement Order (VIII)

Verification of minimum standards

- The **court that issues the EEO certificate** verifies that minimum standards have been complied with
- EEO is issued by court of MS **in which judgment has been delivered** (either court that rendered the judgment or another court declared competent for that purpose)

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European Enforcement Order (IX)

What if the minimum standards are not respected ?

Non-compliance with minimum standards can be cured if:

- Documents were **served** on defendant in accordance with rules of Regulation (or if he received documents personally in sufficient time as to arrange for his defence)
- Defendant had **possibility to challenge the judgment** and was **informed** about respective procedural requirements
- Defendant **failed to challenge** the judgement

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European Enforcement Order (X)

Is any review by the requested MS with respect to the foreign judgment possible?

No review by courts of requested MS, in particular not as to substance of foreign judgment or compliance with minimum standards

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European Enforcement Order (XI)

Standard forms

Standard forms annexed to Regulation:

- Forms for court issuing EEO certificate for judgments, court settlements, and authentic instruments
- Certificate of lack or limitation of enforceability of judgment

European Enforcement Order (XII)

Rectification and withdrawal of EEO certificate

- Rectification: Material **error** in certificate (discrepancy between judgment and certificate)
- Withdrawal: Certificate **clearly wrongly granted** (requirements of Regulation not fulfilled)
- **No possibility to lodge appeal** against decision issuing EEO besides rectification and withdrawal

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European Enforcement Order (XIII)

Enforcement

- Enforcement procedure not regulated by Regulation, but by **national law**
- Claimant must provide enforcement authorities with authentic copy of **judgment** and of **EEO certificate**
- Enforcement authorities **must not refuse** to enforce the judgment.

Exception: Judgment irreconcilable with earlier judgment on same cause of action and between same parties, if irreconcilability could not be raised during court proceedings

- Enforcement proceedings may be **limited or stayed** if defendant decides to challenge the judgment or applies for rectification or withdrawal

European Enforcement Order (XIV)

Entry into force and notifications

- The Regulation shall **apply** as of **21 October 2005**
- MS must **notify** certain information necessary for application of Regulation to the Commission as of **21 January 2005**:
 - Procedures for review and for rectification and withdrawal of EEO Certificate,
 - Languages accepted for completion of certificate,
 - Lists of authorities competent to receive and certify any authentic instrument concerning an uncontested claim

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Regulation 1348/2000

Service of Documents

Council Regulation (EC) 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

O J L 160 , 30 .6 .2000 , p . 37

Georg Haibach, DG JLS (Unit C1)

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Service of Documents (I)

Regulation 1348/2000

Replaces Hague Convention of 1965 between MS

Introduces

- Direct court-to-court dealings
- Uniform standard forms
- New language rules
- Postal service

Service of Documents (II)

Scope (Art. 1)

Service of *judicial* or *extrajudicial* document

=> Glossary of documents (only indicative):

http://europa.eu.int/comm/justice_home/judicialatlascivil/html/docservdocs_en.htm

In *civil* or *commercial* matters

From one *MS* (24: all except DK) to *another*

Address of person to be served *known*

Service of Documents (III)

Agencies and Bodies

Transmitting Agencies - TA (Art. 2 I)

Receiving Agencies - RA (Art. 2 II)

=> Manual of RAs includes:

Name, address, geographical area, means of receipt, languages

http://europa.eu.int/comm/justice_home/judicialatlascivil/html/docservdocs_en.htm

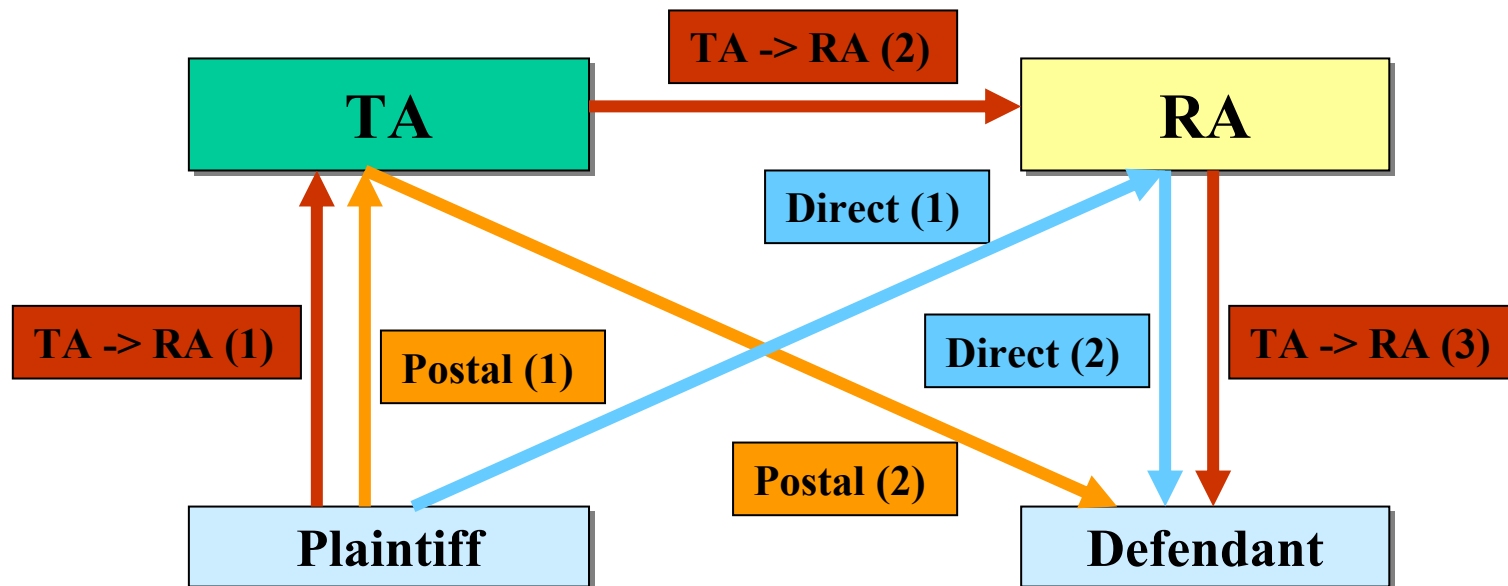
Central Bodies (Art. 3)

=> Supply information to TA, seek solutions to difficulties

Service of Documents (IV)

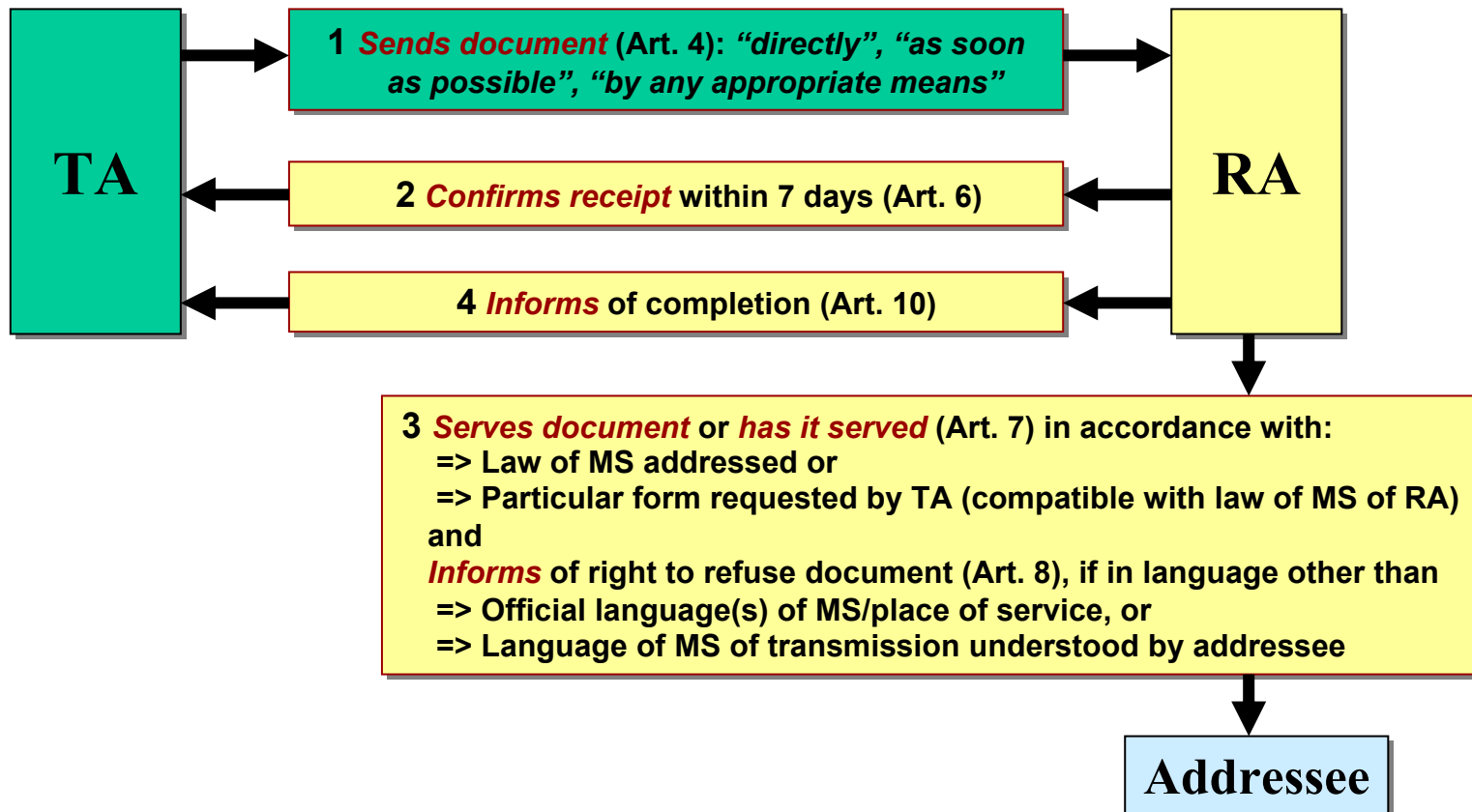
Methods of Transmission II

Example: Service of a writ



Service of Documents (V)

Service TA - RA



Service of Documents (VI)

Service by Post

TA can also send document *by post directly to addressee*

=> Not to RA

But: MS can specify *conditions*

=> Registered letter with acknowledgement of receipt (Most MS)

See *Communications of MS*:

http://europa.eu.int/comm/justice_home/judicialatlascivil/html/docservinformation_en.htm

Service of Documents (VII)

Direct Service

Any person interested in judicial proceeding can also effect service **directly through RA**

=> No involvement of TA

But: MS can *oppose* this possibility

⇒ Austria, Czech Republic, England, Wales and Northern Ireland, Estonia, Germany, Hungary, Latvia, Lithuania, Poland, Portugal, Slovak Republic, Slovenia

See *Communications of MS*:

http://europa.eu.int/comm/justice_home/judicialatlascivil/html/docservinformation_en.htm

Taking of Evidence

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

O J L 174 , 27.6.2001 , p. 1

Georg Haibach, DG JLS (Unit C1)

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Taking of Evidence (I)

Regulation 1206/2001

Replaces Hague Convention of 1970 between MS

Introduces

- Direct court-to-court dealings
- Direct taking of evidence
- Uniform standard forms
- New language rules

Taking of Evidence (II)

Scope (Art. 1)

Court of a MS (24: all except DK) requests

- competent **court of another MS** to take evidence or
- to **take evidence directly** in another MS

In **civil** or **commercial** matters

Evidence intended for use in **judicial proceedings, commenced or contemplated**

Taking of Evidence (III)

Courts and Authorities

Requesting Court, Art. 2:

Court before which proceedings are commenced or contemplated

Requested Court, Art. 2:

Competent court of another Member State for the performance of taking of evidence

Central Body, Art. 3 (1):

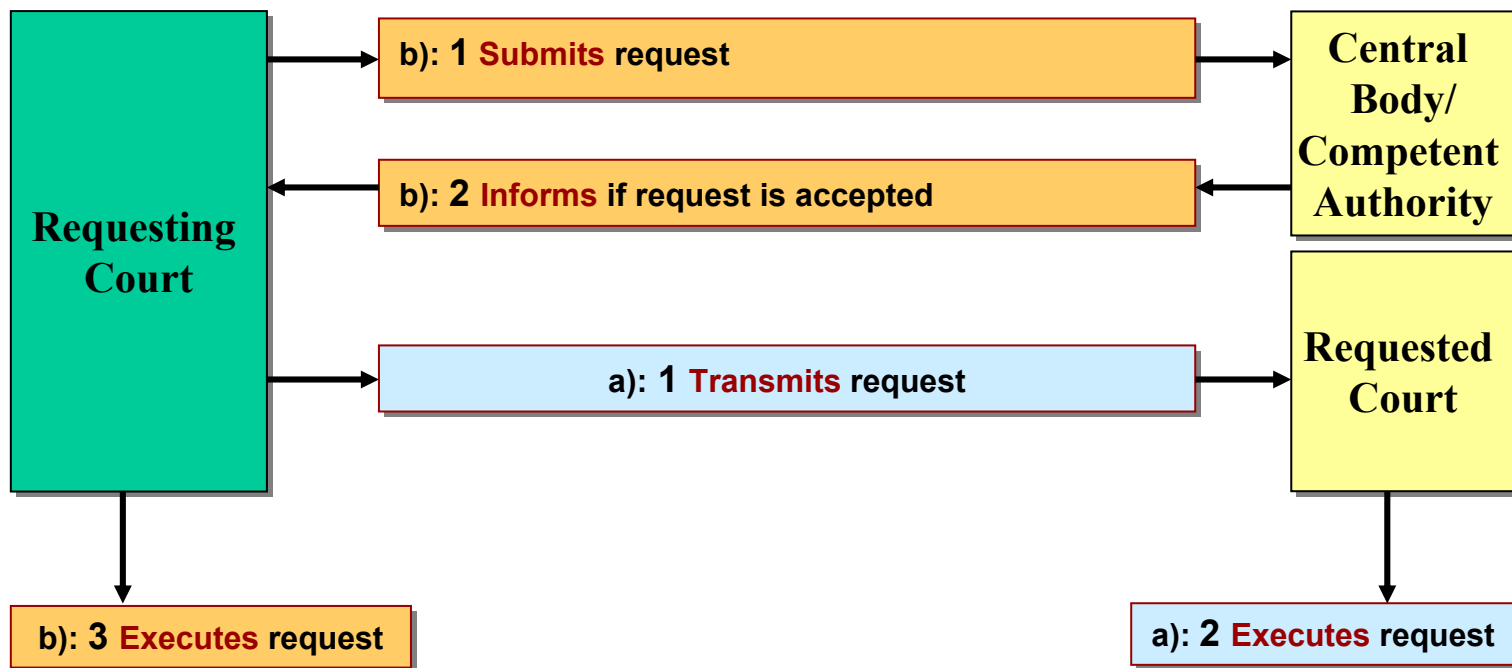
Supplies information to courts, seeks solutions to difficulties

Competent Authority, Art. 3 (3) (or Central Body):

Takes decisions on requests to take evidence directly

Taking of Evidence (IV)

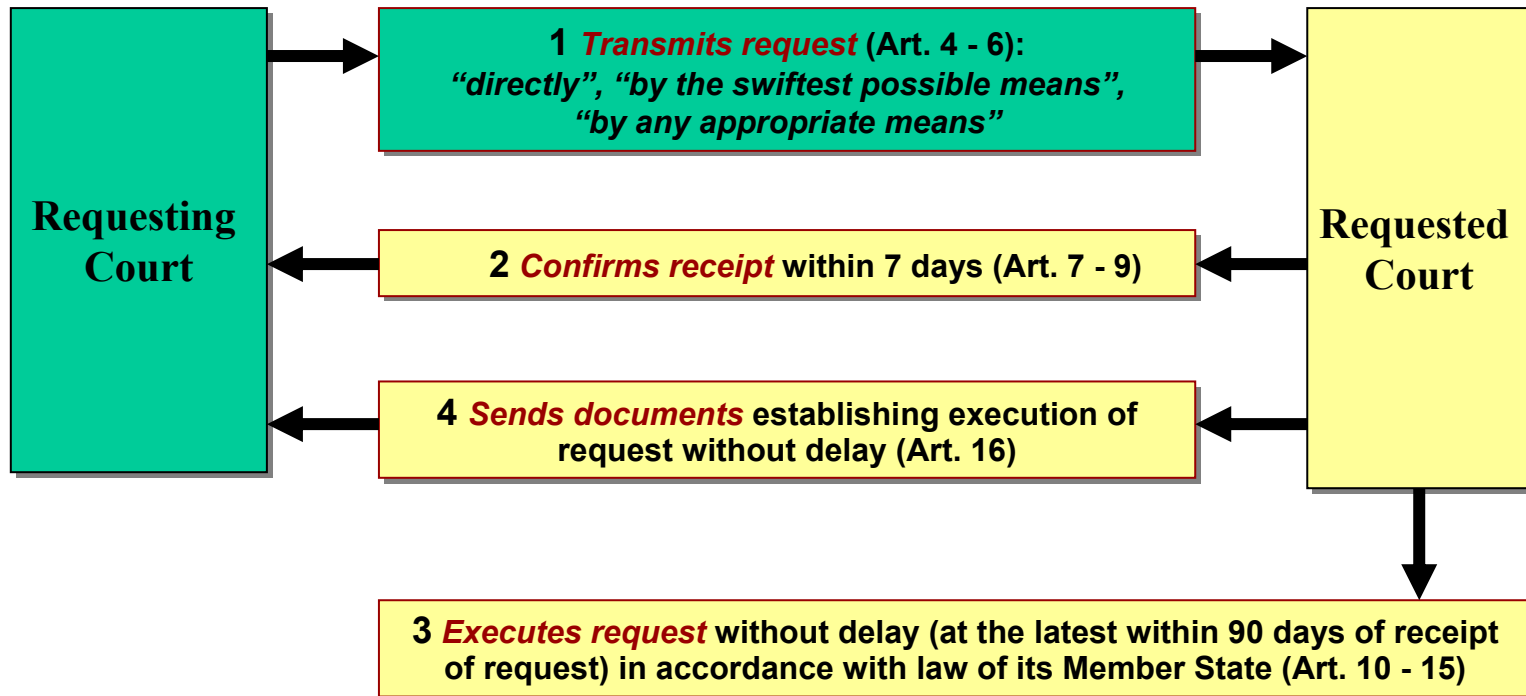
Methods of Taking Evidence II



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Taking of Evidence (V)

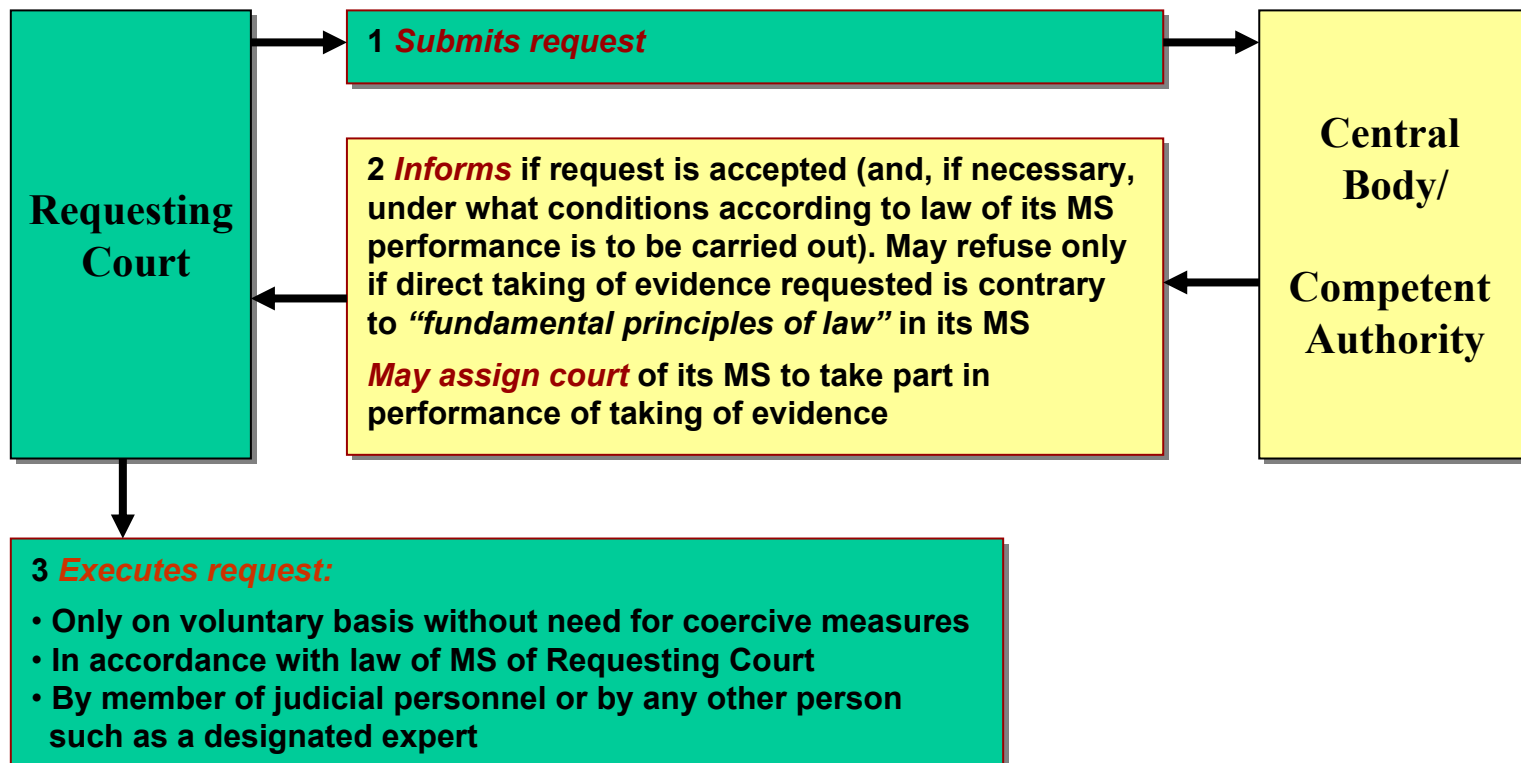
Request to Competent Court



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and justice

Taking of Evidence (VI)

Direct Taking of Evidence (Art. 17)



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freedom,
security
and justice

Taking of Evidence (VII)

Communications of MS (Art. 22)

=> MS communicated to Commission:

- List of requested courts (Art. 2)
- Names and addresses of Central Bodies and Competent Authorities (Art. 3)
- Technical means for receipt available to Requested Courts (Art. 4)
- Languages accepted for requests (Art. 9)

=> **Manual** containing information provided by MS is regularly updated in the **European Judicial Atlas in Civil Matters** at:

http://europa.eu.int/comm/justice_home/judicialatlascivil/html/takingevinformation_en.htm

European Small Claims Procedure

Proposal for a Regulation establishing a European Small Claims Procedure

COM(2005) 87 final

Georg Haibach, DG JLS (Unit C1)

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European Small Claims Procedure

Objectives

- Simplify and speed up litigation concerning small claims, and reduce costs
- Eliminate the intermediate measures necessary to enable recognition and enforcement in other Member States of judgments given in a ESCP

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and justice

European Small Claims Procedure

Scope

ESCP an alternative to the procedures existing under the laws of the Member States

In civil and commercial matters, where the value of a claim does not exceed 2000 €

In cross-border as well as in domestic cases

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and justice

The Procedure

Standard Forms and Time Limits

Written Procedure; Hearing through Audio- or Video Conference

Taking of Evidence

Representation of Parties

Costs

Appeal

Living in an
area of
freedom,
security
and justice

Towards and Area of Freedom, Security and Justice

Convention on the Law Applicable to Contractual Obligations („Rome Convention“)

**opened for signature in Rome on 19 June 1980
(80/934/EEC)**

**Miloš Hat'apka
European Commission
DG Justice, Freedom and Security
Unit C.1 – Civil Justice**

Scope of the Convention (Title I)

- contractual obligations
- involving a choice between the laws of different countries
- exemptions
- universal application

Freedom of Choice (Article 3)

Main principle - Priority of choice made by the parties

- dépeçage possible

Exceptions to the extent of application of chosen law:

- mandatory rules in a „domestic case“ (Article 3 par. 3);
- internationally mandatory rules of a country
with which the situation has a close connection
(Article 7 par. 1);
- mandatory rules of the forum (Article 7 par. 2);
- mandatory rules of the consumer's habitual residence in
certain consumer contracts (Article 5);
- mandatory rules of the law applicable to individual
employment contracts (Article 6).

Absence of Choice (Article 4)

Main principle – The Closest Connection Test

- dépeçage possible by way of exception

Legal presumption for „closest connection“ –

Country where the party who is to effect the performance which is characteristic for the contract

(„characteristic performance“) has,

at the time of the conclusion of the contract:

- (natural persons) - *habitual residence* or, if within their trade or profession, *(principal) place of business*;
- (legal persons, corporate or unincorporate) – *central administration*.

Absence of Choice (Article 4) Cont'd

Exceptions to the principle of characteristic performance:

- certain consumer contracts (Article 5);
- country of immovable property for rights in such property or use of such property (Art. 4 par. 3);
- contracts for carriage of goods (Art. 4 par. 4);
- characteristic performance cannot be determined (Art. 4 par. 5);
- contract „more closely“ connected with another country („*escape clause*“) (Art. 4 par. 5).

Other Provisions

Convention contains provisions dealing with:

- material validity of contracts (Article 8);
- formal validity of contracts and legal acts (Article 9);
- scope of applicable law (Article 10);
- incapacity (Article 11);
- voluntary assignment (Article 12);
- subrogation (Article 13);
- burden of proof (Article 14);
- renvoi (Article 15);
- ordre public (Article 16).

Commission Proposal for Rome I Regulation

Proposal for a Regulation on the law applicable to contractual obligations (Rome I) of 15 December 2005
COM (2005) 650 Final 2005/0261 COD

Reasons:

- coherence of Community policy
- competence of the Court of Justice
- expansion of the Union
- external relations
- need for revision

Commission Proposal for Rome II Regulation

Proposal for a Regulation on the law applicable to non-contractual obligations (Rome I) of 22 July 2003
COM (2003) 427 Final 2003/0168 COD

Purpose:

- improve foreseeability in non-contractual situations (torts, delicts and quasi delicts);
- designed to complement Rome Convention/Rome I;

Commission Proposal for Rome II Regulation

Features:

- universal application;
- general connecting factor: place of damage suffered;
- exceptions: „domestic case“,
escape clause
freedom of choice,
specific rules for certain torts/delicts;
- specific rules for quasi delicts (i.e. unjust enrichment and negotiorum gestio).

Family Law

Council Regulation (EC) 2201/2003 ("the new Brussels II Regulation")

Creates a common judicial area in
matters of divorce and parental
responsibility as of 1 March 2005

Main objectives of Council Regulation 2201/2003:

- Mutual recognition of all decisions in matters of parental responsibility
- Establish uniform jurisdiction rules
- Facilitate cross-border visiting rights
- Dissuade child abduction and ensure the immediate return of the child



Jurisdiction rules (Articles 8-15)

- General rule:
the MS of the habitual residence of the child Art. 8
- Exceptions:
 - child abduction Art. 10
 - prorogation Art. 12
 - visiting rights Art. 9
- Transfer possible
Art. 15



Rules to facilitate cross-border visiting rights (Articles 40-41)

How? A decision granting access rights is directly recognised and enforceable in the other MS, without the need for "exequatur"



Condition: a certificate shall be issued by the court of origin

Aim: remove any obstacles to the exercise of cross-border visiting rights

Rules to prevent parental child abduction (Articles 10, 11 and 42)

The court of origin retains **jurisdiction** after an abduction. Jurisdiction may only shift under very special circumstances.



The Regulation reinforces the principle of 1980 Hague Convention that the court shall order the **immediate return** of the child. It restricts the exceptions of Article 13(b) of the 1980 Hague Convention to a strict minimum.

New procedural safeguards (Art. 11):

- The child shall have the opportunity to be heard.
- The requesting party shall have the opportunity to be heard (cf. Hague Convention).
- The court shall issue a decision within six weeks (cf. Hague Convention).



Giving the last word to the court of origine (Art. 11)

- If the court decides that the child shall not return, it must send a copy of its decision to the competent court in the MS of origin within one month.
- The court of origin invites the parties to submit comments.
- If the parties so wish, the court shall examine the substance of the case and take the final decision whether or not the child shall return.

Procedure before the court of origin (art. 42):

- The court of origin shall:
 - Give the child and all parties an opportunity to be heard;
 - Take account of the reasons underlying the decision on non-return and cooperate with the other judge
 - Fill in a certificate

What happens if the court of origin decides that the child shall return?

- A decision entailing the return of the child is directly recognised and enforceable in the other MS, without the need for "exequatur"
- Only condition: certificate
- Aim: ensure the speedy return of the child

Conclusion

- The new Brussels II Regulation applies in the European Union as of 1 March 2005.
- It creates a common judicial area for decisions on divorce and parental responsibility.
- It complements and reinforces the 1980 Hague Convention on the civil aspects of international child abduction.

Towards and Area of Freedom, Security and Justice

Proposal on Maintenance Obligations

Proposal for a Council Regulation jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations of 15 December 2005

COM(2005) 649 final 2005/0259 (CNS)

Miloš Hatápka
European Commission
DG Justice, Freedom and Security
Unit C.1 – Civil Justice

Features of the Proposal

Jurisdiction

- rules based from Brussels I Regulation, but not limited to defendants domiciled in a Member State

Applicable Law

- harmonisation as a precondition of abolishment of exequatur

Common Procedural Rules

- harmonisation as a precondition of abolishment of exequatur in the area of the rights of defence (service of documents on the debtor, right of review of the decision)

Enforceability of Decisions

- enforceability by operation of law (without the need of intermediate steps)

Enforcement

- two novel possibilities: order for monthly direct payment
order for freezing of assets

Administrative cooperation

- access to information

Council Regulation 1346/2000 on insolvency proceedings

Jerome Carriat
Unit C/1 Civil Justice



European Commission

Directorate-General Justice, Freedom and Security

Subject of the presentation

Insolvency Proceedings

Why a regulation?

Assets and economic activities increasingly transcend national borders. However, the market is not made up exclusively of economically successful individuals and businesses: regrettably, failures also occur.

This makes it necessary for Community law to include provisions for dealing with cross-border problems relating to the assets of insolvent debtors, and to prevent assets from being moved from one country to another in order to prevent their realisation ('forum shopping')

Subject of the presentation

Insolvency Proceedings

Historical Background

Hitherto, common provisions have hardly existed.

The first draft of an agreement was produced 32 years ago, but did not lead to any result

A second attempt in 1980 failed too

Starting in 1989, a working party drafted a new convention, which was signed by all the Member States except one in 1995

On the basis of an initiative by Finland and Germany, a Regulation was finally adopted on 29 may 2000, except with Denmark

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Subject of the presentation

Insolvency Proceedings

Purpose of the Regulation

The new Regulation, which has come into force on 31 May 2002, keeps the essential features of the 1995 draft Convention. It provides :

- a framework for the interaction of insolvency regimes in different countries
- for the making of claims by creditors in respect of insolvency proceedings commenced in other Member States

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Insolvency Proceedings

Key points of the EU Regulation

- Scope
- Rules of jurisdiction
- Applicable Law
- Recognition of judgements
- Powers of the liquidator
- Co-ordination measures
- Information for creditors and lodgement of claim
- Annexes relating to national insolvency law

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Insolvency Proceedings

Scope (Art. 1)

The Regulation applies:

‘to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator’. These proceedings for each Member State are listed in Annex A;

to all proceedings, whether the debtor is a natural person or a legal person, a trader or an individual.

However, it does not apply to insurance undertakings and credit institutions, as two separate Directives were adopted in 2001 concerning the re-organisation and winding-up of such entities.

Insolvency Proceedings

Jurisdiction (Art. 3.1)

The courts with jurisdiction to open the **main insolvency proceedings** are those of the Member State where the debtor has his centre of 'main interests' (in the case of a company or legal person, this is in principle the place of the registered office).

Such solution is based on the principle that proceedings should be universal and unitary, which is inherent in the logic of the internal market. This means a single insolvency procedure within the European Union, in which all assets are liquidated and all creditors participate.

Insolvency Proceedings

Jurisdiction (Art. 3.2)

However, in order to protect local interests, the Regulation authorises **secondary proceedings** to run in parallel with the main proceedings :

- these may be opened in a State other than that where the debtor has his main interests;
- they are permitted both as preliminary proceedings, i.e. before the opening of the main proceedings, and as subsequent proceedings (winding-up only);
- their effects are restricted to the assets of the debtor situated within the territory of the State concerned.

Insolvency Proceedings

Applicable Law (Art. 4)

The law of the 'State of the opening of proceedings' determines the conditions for their opening, their conduct and their closure.

In particular, it determines questions of substance such as the respective powers of the debtor and the liquidator, the definition of assets, effects of proceedings on current contracts, on creditors, rules governing the lodging, verification and admission of claims, the distribution of assets and the ranking of claims, the voidness, voidability or unenforceability of legal acts detrimental to all the creditors...

Insolvency Proceedings

Applicable Law (exceptions)

However, Art. 5 to 15 provide for special rules on applicable law in the case of particularly significant rights and legal relationships (e.g. rights in rem, set-off, reservation of title, immoveable property, contracts of employment, registered rights...)

Furthermore, the law applicable to secondary proceedings is that of the State of the opening of secondary proceedings (Art. 28).

Insolvency Proceedings

Recognition of judgements

- A judgement opening the proceedings handed down by the court with jurisdiction for the main proceedings is recognised immediately in the other Member States without further scrutiny (Art. 16).
- Other decisions concerning the course and closure of proceedings are also recognised with no further formalities (Art. 25). However, such decision shall be enforced in accordance with the provisions of the 'Brussels I' Regulation (EC) No 44/2001: i.e. when, on the application of any interested party, it has been declared enforceable in another State.

Insolvency Proceedings

Powers of the liquidator :

- to request the opening of secondary proceedings
- to remove the debtor's assets from their territory
- to request publication or registration of the judgement
- to lodge claims and participate in other proceedings
- to claim to the court a stay of liquidation for 3 months
- to propose ending the secondary proceedings by a rescue plan, converting earlier proceedings into winding-up, transferring remaining assets
- a liquidator temporarily appointed prior the main proceedings may request preservation measures

Insolvency Proceedings

Co-ordination measures (Art. 31)

Main and secondary proceedings can contribute to the effective realisation of the total assets only if all the concurrent proceedings pending are co-ordinated.

Therefore the liquidators in both proceedings must :

- communicate information to each other
 - e.g. relating to lodging and verifying claims
- co-operate with each other
- give the liquidator in the main proceedings an early opportunity of submitting proposals in the secondary proceedings

Subject of the presentation

Insolvency Proceedings

Information for creditors

- The court or the liquidator is required to send an ***individual notice*** having compulsory contents to each foreign creditor, immediately after the opening of proceedings (Art. 40).
- Such notice shall be drafted in the official language or one of the official languages of the State of the opening of proceedings and should bear a standard heading in all the official languages of the institutions of the Union, as follows (Art. 42):

'Invitation to lodge a claim. Time limits to be observed

Subject of the presentation

Insolvency Proceedings

Lodgement of claim

Any creditor from another Member State may lodge his claim in writing in the official language or one of the official languages of his Member State (Art. 39)

In that event, however, the lodgement of claim shall bear a standard heading - '*Lodgement of claim*' - in the official language or one of the official languages of the State of the opening of proceedings (Art. 42); furthermore, the foreign creditor may be required to provide a translation into this language.

There are also specific conditions on the content of the lodgement of claim (Art. 41)

Subject of the presentation

Insolvency Proceedings

Conclusions

- The EU Regulation on insolvency proceedings is the culmination of many years of hard negotiations. It is aimed at resolving issues of conflict of laws, while the substantive laws of the Member States remain unaltered.
- The relationship between main and secondary proceedings represents a compromise which is likely to improve the efficiency and effectiveness of cross-border proceedings, provided that it is based on a strengthened co-operation between courts and liquidators from the Member States concerned.

Insolvency Proceedings

Where to find information?

- Judicial Co-operation in Civil Matter:
http://europa.eu.int/pol/justice/index_en.htm
- Business Failure and Entrepreneurship:
http://europa.eu.int/comm/enterprise/index_en.htm
- UNCITRAL Model Law on Cross-Border Insolvency:
<http://www.uncitral.org/en/index.htm>
- WORLD BANK Principles and Guidelines for Effective Insolvency and Creditor Rights Systems:
<http://www.worldbank.org/insolvency>
- INSOL Europe (EU Insolvency Practitioners Association):
<http://www.insol-europe.org/>

Directive 2003/8/EC

Legal Aid

Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes

O J L 26 , 31 . 1 . 2003 , p . 41

Jerome Carriat, DG JLS (Unit C1)

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Legal Basis

Amsterdam Treaty (1997)

Article 65 EC Treaty (Title IV)

*“Measures in the field of judicial cooperation in civil matters having cross-border implications ... and insofar as necessary for the proper functioning of the internal market, shall include:
(c) eliminating obstacles to the good functioning of civil proceedings”*

Tampere Conclusions (1999)

“to establish minimum standards ensuring an adequate level of legal aid in cross-border cases throughout the Union”

Charter of Fundamental Rights of the EU (Art. 47)

“right to an effective remedy and to a fair trial”

Legal Aid (II)

Why a Directive?

- **To promote** the application of legal aid in cross-border disputes for persons who lack sufficient resources
- **To guarantee** an adequate level of legal aid by laying down minimum common standards
- **It prevails** over international agreements: CoE Agreement (1977), Hague Convention (1980)
- **It allows** MS making more favourable arrangements for applicants and recipients

Legal Aid (III)

Scope (Art.1 and 2)

The Directive shall apply:

- in **cross-border** disputes
i.e. where, at the time when the application is submitted, the applicant is domiciled or habitually resident in another Member State –in accordance with its internal law- than the State of jurisdiction or enforcement

Beneficiaries are Union citizens and third-country nationals residing lawfully in the EU

- to **civil and commercial** matters, but natural persons only will be entitled to receive legal aid

Legal Aid (IV)

Right to legal aid (Art.3)

- for **pre-litigation advice**
- for **legal assistance and representation** in court
- for **costs of proceedings**, incl. those related to the cross-border context, those of the opposing party if the law so provides
- for **extrajudicial procedures**, e.g. mediation (Art.10) and **enforcement of judgements** notwithstanding appeal (Art. 9)

No obligation of providing legal aid in proceedings **where litigants may make their case in person**, except when the court otherwise decides
Similarly, recipients may be requested **to pay reasonable contributions** or **to refund** legal aid in full or in part if their financial situation appears to be different

Financial resources (Art.5)

Competent Authority of MS of jurisdiction will assess the economic situation of the applicant

- examples of evaluation criteria:

Income, capital, family situation, resources of *financially dependent* persons

- thresholds of resources may apply in a flexible way

No obligation of granting legal aid

if cost of proceedings covered by an *insurance scheme*

Substance of disputes (Art.6)

Competent Authority may reject applications:

- for *manifestly unfounded* actions
- following pre-litigation advice, on *grounds of merits* of the case:
 - in consideration to the *importance of the individual case*
 - In consideration to the *nature of the case*:
 - => *damage to reputation* without material/financial loss
 - => *professional claim* (trader, self-employed)

Legal Aid (VII)

Nature of costs

“Cross-border” costs covered by legal aid in MS of jurisdiction (Art.7)

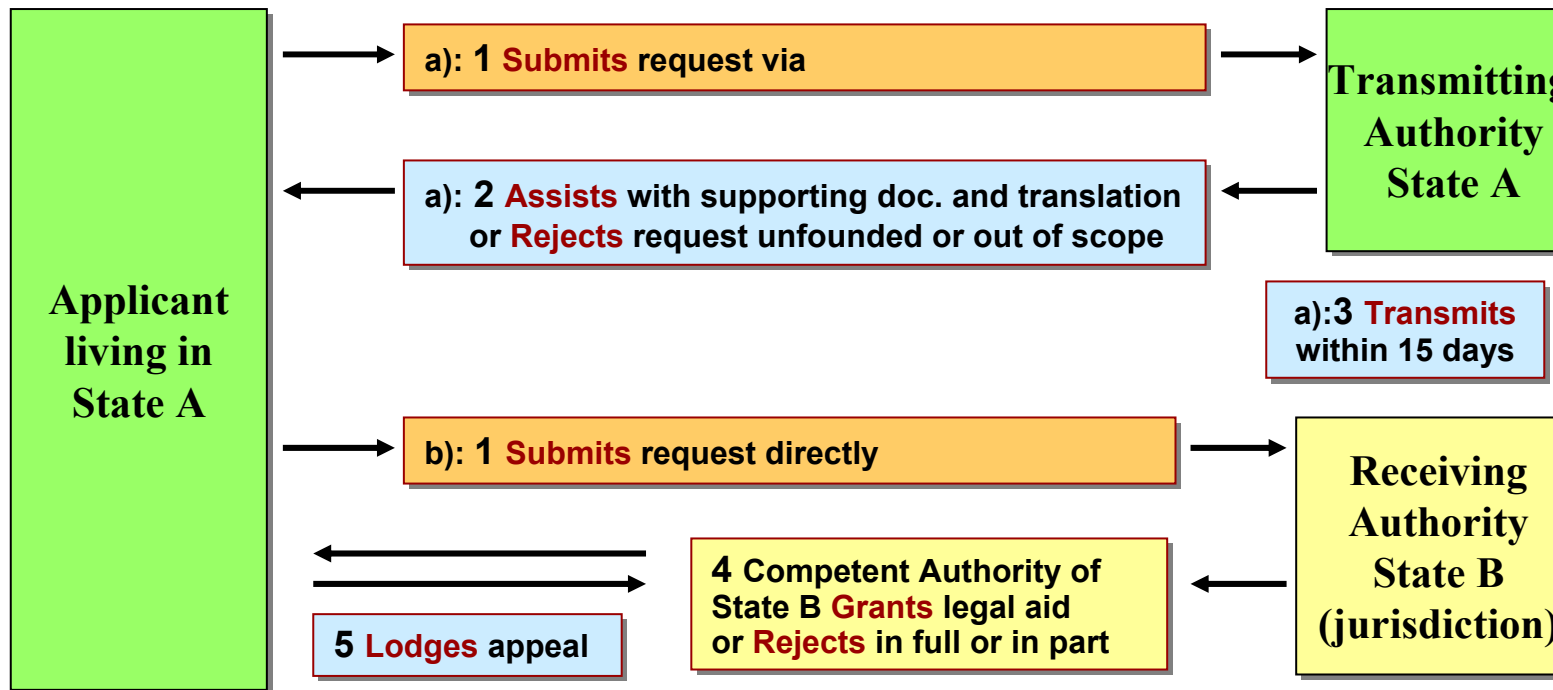
- *interpretation*
- *translations* required by court or competent authority
- *travel costs* incurred for attending court hearings

Domestic costs covered by legal aid in MS of residence (Art.8)

- *assistance of a local lawyer* until the application has been received in MS of jurisdiction
- *translation of application and supporting documents* submitted to MS of residence

Legal Aid (VIII)

Transmission of application (Art.13)



Standard Forms (Art.16)

A: Legal Aid Application

Commission Decision 2004/844/CE of 9.11.2004
OJ L 365 of 10.12.2004

B: Transmission of Legal Aid Application

Commission Decision C(2003)1829 of 30.4.2003

Communications of MS (Art.14)

=> By **30 November 2004**: MS communicate to Commission:

- Names and addresses of receiving/transmitting authorities
- Areas of jurisdiction
- Technical means for receipt available
- Languages accepted for application

=> Commission is assisted by a Consultative Committee

=> Competent Authorities provide information on the EU Judicial Network

=> By **30 November 2004**: MS transpose the Directive except provisions on pre-litigation assistance: by **30 May 2006**

TOWARDS an AREA of FREEDOM, SECURITY and JUSTICE

Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

Screening Chapter 24 Justice, Freedom and Security
January 23-25, 2006

Katja Lenzing
European Commission
DG Justice, Freedom and Security
Unit C.1 – Civil Justice

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TOWARDS an AREA of FREEDOM, SECURITY and JUSTICE

Objective

The Directive establishes

- **a compensation scheme that guarantees fair and appropriate compensation for victims of crimes committed in the territory of the European Union**
- **a system of cooperation between national authorities that facilitates the transmission of applications for compensation in cross-border situations**

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Scope

The Directive applies in national as well as in cross-border situations.

Compensation is to be granted regardless of where in the European Community the crime was committed and the victim is domiciled.

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The system of cooperation

Key Features

- **Victim has the right to submit an application in the Member State of residence**
- **Compensation is paid by the Member State on whose territory the crime was committed**
- **Each Member State designates two types of authorities**
 - **Assisting authority**
 - **Deciding authority**
- **Applications are transmitted using standard forms**

TOWARDS an AREA of FREEDOM, SECURITY and JUSTICE



The system of cooperation Procedure

- 1. Victim submits application to the assisting authority in its Member State of residence**
- 2. Assisting authority provides the applicant with guidance and information how to apply on the basis of a manual**
- 3. Assisting authority transmits application to deciding authority ASAP using a standard form**

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The system of cooperation

Procedure ctd.

- 4. Deciding authority acknowledges receipt and indicates contact person and time line**
- 5. Deciding authority may request supplementary information and hear the applicant, experts or witnesses**
- 6. Deciding authority communicates decision to the applicant and the assisting authority using a standard form**

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The Language Regime

Between the authorities information has to be transmitted

- in one of the official languages of the Member State of the authority to which the information is sent (to the extent that language is an official language of the Community) or
- in another official language of the Community if the Member State in question has accepted this (with some exceptions).

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TOWARDS an AREA of FREEDOM, SECURITY and JUSTICE

Proposal for a Directive on certain aspects of mediation in civil and commercial matters

Objective

- Promote the use of mediation in the Community
- Ensure a sound relationship between mediation and judicial proceedings

Substance

- Invitation to mediate by the court seized, where appropriate
- Enforceability of settlement agreements
- Confidentiality of mediation
- No expiry of limitation or prescription periods during mediation