



## Recast Brussels I Regulation: The Abolition of *Exequatur* and the Amendment to Rules Relating to the Enforceability of Jurisdiction Clause

The recast form of the Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Regulation (EU) No. 1215/2012 of the European Parliament and Council of December 12, 2012 (“Brussels I Recast”), came into force on January 10, 2015, replacing Brussels I Regulation (EC) No. 44/2001 (“Brussels I”). Brussels I Recast applies to court proceedings in all EU Member States commenced on or after January 10, 2015. All judgments given in proceedings commenced before that date remain subject to Brussels I.

### Abolition of *Exequatur*

The main objective of Brussels I Recast is to facilitate and accelerate the mutual recognition of judgments between Member States and thereby promote their free movement. As such, its major change is to abolish the *exequatur* procedure by introducing a simplified mechanism for the recognition and enforcement of Member State judgments: the judgment creditor—which was required to apply for a declaration of enforceability from the enforcing court under Brussels I—is now only required to present to the enforcing court a copy of the

judgment and a standard certificate delivered by the court which rendered the judgment (Article 53).

In practice, it is recommended that the judgment creditor brings a translation of these documents in case the party resisting enforcement requests it, even though not strictly required by Brussels I Recast. To the extent available under local law, the judgment creditor can then request the contemplated enforcement measures.

The judgment debtor may resist enforcement on the grounds set out in Article 45, which are limited and similar to those provided under Brussels I (including the public policy provision). Under no circumstances, can the judge reexamine the case or modify the original judgment.

This streamlined procedure set by Brussels I Recast is in line with Regulation (EC) No. 805/2004, which came into force on October 21, 2005, and which for the first time abolished the *exequatur* requirement for uncontested claims whose value and date is determined. As concerns these claims, all that is required for enforcement is a certificate—known as a “European enforcement order”—from the court that delivered the judgment.

## Change to Rules Relating to the Enforceability of Jurisdiction Clauses

In addition, Brussels I Recast introduced three principal changes to the rules relating to jurisdiction clauses. First, to be effective, a jurisdiction clause must not be “*null and void as to its substantive validity*” under the law of the courts to which it gives jurisdiction. Second, the jurisdiction clauses are valid regardless of where the parties are domiciled. Third and finally, when a court, which is not the one chosen by the parties, is seized of a matter, it should stay proceedings in favor of the court identified as having jurisdiction, which will determine the validity of the jurisdiction agreement.

Particular attention should be paid to these changes when drafting a legal opinion subject to European regulation.

## Lawyer Contacts

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