



April 2015

## Cross-Border Disputes – the Recast Brussels Regulation

Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (“the Recast Regulation”) came into effect in Ireland on 10 January 2015.

The Recast Regulation replaces Regulation 44/2001 (“the Brussels Regulation”). It is a fine-tuning of the rules existing under the Brussels Regulation, rather than a radical overhaul of those rules.

Like its predecessor, the Recast Regulation applies to questions of jurisdiction and the recognition and enforcement of judgments in civil and commercial disputes. Certain matters remain outside the scope of the legislation, such as revenue, customs and administrative matters, as well as certain disputes relating to bankruptcy and insolvency, family law, social security, arbitration and succession.

The Recast Regulation has come into effect across the EU, with the exception of Denmark, which has notified the Commission of its intention to apply the Recast Regulation. It applies to proceedings commenced on or after 10 January 2015, and to judgments given on or after that date. The Brussels Regulation continues to apply to earlier proceedings and judgments.

For enforcement in the Irish courts, the Recast Regulation should be read in conjunction with the implementing statutory instrument S.I. No 6 of 2015 (European Union (Civil and Commercial Judgments) Regulations 2015) and High Court Practice Direction HC62, as well as any new rules of court which might be introduced.

The most significant changes brought about by the Recast Regulation are the following:

[www.dilloneustace.ie](http://www.dilloneustace.ie)

/5815677v1

For further information on any of the issues discussed in this article please contact:



**Peter Bredin**

DD: +353 (0)1 674 1013

[peter.bredin@dilloneustace.ie](mailto:peter.bredin@dilloneustace.ie)

## Simplified enforcement

Under the Brussels Regulation, a party seeking to enforce in the courts of one member state a judgment obtained in the courts of another had to apply for a declaration of enforceability (this was known as the exequatur procedure). All that is required under the Recast Regulation is a copy of the judgment, a standard certificate annexed to the Recast Regulation, and, where necessary, a translation of the certificate and/or judgment. This simplification of procedure is designed to save time and costs for judgment creditors. The Recast Regulation provides certain limited safeguards permitting an interested party to apply for refusal of recognition or enforcement of the judgment.

## Lis pendens and the “Italian Torpedo”

Under the Recast Regulation, the court which the parties have agreed is to have exclusive jurisdiction will have priority over a court in which proceedings may have been first brought. Under the old regime, there was scope for a defendant to delay the progression of imminent proceedings against him by issuing his own proceedings first in the courts of a member state which was not the state referred to in the exclusive jurisdiction agreement between the parties. The court first seised then had to rule on its own jurisdiction, and proceedings subsequently issued in the courts which the parties had agreed were to have exclusive jurisdiction had to be stayed until the court first seised decided on its jurisdiction. This tactic was known as the “Italian Torpedo”, as the courts of Italy were attractive to those seeking to delay proceedings.

## Lis pendens outside of the EU

Under the Recast Regulation, member state courts now have a discretion (but not an obligation) to stay proceedings brought before them where there are existing, pending proceedings between the same parties involving the same cause of action in the courts of a non-EU state (a “third state”). Member state courts may dismiss proceedings brought before them where third state proceedings have already been determined and the judgment would be capable of recognition in the member state courts.

## Jurisdiction agreements between non-EU parties

The member state court chosen by the parties to an exclusive jurisdiction agreement will now have jurisdiction under the Recast Regulation even if neither party is domiciled in the EU. Such jurisdiction will be exclusive unless the parties have agreed otherwise.

## Consumers and employees

The jurisdiction rules applicable to cases brought by consumers and employees have been extended to apply to traders and employers who are not domiciled in the EU.

## Arbitration

Like its predecessor, the Recast Regulation does not apply to arbitration. There was, however, uncertainty as to the scope of this exclusion under the Brussels Regulation which facilitated those seeking to undermine arbitration agreements. Some clarification has now been provided, including that the Recast Regulation shall not prevent the courts of a member state from referring parties to arbitration if they have entered into an arbitration agreement. A ruling by a member state court as to whether an arbitration agreement is operative shall not be subject to the rules of recognition and enforcement set out in the Recast Regulation. The recognition and enforcement of arbitral awards will continue to be governed by the 1958 New York Convention which has precedence over the Recast Regulation.

Some uncertainty remains regarding the interaction between arbitration and court proceedings in cross-border disputes, such as whether the party desiring to arbitrate can obtain an order preventing his opponent from proceeding with court proceedings in another member state (a so-called anti-suit injunction). A decision currently awaited from the European Court of Justice (in the Gazprom case) is expected to provide some elucidation on this issue.

The changes introduced by the Recast Regulation give efficacy to jurisdiction agreements and arbitration agreements, and facilitate the enforcement of judgments, so are likely to be welcomed by those involved in cross-border litigation.

## DILLON EUSTACE

### Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

### Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

### Hong Kong

604 6F Printing House, 6 Duddell Street, Central, Hong Kong. Tel: +852 352 10352.

### New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

### Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

### DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

### Copyright Notice:

© 2015 Dillon Eustace. All rights reserved.