



The Effect in the European Community of Judgments in Civil and Commercial Matters: Recognition, *Res Judicata* and Abuse of Process

Introduction

Article 33.1 of the Judgments Regulation (No. 44/2001(EC)), reflecting its predecessor Art 26, para 1 of the Brussels Convention (1968) provides "A judgment given in a Member State shall be recognised in the other Member States without any special procedure".

The ECJ has stated, in connection with the Brussels Convention, that "[r]ecognition must have the result of conferring on judgments the authority and effectiveness accorded to them in the State in which they were given" (*Hoffmann v Krieg* (Case 145/86) [1988] ECR 645, para 10, citing the Report of Professor Jenard).

This principle of mutual recognition lies at the heart of the Regulation regime. But its precise limits and effectiveness have been little considered in the case law of the ECJ and of the Member States (MS) and in texts on the Regulation. Instead the focus has been upon the enforcement of judgments. This project seeks to redress that balance.

A better understanding of the principle of mutual recognition requires familiarity with the rules of each MS concerning the authority and effectiveness of both domestic and foreign judgments. These rules determine, among other matters, the conclusive and preclusive effects of judgments.

The Court of Justice has recently highlighted the importance of the principle of *res judicata* in its 2006 decision in Case C-234/04 *Kapferer v. Schank* (para. 20: "In that regard, attention should be drawn to the importance, both for the Community legal order and national legal systems, of the principle of *res judicata*. ..."; para. 21: "Therefore, Community law does not require a national law to disapply rules of procedure conferring finality on a decision, even if to do so would enable it to remedy and infringement of Community law by the decision at issue.")

The Project would seek to look at the effects on third parties alongside named parties to civil proceedings, since there is significant divergence in MS' practice (see, for example, para 191 of the report of Professor Schlosser on the accession of Denmark, Ireland and the UK to the Brussels Convention [OJ C59 5.3.79, p 127]).

Significant differences between the authority/effectiveness of judgments in the MS may create impediments to the free movement of judgments in the EC. The project will ascertain and compare the relevant rules in selected MS.

It will also consider, based on as full a study of MS practice as practicable, whether there is scope for developing EC-wide rules on *res judicata* and abuse of process, by developing the principle recognised by the ECJ in *De Wolf v Cox* (Case 42/76) [1976] ECR 1759).

The project will lead to a full day conference open to delegates from all MS and a final report published as a book. This final report will include: (a) selected country reports, (b) detailed analysis and recommendations, and (c) edited conference papers, to promote better understanding of issues raised by the cross-border recognition of judgments in the EC.

The specific question does addressed by the project

The project will address the precise limits, and effectiveness, of the principle of mutual recognition relating to Member State judgments in civil and commercial matters (cf. *Hoffmann v. Krieg*) based on detailed analysis of the rules of selected Member States concerning the authority and effectiveness of both domestic and foreign judgments.

The project will consider the position both as between the parties to civil proceedings and as against third parties. Further, the project will consider whether the existing position creates obstacles to the free movement of judgments in the EC, and (in turn) the proper functioning of the internal market, and whether such obstacles may be effectively addressed through the development of EC-wide rules in this area.

The principal objectives of the project

1. To promote a better understanding of the Member State rules concerning the authority and effectiveness of judgments, and their impact on the Regulation regime for recognition and enforcement;
2. To consider whether disparities between the Member State rules create any impediment to the functioning of the principle of mutual recognition;
3. To consider whether any EC-wide solution to the identified problems is viable.

The contribution of the project to the aims of the Commission's Framework Programme for Judicial Co-operation in Civil Matters

1. *Promoting judicial cooperation in civil matters:* The project will encourage a better understanding of the operation of the principle of mutual recognition in relation to civil judgments.
2. *Improving mutual knowledge of Member State legal and judicial systems in civil matters:* The project will examine, report and compare the rules operating in selected Member States concerning the authority and effectiveness of civil judgments:
3. *Ensuring the sound implementation of Community instruments in the area of judicial cooperation in civil matters:* The project will consider (a) whether disparities between the Member State rules create any problems for implementation of the principle of mutual recognition, which lies at the heart of the Regulation framework, and (b) whether those problems may be capable of being addressed by an EC-wide solution (legislative or otherwise).
4. *Improving information to the public on judicial cooperation and the legal systems:* The end products of the project (conference and report in book form) are designed to facilitate a better understanding of the principle of mutual recognition within the Convention framework and of Member State rules on the authority and effectiveness of civil judgments.

The innovative character of the project

1. It focuses on the recognition, rather than enforcement, of judgments within the EC.
2. It approaches the principle of mutual recognition from the perspective of Member State rules on the authority and effectiveness of judgments, leading to a better understanding of the limits and effectiveness of that principle.
3. It considers the effect of judgments not only as between the parties to civil proceedings, but also as against third parties.

The expected results of the project

In the short term, the project is expected to encourage a better understanding of the operation of the principle of mutual recognition in relation to civil judgments. It will also examine, report and compare the rules operating in selected Member States concerning the authority and effectiveness of civil judgments.

In the medium term it will ensure the sound implementation of Community instruments in the area of judicial cooperation in civil matters. In addition, the final products of the project (conference and report in book form) are designed to facilitate a better understanding of the principle of mutual recognition within the Convention framework and of Member State rules on the authority and effectiveness of civil judgments.

Description of targeted beneficiaries

1. All practising and academic lawyers in all Member States with a specialism or interest in civil procedure or private international law;
2. All those with a commercial or private interest in the effect of judgments in the EC;
3. Ultimately, all those who will benefit in practical terms from an enhanced free movement of judgments.

The dissemination of the result of the project

The results will be published and disseminated as widely as possible and reach a Europe-wide audience; relevant aspects will be published on the Institute's website. The project's results, together with appropriate discussion papers, will also be published in full in book form. A successful conference at the end of the project will help ensure a high profile for the project and optimal dissemination of its results.

Finally, copies of the publication produced will be sent to the Commission and other interested parties.