Draft (for discussion): 26 March 2007


European Community Framework Programme for Judicial Co-operation in Civil Matters

Outline Questionnaire to be Sent to National Rapporteurs

Introduction

Purpose and objectives of study

Scope of study

"Civil or commercial matters" within meaning of Reg. 44/2001, Art. 1

"Judgments" within meaning of Reg. 44/2001, Art. 32

To include judgments "in rem" as well as judgments "in personam"? Concepts defined

Effects of judgments, domestically and cross-border, including (a) dispositive, (b) procedural (including res judicata), (c) evidential effects and (d) other (e.g. administrative), but excluding relationship with procedures for enforcement

Part A: Effects of Judgments within a Legal System

Concept of "Judgment": Definitions; Distinction between formal parts of judgment and reasons?

"Dispositive" effects of judgments

Judgments "in personam"

Types of judicially created obligation; Nature of judicial obligations (whether, e.g., capable of being assigned)

Whether judgments operate to discharge or modify causes of action, whether by "merger" or otherwise

Judgments "in rem"

Types of status which may be altered or conclusively determined by a judgment "in rem" in civil or commercial matters
Binding character of judgments "in rem" (including any territorial restrictions)

"Procedural" effects of judgments

Cause of action preclusion between parties

   Successful claimant – "former recovery" as alternative to merger
   Unsuccessful party – res judicata

Cause of action preclusion against non-parties

   Scope and extent of res judicata rules

Issue preclusion between parties

Issue preclusion against non-parties

   Wider "abuse of process" doctrine between parties
   Wider "abuse of process" doctrine against non-parties

   Other procedural (non-evidential) effects of judgments

Evidential effects of judgments

   In legal proceedings between parties
   In legal proceedings involving non-parties
   In administrative or other processes

Other effects of judgments

Part B: Treatment of foreign judgments outside Brussels/Lugano system – current state practice

Conditions for recognition (general)

Equalisation or extension of effects?

   "Dispositive" effects
      Judgments "in personam"
      Judgments "in rem"
"Procedural" effects

- Cause of action preclusion
- Issue preclusion
- Wider "abuse of process"
- Other

"Evidential" effects

Part C: Treatment of foreign judgments within Brussels/Lugano system – current state practice

Conditions for recognition – Brussels Convention, Arts. 26 and 27; Reg. 44/2001, Arts. 34 and 35

Equalisation or extension of effects?

Approach in principle

National decisions considering meaning and effect of "recognition" under Brussels or Lugano Conventions or Reg. 44/2001

Application of ECJ decision in *Hoffmann v. Krieg*

Application of ECJ decision in *De Wolf v. Cox*

Approach to particular issues

"Dispositive" effects

- Judgments "in personam"
- Judgments "in rem"

"Procedural" effects

- Cause of action preclusion
- Issue preclusion
- Wider "abuse of process"
Other

"Evidential" effects

Part D: Comment