



INTERNATIONAL CONFERENCE ON THE
REVISION OF THE ATHENS
CONVENTION RELATING TO THE
CARRIAGE OF PASSENGERS AND THEIR
LUGGAGE BY SEA, 1974
Agenda item 6

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**CONSIDERATION OF A DRAFT PROTOCOL OF 2002 TO AMEND THE ATHENS
CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND
THEIR LUGGAGE BY SEA, 1974**

**Submitted by the European Commission on behalf of the European Commission
and its Member States**

SUMMARY

Executive summary: This document presents two proposals for amendments to the draft protocol, a new article on the possibility for Regional Economic Integration Organizations to become Parties to the Protocol and a new paragraph relating to the recognition and enforcement of judgements. In addition, the document contains information on the background for and implications of the proposed amendments.

Action to be taken: Paragraph 16

Related documents: LEG 83/WP.1; LEG 83/14; LEG/CONF.13/3

BACKGROUND

1 For the Member States of the EU, the Athens Protocol raises some issues which are of fundamental importance to their possibility to become Parties to the Protocol. The issues stem from the fact that Articles 10 and 11 of the draft protocol include provisions on jurisdiction and recognition and enforcement of judgments and that these matters recently have been regulated at EU-level in Regulation 44/2001.

2 Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was adopted by the Council of the European Union on 22 December 2000 and came into force on 1 March 2002.¹ The Regulation is binding upon all EU Member States, with the exception of Denmark.² Through the adoption of this Regulation,

¹ Official Journal of the European Communities, L 12, 16.1.2001, p. 1. The text of this Regulation is available on the following websites: http://europa.eu.int/eur-lex/en/lif/reg/en_register_1920.html (available in the eleven official EU languages) or <http://folk.uio.no/erikro/WWW/EU/Brussel.pdf>

² In accordance with the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark did not take part in the adoption of Council Regulation 44/2001 and is not bound by it nor subject to its application. The 1968 Brussels Convention remains in force in the relations between Denmark and the other EU Member States.

EU Member States have transferred the competence to assume obligations on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to the European Community as such. According to European law, where Community rules have been adopted, EU Member States cannot, outside the framework of the Community institutions, assume obligations with third countries which may affect those rules or alter their scope.

3 Following a brief discussion on the proposed amendments at the eighty-third meeting of the Legal Committee in October 2001, the European Commission and the EU Member States were asked by the Legal Committee to take measures to adequately inform delegations about this issue with a view to avoiding a lengthy discussion on these questions at the Diplomatic Conference. For this purpose, two specific information meetings on this topic have been held on 25 April 2002 and 3 July 2002. The present submission takes into account comments made at those meetings and includes an Annex which provides answers to many of the specific questions raised at the two information meetings. In addition, following requests by many IMO Member States, a second Annex providing some more detailed information on Regulation 44/2001 is attached for information purposes.

ACCESSION CLAUSE

4 A clause providing for the possibility for the Community to become a party to the Protocol is of key importance for enabling the 14 EU Member States which are bound by Regulation 44/2001 to become parties to the Athens Protocol. The principal purpose of the clause is to avoid a situation of conflict between two systems of law for EU Member States (EU law and international law). Through the ratification of the Athens Protocol by the European Community, the relevant provisions of the Athens Protocol (those for which there is Community competence) would be incorporated into the body of EU law. In this way a link between the two legal systems would be established and the legal obstacles for EU Member States to ratify the Protocol would be removed.

5 Such clauses are commonplace in international agreements regulating areas in which there is Community competence. Among agreements relating to liability for the carriage of passengers, Article 53 of the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air (developed under the aegis of ICAO) is a recent example (see Annex 1).

6 The ratification/accession of the EC to this Protocol does not extend the Community competence to other matters regulated therein. If the EC were to become a party to the Protocol, the division of competence between the Community and its Member States would continue to be regulated by the existence of common EC rules in the field. In decisions whereby a vote is required under the Protocol, the Community would not have a vote in its own right in addition to those of its Member States which are parties to the Protocol and it would only exercise its right to vote in matters over which it has competence.

7 States outside the EU will not be affected in any way by the proposed clause. Nor will the Community count as an extra State Party in relation to the entry into force provisions. The insertion of the clause may be seen as a technical amendment to allow for the special needs of the EC and its Member States.

8 Article 19 of the draft protocol, as submitted to the Diplomatic Conference, already contains an accession clause within square brackets. A more elaborate wording, specifying the nature of the Community's accession in more detail, is proposed below. All proposed changes are based upon existing international conventions to which the Community is a party. The purpose of the proposed changes is either to align the text to similar clauses in existing conventions or to

clarify what the accession by the EC means and to make it completely clear that it does not affect any other parties to the Protocol:

“ARTICLE 19

Regional Economic Integration Organizations

- 1 A Regional Economic Integration Organization, which is constituted by sovereign States that have transferred competence over certain matters governed by this Protocol to that Organization, may sign, ratify, accept, approve or accede to this Protocol. A Regional Economic Integration Organization which is a Party to this Protocol shall have the rights and obligations of a State Party, to the extent that the Regional Economic Integration Organization has competence over matters governed by this Protocol.
- 2 Where a Regional Economic Integration Organization exercises its right of vote in matters over which it has competence, it shall have a number of votes equal to the number of its Member States which are Parties to this Protocol and which have transferred competence to it over the matter in question. A Regional Economic Integration Organization shall not exercise its right to vote if its Member States exercise theirs, and vice versa.
- 3 Where the number of States Parties is relevant in this Protocol, the Regional Economic Integration Organization shall not count as a State Party in addition to its Member States which are States Parties.
- 4 At the time of signature, ratification, acceptance, approval or accession the Regional Economic Integration Organization shall make a declaration to the Secretary-General specifying the matters governed by this Protocol in respect of which competence has been transferred to that organization by its Member States which are signatories or Parties to this Protocol and any other relevant restrictions as to the scope of that competence. The Regional Economic Integration Organization shall promptly notify the Secretary-General of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
- 5 States Parties which are Member States of a Regional Economic Integration Organization which is a Party to this Protocol shall be presumed to have competence over all matters governed by this Protocol in respect of which transfers of competence to the organization have not been specifically declared or notified under paragraph 4.”

RECOGNITION AND ENFORCEMENT OF JUDGEMENTS

9 Rules on the recognition and enforcement of foreign judgments are sometimes governed by a multitude of laws. Apart from international instruments on a specific subject matter (such as the Athens Protocol) which include provisions on this matter, national laws and ‘horizontal’ instruments relating to the recognition and enforcement of judgments between two or more States regulate this matter more generally.

10 As for the EU, Regulation 44/2001 constitutes a first step in a wider effort to establish a common judicial area within the Community, which involves the aspect of free ‘circulation’ of

court rulings. The rules on the recognition and enforcement of judgments in civil and commercial matters, as laid down in the Regulation, form an important part of this effort and the possibility to continue the application of Regulation 44/2001 as between EU Member States is therefore of considerable importance for EU Member States. The significance of Regulation 44/2001 in the context of the Athens Protocol is described in more detail in Annex 1 and further explanations, including the full text of the relevant Chapter of Regulation 44/2001, is reproduced in Annex 2.

11 In order to avoid the application of different standards of recognition and enforcement depending on the subject matter in question, international instruments, including transport liability conventions,³ have sometimes included an ‘opt-out’ clause in order to explicitly authorize two or more States to continue the application of mutual rules on recognition and enforcement of judgments which have been agreed in other international instruments.

12 On the other hand, it is accepted that the purpose of instruments such as the Athens Protocol are aimed at harmonizing the recognition and enforcement of judgments as between the Parties to the Protocol.

13 In order to find a compromise between the wish of prospective Parties to ensure a continued application of existing rules that may not be identical to the Athens Protocol and the need for clarity among all Parties to the Athens Protocol on the common rules for recognition and enforcement of judgments relating to passenger claims, a new paragraph 3 is proposed to Article 17bis. The proposed wording spells out that paragraphs 17bis, paragraphs 1 and 2 constitute a minimum standard and that other rules may be applied, provided that they ensure at least equivalent recognition and enforcement of foreign judgments. Should the other rules be less permissive in granting recognition and enforcement than paragraphs 1 and 2, such other rules could not be applied under the proposed wording.

14 As far as is known, the insertion of such a new paragraph would not represent any departure from how the present paragraphs 1 and 2 have been applied and interpreted in other instruments to date. It would, however, serve the purpose of clarifying the possibility to apply other, less restrictive rules for recognition and enforcement of judgments.

15 It is therefore proposed that the following text is inserted as a new paragraph 3 to Article 11 of the Protocol (new Article 17bis of the Athens Convention):

“3 A State Party to this Protocol may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraph 1 and 2.”

ACTION TO BE TAKEN

³ Article 21 of the 1989 Convention on Civil Liability for Damage caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels (CRTD) provides: “Whenever two or more States are bound by an international Convention establishing rules of jurisdiction or providing for recognition and execution of judgments given by a court of another State, the provisions of those instruments replace the corresponding provisions of ... this Convention.”

16 The co-sponsors recommend that the Diplomatic Conference adopt the proposed amendments.

ANNEX 1

QUESTIONS AND ANSWERS RELATING TO THE NEW PROVISIONS

Accession clause (Article 19)**1 Why is this clause needed?**

Its main purpose is to remove a very serious legal obstacle for EU Member States to ratify the Athens Protocol, presented by a conflict between two legal systems (EU law and international law) governing the same subject. Through ratification of the Athens Protocol by the European Community, a link between the EU legal system and the Athens Protocol can be achieved and the relevant provisions of the Athens Protocol (those for which there is Community competence, in this case Articles 10 and 11) would be incorporated into the body of EU law. In this way the legal obstacles for EU Member States to ratify the Protocol would be removed without the rights of any other States Party to the Protocol being affected.

2 Is this clause new?

No. Clauses allowing for regional economic integration organizations to become parties are increasingly common in multilateral agreements. There are numerous such clauses in conventions adopted under the aegis of the United Nations and its specialized agencies, many of which are already ratified or acceded to by the European Community. This is notably the case in the field of environmental protection, trade, agriculture and fisheries, where the Community competence is well-established. The European Community is also a contracting party to the 1982 UN Convention on the Law of the Sea. In the field of liability for passengers, Article 53 of the Montreal Convention contains a clause to the same effect⁴ and the process of ratifying this

⁴ The relevant provisions of Article 53 read:

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organisation in Montreal until it enters into force in accordance with paragraph 6 of this Article.
2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.
3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.
4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.
6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.
7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

agreement is well underway in the Community. It is true, however, that the Athens Protocol is the first instrument adopted under the aegis of the IMO which raises this issue.

3 Which are the precedents for the wording of the proposed article?

Since the existing accession clauses show some degree of variation, there may not exist a completely similar article in any of the existing conventions. In the present case, the Community has wished to facilitate the discussions by building upon the text which already exists within square brackets in Article 19 of the draft protocol.

All proposed amendments to Article 19 are based upon existing agreements.

Paragraph 2, setting out the principles relating to voting in more detail, is based upon existing precedents in numerous existing international conventions, which provide for voting.⁵

The competence declaration (paragraph 4), which serves the purpose of clarifying for non-EU States the extent of the Community competence at any particular point in time, is equally a standard clause which exists in a similar format in a number of international conventions.⁶

The new paragraph 5 is based on the corresponding provision in Article 5.3 of Annex IX to the 1982 United Nations Convention on the Law of the Sea. It serves to clarify that matters which are not explicitly listed in the declaration/notification of competence shall be presumed to remain the competence of the Member States of the Regional Economic Integration Organization.

4 The paragraph on voting seems unnecessary, in light of the limited voting provisions in the Protocol and the absence of EC competence in those matters.

It is true that the only provisions in the draft Athens Protocol which contain rules on voting relate to matters which are outside Community competence (revision of limits). Yet, the voting provisions serve a purpose in clarifying the full implication of the accession of a regional economic integration organization. The wording of this article is drafted in order to “last” and to stand potential future changes of the extent of the Community competence. In light of the fact that the Athens Protocol is the first IMO instrument to address this issue, it is considered important to achieve a wording which is as complete as possible, while still being based on texts that already exist in international conventions.

⁵ Examples include the 1992 UN Framework Convention on Climate Change (Article 18.2); the 2000 UN Convention against Transnational Organized Crime (Article 39.2); the 2001 Stockholm Convention on Persistent Organic Pollutants (Article 23.2)

A slight modification of the standard wording of the cited conventions has been made in order to take into account the special position of Denmark (being an EU Member State, but still not bound by Regulation 44/2001) in the present case.

⁶ Examples include: the 1992 UN Framework Convention on Climate Change (Article 22.3); the 2000 UN Convention against Transnational Organized Crime (Article 37.3); the 2001 UNIDROIT/ICAO Convention on International Interests in Mobile Equipment (Article 48.2); the 2001 Stockholm Convention on Persistent Organic Pollutants (Article 25.3).

As explained in the previous footnote, a slight modification of the most commonly used text has been made to take into account the special situation arising from the position of Denmark in the present case.

5 Does the clause affect any rights or duties for non-EU States?

No. The accession clause will not affect the rights or duties of States outside the EU.

6 Does the clause bring any additional advantage for the EU or its Member States?

No. The proposed article tries to make it very clear that there will be no additional benefit for the EU or its Member States, in terms of number of votes or otherwise. Nor will it bring about any new competence to the European Community. The main advantage of the article is that it would remove a very serious obstacle for EU Member States to ratify the Athens Protocol, should the accession clause not be there.

7 Does the clause have any implications on the requirements or procedures for EU Member States to ratify the Athens Protocol?

No. The clause as such is completely neutral as to how, and if, the Protocol should be ratified by the European Community and its Member States. It does not specify at what time such ratification should take place nor does it imply any specific order or co-ordination of ratification procedure.

8 What rights and obligations would the European Community undertake through the ratification or accession of the Athens Protocol?

It follows from other parts of this document that the EC ratification/accession is complementary to that of its Member States. The purpose is to ensure that all rights and obligations of the Protocol are exercised, either by the Community or by its Member States, but never by both. The determining issue as to which entity undertakes to perform them is the division of competence. As far as the Community is concerned, its ratification is only significant for the parts over which it has competence. Consequently ratification would entail neither rights nor obligations for the European Community for the (the great majority of) parts of the Protocol over which it has no competence.

As for the parts which are under Community competence (to be further specified in the declaration/notification to the Secretary-General) the Community would substitute its Member States and assume their rights and obligations. Put in a different way, the Community would only ratify/accede to a part of the Protocol. This part of the Protocol would apply in the whole European Community (except Denmark, in this case) whether a particular Member State is a party to the Protocol or not. For the European Community, ratification of the Protocol (which can take place only once there is specific approval for it by the EU Member States) would mean that the parts of the Athens Protocol which belong to Community competence are incorporated into the body of EC Law.

9 Given that the wording 'States Parties', Contracting States' etc. are used throughout the Protocol and in the underlying Athens Convention, does not the proposed Article 19 necessitate a whole range of consequential amendments elsewhere in the instruments in order to cater for the new situation?

It is believed that this issue is resolved by the wording in the first paragraph of Article 19, which makes it clear that a regional economic integration organization, should it become a party to the Protocol, would have the same rights and obligations as those of States Parties. Through this wording, references to States Parties in the Protocol would encompass such organizations as well, unless explicitly stated otherwise.

Recognition and enforcement of judgments

10 Would the proposed new paragraph imply a continued application of EU Regulation 44/2001 between EU Member States?

Since the provisions on recognition and enforcement of judgments of Regulation 44/2001 generally are less restrictive than the rules provided for in paragraphs 1 and 2 of Article 17bis, EU Member States could continue to apply the main thrust of the Regulation. EU Member States could in other words continue to recognise and enforce judgments given in other EU Member States to a wider extent than the mere application of the provisions of paragraphs 1 and 2 of Article 17bis would imply. On the other hand, the Regulation should be applied only to the extent that it would ensure at least the same level of recognition as those two paragraphs. In this way a certain minimum threshold for the standards for recognition and enforcement of judgment under the Athens Protocol is achieved among its all Parties. In any case, however, Regulation 44/2001 only deals with the way a judgment given in one EU Member State is recognised and enforced in another EU Member State.

11 Would the continued application of EU Regulation 44/2001 have any implications on how judgments of an EU Member State are to be recognised and enforced in another State or vice versa?

No, the Regulation only deals with how a judgment in one EU Member State is recognised and enforced in another EU Member State. Recognition and enforcement of judgments between EU States and other Parties to the Athens Protocol will continue to be governed by the Protocol and national laws.

12 What is the main content of Regulation 44/2001?

Because of the complexity of the matter, this question is addressed separately in Annex 2. It should be noted, however, that the proposed new paragraph 3 to Article 17bis does not, as previous proposals on this issue have done, imply a complete disconnection between the application of Regulation 44/2001 and the Athens Protocol's rules on recognition and enforcement of judgments. This, in combination with the fact that the Regulation only regulates the recognition and enforcement of judgments between EU Member States, means that there is no immediate need for States outside the EU to have detailed knowledge of the EU Regulation for the purpose of the Athens Protocol. Nevertheless, following requests from several IMO Member States, a summary and excerpt of the relevant parts of Regulation 44/2001 is provided for information purposes in Annex 2.

ANNEX 2

MORE DETAILED INFORMATION ON EU REGULATION 44/2001 AND ITS PROVISIONS ON RECOGNITION AND ENFORCEMENT**1. Main content**

Council Regulation 44/2001 sets up a virtually automatic system for recognition and enforcement of judgments within the EU. It is based on the principle of mutual trust in the administration of justice in the EU and that judgments given in a Member State are to be recognised automatically in another Member State without the need for any procedure, except in cases of dispute.

Similarly, the procedure for enforcement of judgments is made more expeditious. The declaration that a judgment is enforceable is issued automatically after purely formal checks of the documents supplied, without there being any possibility of automatically raising any of the grounds for non-enforcement provided for by the Regulation (Articles 39 to 42).

However, respect for the rights of the defence means that the defendant is able to seek redress, in an adversarial procedure, against the judgment given if he believes one of the grounds for non-recognition applies. Redress procedures are available to the claimant where the application for a declaration of enforceability has been rejected.

The main rules are the following :

A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required. Even if the judgment is not final or is still subject to an appeal, it is subject to enforcement. However, a court of a Member State in which recognition of a judgment covered by the Regulation is sought may stay the proceedings if an ordinary appeal against the judgment has been lodged.

A judgment shall not be recognised (or enforced) :

- (1) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;
- (2) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so (in the court of origin);
- (3) if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;
- (4) if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

Subject to point (1), the jurisdiction of the court of the Member State of origin may not be reviewed. Under no circumstances may a foreign judgment be reviewed as to its substance.

A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. Main differences between Regulation 44/2001 and the draft Athens Protocol

a) Procedure and conditions for enforcement

Article 17bis .2 of the draft Athens Protocol refers to the procedure for enforcement of foreign judgments, if any, of each Contracting State: "A judgment recognised under paragraph 1 of this article shall be enforceable in each State Party as soon as the formalities required in that State have been complied with." As explained under question 9, the procedure under Regulation 44/2001 is already very 'light' within the EU. In addition, future simplifications are expected and it is foreseen that there will be no more requirements for enforcement of judgments given in EU Member States (abolition of the "exequatur" procedure).

According to the Athens Protocol, the judgment is recognised only if "it is no longer subject of ordinary forms of review". This is not the case for judgments falling within the scope of the Regulation 44/2001, which can be enforced even if they are only enforceable on a provisional basis.

b) Grounds for refusal

The grounds for refusal are different. The Regulation does not, like Article 17bis.1 a) of the Athens regime, allow the possibility to refuse the recognition of an EU judgment for reasons of "fraud".

The grounds for refusal of Article 17bis.1 b) of the draft protocol are less precise than those of Regulation 44/2001. For the service of documents which instituted the proceedings and for the rights of defence, the requested court can, according to the Regulation, refuse to enforce the judgment only where it was given in default of appearance and unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so in the court of origin. In practice, this ground is the one which is most used by litigants.

In addition, the Regulation contains two other grounds for refusal which are not explicitly mentioned in the draft protocol (points (3) and (4) under question 9 above).

The full text of Chapter III of Regulation 44/2001 is reproduced in the Appendix.

Appendix

RECOGNITION AND ENFORCEMENT

Article 32

For the purposes of this Regulation, 'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

Section 1

Recognition

Article 33

1. A judgment given in a Member State shall be recognized in the other Member States without any special procedure being required.
2. Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be recognized.
3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 34

A judgment shall not be recognized:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;
4. if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

Article 35

1. Moreover, a judgment shall not be recognized if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.
2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.

Article 36

Under no circumstances may a foreign judgment be reviewed as to its substance.

Article 37

1. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin, by reason of an appeal.

Section 2

Enforcement

Article 38

1. A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 39

1. The application shall be submitted to the court or competent authority indicated in the list in Annex II.

2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

Article 40

1. The procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.

2. The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the Member State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

3. The documents referred to in Article 53 shall be attached to the application.

Article 41

The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 42

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.
2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

Article 43

1. The decision on the application for a declaration of enforceability may be appealed against by either party.
2. The appeal is to be lodged with the court indicated in the list in Annex III.
3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.
4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 26(2) to (4) shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.
5. An appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 44

The judgment given on the appeal may be contested only by the appeal referred to in Annex IV.

Article 45

1. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.
2. Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 46

1. The court with which an appeal is lodged under Article 43 or Article 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.
2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.
3. The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 47

1. When a judgment must be recognized in accordance with this Regulation, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State requested without a declaration of enforceability under Article 41 being required.
2. The declaration of enforceability shall carry with it the power to proceed to any protective measures.
3. During the time specified for an appeal pursuant to Article 43(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 48

1. Where a foreign judgment has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.
2. An applicant may request a declaration of enforceability limited to parts of a judgment.

Article 49

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.

Article 50

An applicant who, in the Member State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedure provided for in this Section, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State addressed.

Article 51

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Article 52

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State in which enforcement is sought.

Section 3

Common provisions

Article 53

1. A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.
2. A party applying for a declaration of enforceability shall also produce the certificate referred to in Article 54, without prejudice to Article 55.

Article 54

The court or competent authority of a Member State where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Regulation.

Article 55

1. If the certificate referred to in Article 54 is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.
2. If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be certified by a person qualified to do so in one of the Member States.

Article 56

No legalization or other similar formality shall be required in respect of the documents referred to in Article 53 or Article 55(2), or in respect of a document appointing a representative *ad litem*.