Jurisdiction, Recognition and Enforcement of Civil Judgments under EU Law

Regulation 1215 of 2012
„Brussels Ia-Regulation“

Prof Dr Thomas Rauscher
Study Materials

- EU-material
- ECJ-decisions
- Text and collected materials EC-reg about civil procedural law
- Study book
- Commentary

- www.europe.eu
- www.curia.eu
- www.euzpr.eu

Rauscher, IPR⁵, 2017, published: C.F.Müller, Heidelberg

Rauscher, EuZPR/EuIPR, 2015/16, published: Otto Schmidt
Interpretation of EU-Reg on Civil Procedure by ECJ

Jurisdiction

ECJ deciding on
Preliminary rulings under
Art 267 (1)(b) TFEU
(EC/EU-Reg are EU law)

TFEU = Treaty on the
Functioning of the EU

ECJ = Court of Justice of
European Union

Sources & methods of interpretation

ECJ-decisions on
- Brussels I Convention 1968
- Brussels I Regulation 44/2001

Autonomous („European“)
interpretation or reference to
national law

see: Art 7 (1) (a), (c)
(place of performance)
see: Art 62 (domicile)
Regulation No 1215/2012 of 12/12/12
Brussels Ia-Regulation

Aspects covered:

- Jurisdiction (=international)
- Litispendency between Member States
- Recognition of Member State Judgments
- Enforcement of Member State Judgments

Member State:

- all EU members with the exception of Denmark
- Agreement on the application of Brussels I-Reg for Denmark, in force since July 1, 2007, may be extended to Brussels Ia (see Recital 41)
## Related Instruments – Territorial Scope

<table>
<thead>
<tr>
<th>Former instruments</th>
<th>Parallel instruments (of treaty nature)</th>
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<tbody>
<tr>
<td><strong>Brussels Convention 1968</strong>&lt;br&gt;- Accession conventions necessary for new EC-members</td>
<td><strong>Lugano Convention 1988</strong>&lt;br&gt;- Similar to 3rd Accession convention&lt;br&gt;- EU-Members, EEA-Members and CH</td>
</tr>
<tr>
<td><strong>Brussels I-Regulation 2001</strong>&lt;br&gt;- Applicable to any member of the EU participating in Title V TFEU</td>
<td><strong>Lugano Convention 2007</strong>&lt;br&gt;- Similar to Brussels I-Regulation&lt;br&gt;- EU-Members, Iceland, Norway, CH</td>
</tr>
</tbody>
</table>
Brussels Ia Reg / other instruments: Ranking

Art 68
Brussel Ia-Regulation supersedes Brussels I convention (as did Brussels I-Regulation)

Art 66 (next slide)
Brussels Ia-Regulation ./. Brussels I-Regulation

Art 69, 70
B Ia-Reg supersedes conventions between Member States on the same matter as far as B Ia-Reg applies (material, personal, temporal)

Art 71 ss
B Ia-Reg does not affect -conventions with third parties concluded before Brussels I-Reg -2007 Lugano Convention (if related to IC, N, CH)
Temporal scope of application (Art 66)

**Jurisdiction, Litispendency**

Proceeding instituted and authentic instruments drawn or registered after 10 January 2015 (Art 66 (1))

„instituted“ = „court seised“ (Art 30)

„old“ proceedings continue under Brussels I-Regulation

**Recognition, Enforcement**

Judgments given in proceedings ... instituted on or after 10 January 2015 (Art 66 (1)) [reason: new type of enforcement]

Judgments given in proceedings instituted before: Brussels I-Reg

Judgments under Brussels Convention: see Art 66 Brussels I Reg
Material Scope of Application (Art 1)

Art 1 (1):
Civil and Commercial Matters

- Autonomous interpretation
- Nature of court irrelevant (civil action in penal court)
- Not, if administrative body acting by subordination
- Not: Revenue and Customs

Art 1 (2):
...shall not apply to...

- Civil Status, Matrimonial Property (Divorce: Reg 2201/2003 Brussels IIa)
- Bankruptcy proceedings (Reg 1346/2000)
- Social Security
- Arbitration
- Maintenance (Reg 4/2009)
- Succession (Reg 650/2012)
Cases (Article 1 (1))

LTU/Eurocontrol [29/76]
    NOT CIVIL: defendant European agency acting as “superior”

Sonntag/Waidmann [C-172/91]
    CIVIL: criminal court judgment for damages against German teacher (state official)

Lechouritou et al/F.R. of Germany [C-292/05]
    NOT CIVIL: damages for WW2 crimes by Wehrmacht & SS

Fahnenbrock et al/Hellenic Republic [C-226/13 etc]
    CIVIL: compensation for disturbance of ownership of GR government bonds (if not obviously out of scope)
Cases (Article 1 (2))

De Cavel/De Cavel ONE [143/78]
Matrimonial property = Property issues arising out of particular rules which apply to husband and wife only

De Cavel/De Cavel TWO [120/79]
Consequential matters to be decided with a divorce (= status=not B Ia) case may fall within the scope of B Ia if not excluded by their own type (thence: maintenance)

Marc Rich/Società Italiana Impianti [C-190/89]
State court proceeding on the nomination of an arbiter is „arbitration“: B Ia NOT applicable
Preliminary question of validity of arbitration agreement is NOT „arbitration“ : B Ia applicable
Personal Scope of Application: Jurisdiction

Art 5 (1): Defendant domiciled in ANY Member State:
   Brussels Ia - jurisdictional rules only

Art 62: Domicile of natural person defined under national law of respective Member State

Art 63: Domicile of company or other legal person
   Statutory seat OR central admin OR principal place of business

Art 6 (1): Defendant NOT domiciled in ANY Member State:
   National law („lex fori“) applies

Art 6 (2): „Exorbitant“ Jurisdictions (see Art 76) apply in favor of any plaintiff domiciled in the forum state without regard to nationality
Cases (Article 5, 6)

**Group Josi/ UGIC [C-412/98]**
Brussels I applies as against defendant domiciled in a Member State even if plaintiff is not domiciled in any Member State and the case is not relied to any other M.S.

**Owusu/Jackson et al [C-281/02]**
Brussels I applies and the courts of the defendant’s domicile do have jurisdiction under Art 4 even if the case is strongly connected to a non-Member State. “Forum non conveniens“ does not apply under Brussels I

**Fiction**
According to Art 6(2) a German citizen living in Paris is to be treated as French citizen when bringing action against a US-domiciliary in French courts under Art 14 CC.
Jurisdictional System

General J. (Art 4): Domicile of the defendant for all causes of action with the exception of exclusive jurisdictions

Special J. (Art 7, 8): May apply to particular causes of action OR particular constellations of the parties involved

Exclusive J. (Art 24): Must apply to particular causes of action which involve state interest

J. Agreement (Art 25): May be agreed on in the form of Art 25 if not excluded under Art 15, 19, 23 [see: protected persons] May be exclusive or may not according to interpretation

Protected persons: Supersede all other jurisdictional rules

Art 10 ss: Insurance - Art 17 ss Consumer
Art 20 ss Individual contract of employment
Special Jurisdiction (Art 7)

**General prerequisite:**
Defendant domiciled in **one**, proceeding in **another** Member State

**Applies to particular causes of action:**
to assure „best administration of justice“
(proof, local rules etc)

**Not mandatory:** Plaintiff may choose between Art 7 and Art 4
### Contract: Place of Performance (Art 7 (1))

#### Contract cases

<table>
<thead>
<tr>
<th>Art 7 (1)</th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Contract:</strong> Claim arising out of contractual relationship (even if validity in dispute)</td>
<td></td>
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<tr>
<td>No annex J for tort claims</td>
<td></td>
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<tr>
<td>Not applicable if indefinite places of perf.</td>
<td></td>
</tr>
</tbody>
</table>

#### Art 7 (1)(a)

<table>
<thead>
<tr>
<th>If contract not of type (b) or (b) not functioning [see (c)]</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary obligation in question</td>
<td></td>
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<tr>
<td><strong>Place of Performance:</strong> According to the law as applicable under the conflict rules of the forum, or</td>
<td></td>
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<tr>
<td>Agreement as to place of performance</td>
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</tbody>
</table>

#### Art 7 (1) (b)

<p>| | |</p>
<table>
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<tr>
<th></th>
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<tbody>
<tr>
<td>Sale of goods: place of delivery</td>
<td></td>
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<tr>
<td>Except: Services: place of provision of service or where service should have been.</td>
<td></td>
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<tr>
<td>One place of performance for the entire contract</td>
<td></td>
</tr>
</tbody>
</table>
Cases (Article 7 (1))

Color Drack GmbH/Lexx Intl Vertriebs GmbH [C-386/05]
7(1)(b)(i) applies if several places of delivery in one Member State. If one capital place of delivery, courts of this place have venue. Otherwise the plaintiff may choose.

Electrosteel Europe sa/Edil Centro SpA [C-087/10]
7(1)(b)(i): If merchandise is to be shipped under a contract of sale, the place of performance must be determined according to the terms of the contract including INCOTERMS.

Rehder/Air Baltic Corp [C-204/08]
7(1)(b)(ii) applies to airline transportation. Place of performance at the departure and the arrival ports; plaintiff may choose.
| „Tort“ Definition | Responsibility for damages without contract |  
| | No annex jurisdiction for contract claims |  
| | Pre-contractual obligation under Art 7 (2) [see also Art 2(1) Rome II-Reg |  
| Jurisdiction | Place where the tort occurred |  
| | Torts committed over distance: place of action OR place of primary damage |  
| | Torts with multiple places of damage (press related, environmental!): Only those damages that occurred in the particular jurisdiction |  
| | Preventive claims („may occur“) included |  
| | Consumer protection agency’s preventive claims included |  

TR 2017
Cases (Article 7 (2))

Folien Fischer AG & Fofitec AG/RITRAMA SpA [C-133/11]

Art 7(2) applies to action for negative ascertainment claiming the non-existence of tortious responsibility.

Pinckney/KDG Mediatech AG [C-170/12]

Art 7(2) applies in intellectual property case concerning a publication on the www. Court has jurisdiction, if publisher domiciled in another Member State but may decide only on damages that arose in the Member State of the court.

Andreas Kainz/Pantherwerke AG [C-45/13]

Action for product liability may be brought in the place of production of the damaging product.
## Other Special Jurisdictions (Art 7 (3)-(7))

<table>
<thead>
<tr>
<th>Issue</th>
<th>Relevant Details</th>
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<tr>
<td><strong>Adhesion (Art 7 (3))</strong></td>
<td>- Civil damages in Criminal Court if competent;</td>
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<tr>
<td></td>
<td>Exception: Art 64: Rights of defense</td>
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<tr>
<td><strong>Property of cultural objects (Art 7 (4))</strong></td>
<td>- Civil property claim for the recovery of cultural objects as defined under</td>
</tr>
<tr>
<td></td>
<td>Directive 93/7/EEC</td>
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<tr>
<td><strong>Agency (Art 7 (5))</strong></td>
<td>- Permanent branch, own management, under supervision;</td>
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<tr>
<td></td>
<td>only for claims arising out of the branch’s operation</td>
</tr>
<tr>
<td><strong>Trust (Art 7 (6))</strong></td>
<td>- Action as settlor, trustee, beneficiary of a trust: Domicile of the trust</td>
</tr>
<tr>
<td><strong>Salvage of cargo (Art 7 (7))</strong></td>
<td>- Jurisdiction at the place where cargo has been/could have been arrested</td>
</tr>
</tbody>
</table>
Several Parties (Art 8)

**Concept:**
- Defendant domiciled in a Member State may be sued as additional defendant

**Several Defendants** (Art 8 (1))
- First defendant domiciled in M.State of court. Close connection between claims (see Art 30)

**Intervention Warranty** (Art 8 (2))
- Warranty, guarantee, third-party proceeding; Not if sole intention to remove defendant from other jurisdiction; Not applicable in A, D & H (Art 65 (1))

**Counterclaim** (Art 8 (3))
- Same contract or cause of action ./ Compensation: Means of defense, no jurisdiction necessary

**Contract claim related to rights in rem** (Art 8 (4))
- Personal action may be brought in jurisdiction for related real property action
Cases (Article 8)

Freeport plc/Olle Arnoldsson [C-098/06]

Art 8 (1) applies even if the claims against different defendants arise out of different causes of action ... if those actions are to be decided together in order to avoid conflicting decisions

Glaxosmithkline/Rouard [C-462/06]

Art 8 (1) does not apply to controversies concerning individual labour contracts as Chapter II Sec 5 prevails

Land Berlin/Sapir & oth [C-645/11]

Close connection under Art 8 (1) is given for action against several defendants in different Member States who are claiming reparation. Art 8 (1) does not apply against defendants NOT domiciled in any Member State.
Exclusive Jurisdiction (Art 24)

Why exclusive Jurisdiction?

Public interest involved

Consequences:

- Applies regardless of domicile – even if defendant is not domiciled in any Member State
- Applies if and only if relevant criteria are situated in a Member States
- No valid prorogation against exclusive jurisdiction
- No entering an appearance against exclusive jurisdiction.
Exclusive Jur. for immovable property (Art 24 (1))

Rights in rem

- Immovables defined by lex situs
- Immovable property rights: against everybody; no personal claims

Tenancies

- Tenancies: right of use against payment (autonomous definition)

„Holiday Flats“ exception

- Private tenancies, not to exceed 6 months
- Both parties domiciled in same Member State
- additional exclusive jurisdiction of the courts of both parties‘ domicile
Cases (Article 24)

Apostolides/Orams&Orams [C-420/07]
Under Art 24 (1) Republic of Cyprus’ courts do have jurisdiction even if the property concerned is situated in that part of the country over which the R of Cyprus authorities presently do not exercise effective control.

Weber/Weber [C-438/12]
Art 24 (1) applies to an action concerning a right of pre-emption if such right is actionable against everyone.

Berliner Verkehrsbetriebe/JP Morgan [C-144/10]
Art 24 (2) does not apply if a corporation objects against a contractual claim saying that the corporate decision permitting the signing of such contract was invalid.
## Prorogation of Jurisdiction (Art 25) [Application]

<table>
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<tr>
<th>Material Scope</th>
<th>Admissibility, parties, form, general condit.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Independent of other terms of contract (5)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Territorial Scope</th>
<th>Regardless of the parties’ domicile</th>
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<tbody>
<tr>
<td></td>
<td>A court or the courts of a Member State</td>
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<tr>
<td></td>
<td>Not applicable in mere national cases</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Temporal scope</th>
<th>Art 66 (1) Agreements entered into since 10 January 2015</th>
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<tbody>
<tr>
<td></td>
<td>Art 66 (2) B I-Reg continues to apply to agreements entered into before</td>
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<tr>
<td></td>
<td>Before B I-Reg: No invalidity if agreement was valid under former rules</td>
</tr>
</tbody>
</table>

| Effect            | Exclusive Jurisdiction unless agreed otherwise (Art 25 (1)) |
## Prorogation of Jurisdiction (Art 25) [Form]

| In Writing Art 25 (1) (a)/1 | Written consent of both parties gives proof of **agreement**
|                             | Including letter, telefax, e-mail (Art 25 (2))
|                             | General condit.: Prior knowledge necessary |
| Evidenced in Writing Art 25 (1) (a)/2 | Agreement neccessary
|                                | one-sided confirmation sufficient if it gives evidence of prior agreement |
| Individual Practice Art 23 (1) (b) | Arising out of earlier relationship
|                                   | General conditions in delivery notes |
| Usage in intl Trade Art 23 (1) (c) | **International** Trade
|                                    | Widely known/regularly observed in this type of trade
|                                     | Both parties aware of/ought to be aware of |
Cases (Prorogation)

Powell Duffryn/Petereit [C-214/89]
A prorogation clause in the statute of a corporation is valid if it has been duly registered and applies against shareholders without regard to time they acquire their shares.

Refcomp SpA/Axa Assurance SA & anoth. [C-543/10]
A prorogation clause in a contract between the producer and the first purchaser of a product is not binding on a further purchaser unless there is proof of consent of such further purchaser.

Jaouad El Majdoub/CarsOnTheWeb.Deutschland.GmbH [C-322/14]
A prorogation clause in general conditions attached to an electronic contract by „click wrapping“ is valid if it can be downloaded and saved OR printed.
Entering an Appearance (Art 26)

Prerequisites:

Defendant answers the action not only to contest jurisdiction

Answering the action after contesting jurisdiction is permitted in order to avoid being prevented from defense

Consequence:

The court apart from jurisdiction derived from other provisions acquires jurisdiction

Not applicable if:

Exclusive jurisdiction of another court

Consumer, insurance, individual labor contract:

Art 26 applies only after due information (Art 26 (2))
Consumer Contract (Art 17) [Application]

Consumer Contract defined Art 17 (1)
- Contract outside the consumers trade or profession
- B 2 C only
- Applies only to particular types
  - Sale of goods on instalments
  - Loan or credit on instalments to finance a sale
  - With Business pursuing OR directing activity in or to the Member State of consumer’s domicile (www-cases!)

Scope of application
- Art 6: Defendant domiciled in M. S.
- Art 17 (2): Applies if contract arising out of business of branch etc in a M. S.
- Art 7 (5) applies: J in courts of the branch
- Art 17 (3): Not applicable to contract of transport, applicable to “travel contract”
Consumer Contract (Art 18, 19) [Jurisdiction]

Consumer as plaintiff Art 18 (1)
- Courts of the Member State of consumer’s domicile or other party’s domicile
- AND Art 7 (5): Courts of the Member State of the branch’s/agency’s domicile

Consumer as defendant Art 18 (2)
- Only courts of M.S. of consumer’s domicile
- Counterclaims not affected (Art 18 (3))

Prorogation of Jurisdiction Art 19
- Art 19 takes preference over Art 25
  - Agreement after dispute arises
  - In favor of the customer
  - Conferring jurisdiction to the courts of the Member State where both parties are habitually resident when entering into the agreement
- Formal requirements according to Art 25
Cases (Consumer)

Pammer/Schlüter _ Hotel Alpenhof/Heller [C-585/08_C-144/09]
A business „directs activity“ to the state of the consumer’s domicile under Art 17(1)(c) if from its web-site and the entire course of dealing results that such business had the intention to enter into contracts with consumers domiciled - inter alia – in this Member State. All relevant criteria need to be taken into consideration.

Lokman Emrek/Vlado Sabranovic [C-218/12]
Art 17 (1)(c) applies even if the business’s web-site which was directed to the consumer’s domicile was not relevant for the contract in action.

Harald Kolassa/Barclays Bank [C-375/13]
Art 17 (1) does not apply to an action brought by a consumer against a bank issuing bonds the consumer bought elsewhere, if there is no contract with the bank.
Matters related to Insurance (Art 10-16)

Insurance matters defined (Art 10)
- Action between insurer and insured, beneficiary or policyholder
- Not applicable to re-insurer/re-insurer-cases
- Applies also to claims of victim bringing direct action against liability insurer (Art 13 (2))

Jurisdiction
Art 11, 14, 15
- Against insurer:
  - domicile of the insurer
  - domicile of the claimant (plaintiff)
  - domicile of a branch (Art 11 (2) + 7 (5))
- Against insured person etc:
  - Domicile of the defendant (Art 14 (1))
  - Counterclaim not affected (Art 14 (2))

Prorogation only in certain situations (Art 15)

Art 12, 13, 16
- Additional rules for liability, immovables, „great risk“
Cases (Insurance)

FBTO Schadeverzekeringen NV/Odenbreit [C-463/06]
Under Articles 13 (2) and 11 (2) the victim of an accident may bring direct action against the other party’s liability insurer in the courts of the plaintiff’s domicile if such direct action applies [see Art 18 Rome II-Reg] and the insurer is domiciled in another Member State.

Vorarlberger Gebietskrankenkasse/WGV AG [C-347/08]
Under Articles 13 (2) and 11 (1)(b) a social insurance company may not bring an action against the tortfeasor’s liability insurance domiciled in another Member State even if such action is based on the victim’s original claim for damages which was ceded by operation of law to the social insurance company.
Individual Contracts of Employment (Art 20-23)

Employment contract defined
- Dependent employment in a broad sense
- Not including self-employment
- Not including collective labor law

Jurisdiction
Art 21
- Action against employer in the courts of
  - his domicile (Art 21 (a))
  - the habitual place of work (Art 21 (b)(i))
  - if none, the place of the business which engaged the employee (Art 21 (b)(ii))
- Employer with branch in Member State presumed to be domiciled there (Art 21 (2))

Art 22
- Action against employee
  - Member State of the domicile (Art 22(1))
  - counterclaim not affected (Art 22(2))

Art 23
- Jurisdiction Agreements only if
  - entered into after dispute arose, or
  - in favor of employee
Cases (Employment contract)

Petrus W Rutten/Cross Medical Ltd [C-383/95]

If an employee carries out his work in more than one Member State, the place where he habitually carries out his work is defined as the place which the employee made the actual center of his professional work. The time he spends in his office and the fact that he regularly returns there after business trips is taken into consideration.

Ahmed Mahamdia/DPR of Algeria [C-154/11]

An embassy of a Non-Member-State situated in a Member State is considered a „branch“ for the purpose of a labour contract concluded by this embassy in the name of such Non-Member-State, if the employee’s functions are not related to sovereignty.
Examination as to Jurisdiction (Art 27, 28)

Exclusive Jurisdiction of courts in other Member State

- Court declares on its own motion that it has no jurisdiction (Art 27)
- Exception: Priority prevails if both courts have exclusive jurisdiction (Art 31)

Jurisdiction of the court itself

- No examination if defendant enters an appearance (Art 26 (1))
- If defendant does not enter an appearance [either not present or contesting]
  - Examination of jurisdiction by the court ex officio (Art 28 (1)):
- If defendant not present & court has jurisd. Stay of the proceeding until proof of service (Art 28 (2)-(4))
  - Art 19 EC Reg on service (Art 28 (3))
  - Art 15 Hague Conv on service (Art 28 (4))
Provisional & Protective Measures (Art 35)

Provisional measures defined
- Only if within the material scope of application of B Ia-Reg
- Including measures for preliminary performance, if restitution secured
- Not including measures for discovery

Jurisdiction (Art 35)
- Either under the rules of B Ia-Reg
- Or under the rules of the lex fori even if the courts of another Member State have jurisdiction as to the substance
Lis pendens (Art 29, 33)

Same cause of action in other Member State (Art 29)
- Identity as to the central point of the action
  - same cause of action not required
  - only claim, not a defense is relevant
- Same parties
- Stay of proceeding in court 2nd seised
- Declines jurisdiction if jurisdiction of court 1st seised has been established

...then...

Definition „court seised“: Art 32
- Writ of action lodged with the court if plaintiff takes all subsequent steps

Same cause of action in Non-Member State
- AND
  - jurisdiction based on Art 4, 7, 8, 9
  - recognition expected (Art 33 (1)(a))
  - discretion (Art 33 (1)(b))
- Court MAY stay proceeding and may continue any time

...then...

...
Related actions (Art 30, 34)

**Related Actions in other Member State (Art 30)**

- If decision in other court could lead to a Art 45 (c) -type situation (irreconcilability)
  - Same cause of action not necessary
  - Same parties not necessary
- Court 2nd seised may stay proceeding
- May also decline jurisdiction, if other court has jurisdiction and action is pending there in first instance

**Related action in Non-Member State (Art 34)**

- AND
  - expedient to hear both actions together
  - recognition expected
  - discretion
- Court MAY stay the proceeding, may continue any time, may dismiss if judgment in other court given and can be recognised
Cases (Lis pendens and related actions)

Gubisch/Palumbo [144/86]
Art 29 applies if one party brought an action for negative ascertainment of the validity or the voiding of a contract and the other party later brings action for the performance of the same contract [„Torpedo-actions“].

Overseas Union/New Hampshire Insurance [351/89]
Art 29 does not require domicile of a party in a Member State and applies even if jurisdiction is based on Article 6.

Cartier parfums SAS & anoth/Ziegler France SA [C-1/13]
The jurisdiction of the court first seised is „established“ for the purpose of Art 29 (2) if that court did not decline jurisdiction of its own motion and no party did contest jurisdiction together with the first statement of defense in that proceeding.
Recognition of Judgments

proceeding started before 10 Jan 2015

Judgment

Art 32 B I-Reg
- Decision as to the merits
- Not applicable to procedural decisions

Recognition

Art 33 (2), (3) B I-Reg
- No particular proceeding (incidenter)
- Application for formal decision admissible

Recognition as the principle

Art 33 (1) B I-Reg
- No revision to the merits (Art 36 B I-Reg)
- No examination of conflict law (Art 36 B I-R)
- No examination of jurisdiction (Art 35 (3) B I-R)

Impediments to Recognition

Art 34 B I-Reg (next slide)
- Conflict with certain jurisdictional rules (Art 35 (1) B I-Reg)
  - Consumer, Insurance, Exclusive
  - Not: contract for employment
<table>
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<th>Impediments against recognition (Art 34 B I-Reg)</th>
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<td><strong>Public policy</strong></td>
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<tr>
<td>Art 34 (1)</td>
</tr>
<tr>
<td>- Material or procedural</td>
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<tr>
<td>- Only if manifestly contrary to public pol.</td>
</tr>
<tr>
<td><strong>Service of Action</strong></td>
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<tr>
<td>Art 34 (2)</td>
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<tr>
<td>- Service not timely (for defense)</td>
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<td>- Formal mistakes relevant only if related to</td>
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<td>preparation of defense</td>
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<td>- No appearance</td>
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<td>- Challenge of judgment in Member State of</td>
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<td>origin necessary</td>
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<td><strong>Irreconcilability</strong></td>
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<td>Art 34 (3)</td>
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<tr>
<td>- Conflicting issues between same parties</td>
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<td>- Judgment from Member State where</td>
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<tr>
<td>recognition is sought prevails</td>
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<tr>
<td>Art 34 (4)</td>
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<tr>
<td>- Judgment from other Member State or third</td>
</tr>
<tr>
<td>state prevails only if earlier</td>
</tr>
</tbody>
</table>
Enforcement (Proceeding started before 10 Jan 2015)

Applies to:
- Judgment (Art 38 B I-Reg)
- Authentic instruments (Art 57 B I-Reg)
- Only from Member States

„Exequatur“ required
- No „automatic“ enforcement
- Declaration of enforceability, application necessary (Art 38 (1) B I-Reg)

Prerequisites
- Enforceability in state of origin
- Only formal documentation in 1st instance (Art 53-56 B I-Reg)
- Recognition not to be examined

Appeal
- May be brought (Art 43 B I-Reg)
- May be based on grounds for non-recognition only (Art 45 (1) B I-Reg)
Cases (Articles 32-34 B I-Reg)

Gothaer Allgemeine Versicherungs AG/Samskip GmbH [C-456/11]
Art 32 B I-Reg applies to a decision declining jurisdiction with respect to a prorogation agreement. Under Art 33 B I-Reg the courts of other Member States are bound by the ascertainment of the invalidity of such prorogation.

Diageo Brands BV/Simiramida-04 EOOD [C-681/13]
Art 34 (1) B I-Reg does not prevent recognition if the decision is in conflict with EU-law if there is no obvious breach of either EU-law or principles of national law in the Member State where recognition is sought.

ASML Netherlands BV/Semiconductor Ind Serv GmbH [C-283/05]
In the sense of Art 34 (2) B I-Reg the defendant had a „possibility“ to challenge a default judgment only if he had actual knowledge under a timely service of this judgment.
Enforcement (and Recognition) under B Ia

**Recognition** (Art 36 – 38)
- unchanged principles
- impediments to recognition now become grounds for refusal of recognition (Art 45)

**Enforcement** (Art 39-44)
- NO Exequatur required
- enforceable in any Member State (Art 39)
- formal documentation required (Art 42)
- procedure of enforcement still under the laws of the Member State addressed (Art 41)

**Refusal of rec & enf** (Art 45, 46)
- all grounds for non-recognition (Art 34 B I-Reg prevail under Art 45 B Ia-Reg)
- only proceeding changes:
  - application for refusal of rec/nition (Art 45)
  - application for refusal of enf/ment (Art 46)
Thank you for your kind attendance!

Prof Dr Thomas Rauscher

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