EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Accelerated justice: the coordination between the Brussels Ia Regulation and specific rules in transport and travel packages contracts to lodge compensations claims

Prof. Dr. ROSARIO ESPINOSA CALABUIG
University of Valencia (Spain)

COORDINATING BRUSSELS IA WITH OTHER INSTRUMENTS OF EU LAW:
A ROUNDTABLE ON THEORETICAL AND PRACTICAL ISSUES
Tirana roundtable (online)

15 October 2020

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

INDEX:

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

1. Introduction

Relevance of Travel packages contracts:

1) Relations with 2 different but at the same time connecting fields of Law: consumer law and transport law.

2) Consequences over jurisdiction -depending on the field concerned- and coordination rules between instruments… (art. 67 BIa)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Easily observed in the context of TOURISTIC CRUISES: the best experiment to study the rules and principles of PIL and the COORDINATION between all the instruments involved in this context, having into consideration the principles of the EU and, as a REFERENCE POINT, the art. 67 of Brussels Ia

* Art. 67 Bla- En2Bria- Project
*Art. 71 Bla –BRIaTRA Project

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

2. TRAVEL PACKAGES AS CONSUMER MATTERS ACCORDING TO THE COURT OF JUSTICE AND TO THE DIRECTIVE 2015/2302

Pammer/Alpenhof case

Judgment of 7 December of 2010 in the accumulated cases *Peter Pammer/Reederei Karl Schlüter GmbH & Co. KG* (C-585/08) and *Hotel Alpenhof GesmbH/Oliver Heller* (C-144/09).

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

But in practice, the EU law on package travel coexists with EU and international legislation regarding transport of passengers.

a) Transport of passengers is usually a component of a package travel (often by air) and this can have consequences over passenger damages' claims.

b) Transport of passengers is regulated by international uniform law as well as EU law (there are Conventions and EU Regulations in air, sea and rail transport).

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

The Legal operator faces to a complex legal framework in which the respective area of application of the existing legislations in this field have to be identified.

The coordination of the rules on compensation of the traveler/consumer - against the businessman- according to the Directive 2015/2302 on travel packages-, **and of the traveler/passenger against the carrier (for example by air),** according to the International Conventions (Montreal 1999) and EU regulations on transport (261/2004 Regulation), will be regulated by the Directive 2015/2302, art. 14.5… but not easy...

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Directive 2015/2302 is more specific than the former one as the result of the changes occurred in the tourism market (internet...).
«Package means a combination of at least two different types of travel services for the purpose of the same trip or holiday», if some conditions are accomplished (art.3)...

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

In a sector so relevant as TOURISTIC CRUISES the application of the Directive 2015/2302 on **travel packages** (before Directive 90/314/CEE), **overlaps** to a certain extent with EU and international legislation regarding **transport of passengers (and other sectors as labour law, environmental law…).**

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

In Directive 2015/2302 the organiser of the travel is responsible for the correct execution of all services included in the travel package, regardless of the fact that services had been provided by the same organiser or by a third one, and therefore, in particular, of the transport services provided by a third carrier.

A comparative study of the directives -applicable to travel packages and transport- shows that the content of the damages caused by the travel package organizer is more rigorous than that of those regulated for the carrier (at least in relation to maritime and air carriers).

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

In practice, the consideration of travel packages as consumer contracts and the relation with air transport of passengers has an impact on the PIL system of the Member States and the application, among others, of Brussels Ia and Rome I.

In both regulations, travel packages are considered an "exception of an exception", meaning that they are an exception to passenger transport contracts and considered as consumer contracts in EU PIL.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

3. COORDINATION RULES BETWEEN INSTRUMENTS IN CASES OF COMPENSATION CLAIMS OF THE TRAVELER/CONSUMER AND THE TRAVELER/PASSENGER IN RELATION TO THE INTERNATIONAL JURISDICTION.

1) FOR THE TRAVELER/PASSENGER IN THE AIR TRANSPORT CONTRACTS

2) FOR THE TRAVELER/CONSUMER IN THE PACKAGE TRAVEL CONTRACTS

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

For the air traveler/passenger, the BIa regulation has to be coordinated with the **1999 Montreal Convention** that has rules on jurisdiction in art. 33 (to protect the passenger as weak party).

* The Convention is ***lex specialis*** in relation to the Brussels Ia Regulation.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

But in this context: also the REGULATION 261/2004 . With this act the EU has extended the scope of application of the Montreal Convention also to the transports performed in only a member State (but without extending the material scope of application).

PROBLEM: **Montreal Convention is not applied to the compensation pecuniary claims** based on the Regulation 261/2004 and for these claims the general rules of Brussels Ia regulation (LEX GENERALIS) have to be applied

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

In the case of *ZX v. Ryanair*, the Court of Justice with Judgment 11 APRIL 2019. Case C-464/18 has determine the relation between BIa regulation and 261/2004 regulation on air passenger rights.

Having into account art. 67 of BIa, the Court has underlined that 261/2004 reg. has no rules on jurisdiction and therefore only the BIa reg. is applied.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Bla reg. makes the distinction in art. 17 between the travel packages contracts, assimilated to consumer contracts (art. 18 and 19), and passenger transport contracts (art. 4, 7, and 25).

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

4. INTERNATIONAL JURISDICTION IN TRAVEL PACKAGES CONTRACTS AND PASSENGER CONTRACTS: SCOPE AND LIMITATIONS

A) TRAVEL PACKAGES CONTRACTS

* FIRST RULE (ART. 19). FORUM SELECTION CLAUSES WITH LIMITATIONS
* SECOND RULE (ART. 18). TWO HYPOTHESIS

FORUM SELECTION CLAUSES IN TRAVEL PACKAGES may hinder the consumer's right to take legal action for which reason it could be held null and void as it has been ruled out in the *Costa Crociere* case.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

One aspect of the litigation focused on the claim for damages, including material and non-material loss. The Spanish Supreme Court, by judgment 232/2016 of 8 April 2016, concluded: 1) Passengers had to be compensated for any damage, either material or non-material; 2) The amount of compensation could be determined taking into account the scale of compensation legally laid down for liability arising out of road accidents.

Other aspect of the litigation in the *Costa Concordia* case depended on the characterization of passengers as consumers and the inclusion of a choice of forum clause considered null and void .

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

B) PASSENGERS TRANSPORT CONTRACTS.

FIRST RULE: ART. 25. FORUM SELECTION CLAUSES. LESS LIMITATIONS.

SECOND RULE:

1)DOMICILE OF THE DEFENDANT (art. 4) OR

2)PLACE OF PERFOMANCE OF THE CONTRACT OF TRANSPORT (ORIGIN OR DESTINATION OF THE TRANSPORT…). Art. 7.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

it

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

THANK YOU!
FALEMINDERIT!
¡GRACIAS!

Rosario.Espinosa@uv.es

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

THE RECOGNITION AND ENFORCEMENT OF FOREING JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS IN ALBANIA

Prof. Assoc. Dr. Flutura Kola Tafaj

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

Recognition vs. Enforcement

- Enforceable acts are those that under the Albanian law are considered **“enforcement title”.**

- Article 510 of the ACPC provides a list of enforcement titles, which includes “the foreign judgments that are recognized in the RoA in accordance with the provisions of the ACPC”

- Under the ACPC, a foreign judgment can be enforced in Albania **only after it is recognized by an Appellate Court, which does not decide on the merits of the case, but only reviews if there exists any of the grounds for refusal of recognition**.

- The recognition of foreign judgments in Albania is regulated under the ACPC (art. 393-398), which provides that **in the absence of bilateral or multilateral agreements on recognition of foreign judgments, the provisions of the ACPC shall apply.**

- Albania is not yet an EU Member State and therefore the Brussels Regulation is not applicable.
- Albania has not ratified the Convention on Choice of Court Agreements (30 June 2005).
- Albania has ratified the Hague Convention on the Recognition and enforcement of foreign judgments in civil and commercial matters, (1 February 1971) among 4 other countries. Albania has not concluded any Supplementary Agreement as required by art. 21 and therefore, the Convention is not applicable even among these 4 countries.
- Albania has not ratified the New Hague Convention on the Recognition and enforcement of foreign judgments in civil and commercial judgments, (Judgment Convention) of 2nd of July 2019. Its ratification should be encouraged.

Albania has ratified the following bilateral agreements

1. Agreement between the Republic of Albania and the Republic of **Bulgaria** on Mutual Legal Assistance in Civil Matters (2005)
2. Agreement between the Government of Albania and the Government of (North) **Macedonia** on Legal Assistance in the field of Civil and Criminal Matters (1998)
3. Convention on Mutual Assistance in Civil, Commercial and Criminal Matters between the Republic of Albania and the Republic of **Turkey**, (1995).
4. Protocol on the Exchange of Instruments of Ratification of the Convention on Mutual Assistance in Civil, Commercial and Criminal Matters between the Republic of Albania and the Republic of Turkey, (1998)
5. Convention between the Republic of Albania and the Republic of **Greece** on Judicial Assistance in Civil and Criminal Matters, (1993).
6. The **Russian** Federation "On Legal Aid in Civil, Criminal and Family Matters" (1996)
7. **Romania** "On Mutual Legal Assistance in Criminal and Family Civil Matters" (1961)
8. **Hungary** "On Mutual Legal Assistance in Civil, Criminal and Family Matters" (1960)

- As a matter of fact, out of around 50 judgments of the Appellate Courts of Tirana (capital) and Durres only 3 or 4 of them have addressed the above Agreements, without taking into consideration their provisions.

- In none of these judgments the issue of application of the bilateral agreement or the provisions of the ACPC is addressed.

- It is difficult to understand the reasons for the non application of the Bilateral agreements as long as:

1. The Constitution of RoA recognizes the supremacy of the international ratified agreements over the national legislation;
2. Article 393 ACPC provides that in the absence of bilateral or multilateral agreements on recognition of foreign judgments, the provisions of the ACPC shall apply;
3. The above bilateral agreements do not contain a favorable provision similar to that of article 7 of the New York Convention.

- Article 394 ACPC provides the legal grounds for refusing the recognition that are as follows:

  - The dispute cannot be in the jurisdiction of the court that has rendered the foreign judgment;
  - The defendant in absence was not duly notified about the claim in a regular basis in order to give him the possibility to be defended.
  - The Albanian court has rendered a different judgment on the same dispute, between the same parties, for the same cause.
  - The same dispute, which was submitted before the foreign judgment had become final, is under examination before an Albanian court.
  - The foreign judgment does not comply with the basic principles of the Albania legislation

- **Albanian courts do not apply the principle of reciprocity with respect to the recognition of foreign judgments.**
- Eg. Although Austrian courts do not recognize Albanian judgments, the Albanian courts can freely recognize Austrian judgments if they meet the criteria of the ACPC. Also, Albanian Courts freely recognize the German judgments, despite the fact, that German courts are doubtful with respect to the application of the reciprocity.

- Recognition of a foreign judgment on–issues regarding the immovable properties, or registration of trademarks, patents etc. which fall under the exclusive jurisdiction of the Albanian courts, will be refused because according to art. 394 (a) ACPC ‘the judgment of a court of a foreign state does not become effective in Albania when in conformity with the provisions in effect in the RoA, the dispute cannot be within the competence (jurisdiction) of the court which has issued the judgment.’

- In case when the judgments involve concepts that are unknown to the Albanian system, **the judgments risk of not being recognized by the Albanian courts** because under article 394(dh) of the ACPC, the judgment of a court of a foreign state does not become effective in Albania when it does not comply with the basic principles of the Albanian legislation. For example, the Appeal Court of Tirana has refused to recognize a default judgment issued by a North Macedonian court reasoning that this judgment does not comply with the basic principles of the Albanian legislation, because the Albanian legislation does not provide for the default judgment.

- Referring to the case law of the Tirana and Durres Courts of Appeal, recognition of the foreign civil judgement is not a lengthy and complicated process.

- The Albanian courts are not inclined to hinder recognition of the foreign civil and commercial judgments. They interpret the provisions of the ACPC (legal grounds for refusing the recognition) exhaustively.

- The grounds of refusal are mostly related to the notification of the defendant; lack of documents that prove that the judgment is final; type of judgment (civil or administrative); the lack of jurisdiction of the court that has rendered the foreign judgment ect.

Res judicata effects to a foreign judgment in RoA

- **"absolute equalization of effects" *vs.* "absolute extension of effects"**

- The Albanian legal order and doctrine do not address this issue specifically and the legal practice does not offer cases either.

- Once the foreign judgment is recognized in the RoA, then the Albanian court, upon request of the party, must take into consideration its *res judicata* effect.

- According to some foreign legislations the *res judicata* effect of the judgment covers only the operative part of the judgment (e.g. Germany, Switzerland etc.) and to some others, the effect covers even the reasoning part (e.g. Italy etc.).

- Under the jurisprudence of the Albanian Constitutional Court, *res judicata* includes not only **the operative part** of the judgment, but also the findings of fact and the application of law, set out in **the reasoning part** of the judgment, conditionally that the fact and legal relationships are performed in function of rendering the decision and form the object of the adjudication upon which the court rendered the judgment.

- **Will the Albanian courts recognize the *res judicata* effect of the reasoning part of a foreign judgment, issued in a country the legislation of which does not recognize that effect to its judgments?**

- The majority of the Albanian judges and lawyers are more inclined to the view that once the foreign judgment is recognized in Albania, then that judgment should be equated in effect with the other Albanian judgments.

- There is another theory (including my opinion), that a foreign judgment cannot be given more 'power' then it has in its country of origin. E.g. In the case of a judgment from Switzerland, the Albanian courts will be bound by what it is stated in the operative part (*res judicata* effect) and will not take into consideration what it is stated in the reasoning part of the foreign judgment. (CJEU: Hoffman *vs* Krieg)

Some special remarks regarding the recognition and enforcement in Albania

1. **The Albanian legal order enables only the recognition and enforcement of foreign judgments and not of other enforcement titles issued outside the RoA (as authentic instruments)**

- **Exceptionally**, very recently the Appeal Court of Tirana has recognized an European Enforcement Order issued by the court of Bergamo Italy, reasoning, among others, that:

  "….It is true that the ACPC does not recognize the procedure for issuing an European obligation order, as it is the case in many EU countries and as it is aimed to be included in our Code, as a measure for effective adjudication, but the judgment that has resulted in the conclusion of this procedure has the character of a court judgment on the obligation of the debtor party to make the payment, as fulfillment of the contractual obligation."

2. **The Albanian legal order does not enable the enforcement of interim measures issued outside the territory of the Republic of Albania**.

   Exceptionally, the bilateral agreement between Republic of Albania and the Republic of Bulgaria on Mutual Legal Assistance in Civil Matters, ratified by Law no. 9348, dated 24.02.2005 provides even for interim decisions.

3. **The Albanian legal order does not provide for the enforcement of the settlement agreements, which constitute an enforcement title under a foreign law.**

- THANK YOU FOR YOUR ATTENTION

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

The practice of European judges in reconciling Brussels Ia with other EU and international instruments

15th October 2020, University of Tirana (Tirana, Albania)

Pr Giulio Cesare GIORGINI
Université Côte d'Azur (Nice, France)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

The Team

Presentation based on the reports of Mrs **Paula-Carmel ETTORI**, Mrs **Jessica SANCHEZ**, Mrs **Chirouette ELMASRY**

under supervision of

Prof. **Jean-Sylvestre BERGE** and
Prof. **Giulio Cesare GIORGINI**

Objectives of the presentation

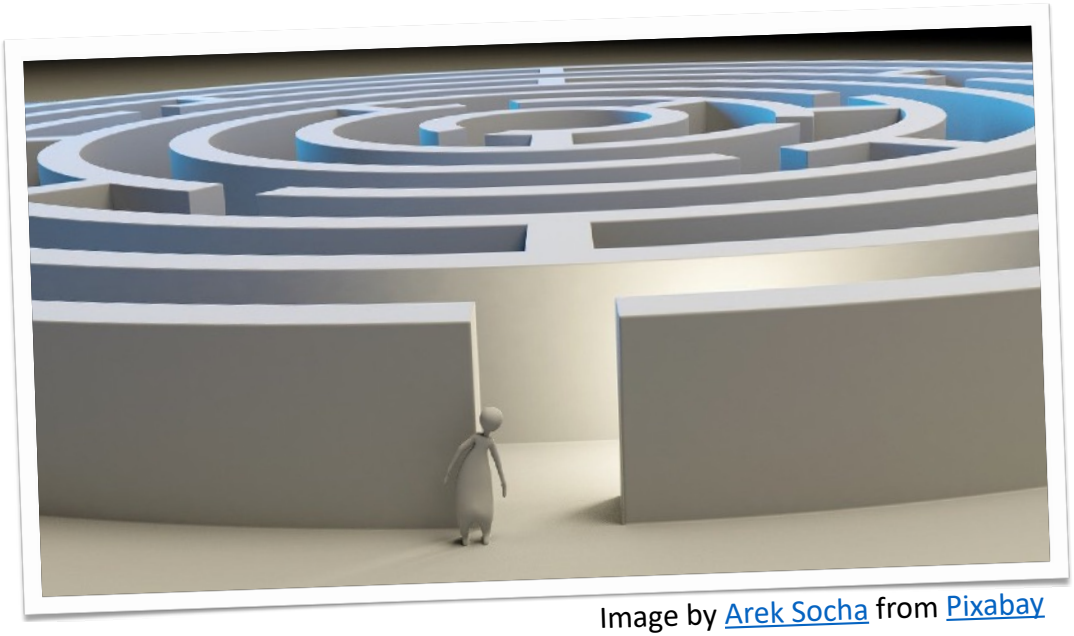


Image by Arek Socha from Pixabay

Basic framework of European Private International Law (PIL)

Overview of **judges' practice based** on collected case-law

Conclusions on further research on judges' practice in European PIL

European Union and PIL

2 distinctive bodies of law

Relationships?

- contradiction
- competition
- overlapping
- commingling

Why national judges?

Basic mission : apply **domestic law**

EU Law perspective

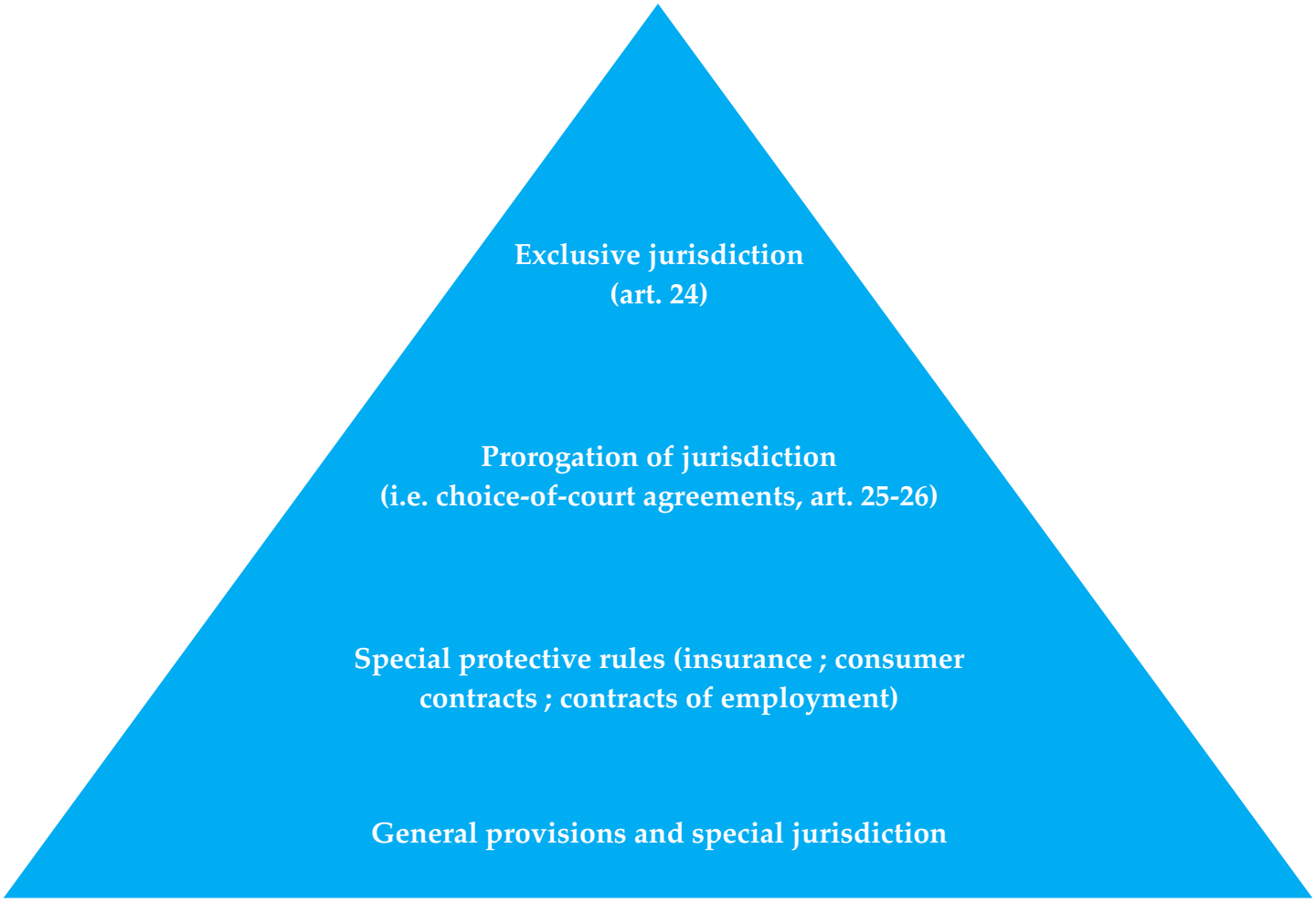
PIL perspective

Why Brussels Ia?

Base of an effective European judicial sovereignty

Technical approach of Brussel Ia

Why Brussels Ia?



Principle : **automatic recognition**

Possible **refusal** of recognition and enforcement

Framework

Image by JayMantri from Pixabay

Article 351 TFEU
(ex Article 307 TEC)

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties.

To the extent that such agreements are not compatible with the Treaties, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under the Treaties by each Member State form an integral part of the establishment of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

Framework

Article 67, Brussels Ia

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in instruments of the Union or in national legislation harmonised pursuant to such instruments.

Image by JayMantri from Pixabay

Article 69, Brussels Ia

Subject to Articles 70 and 71, this Regulation shall, as between the Member States, supersede the conventions that cover the same matters as those to which this Regulation applies. In particular, the conventions included in the list established by the Commission pursuant to point (c) of Article 76(1) and Article 76(2) shall be superseded.
(…)

Article 70, Brussels Ia

1. The conventions referred to in Article 69 shall continue to have effect in relation to matters to which this Regulation does not apply.
(…)

Article 71, Brussels Ia

1. This Regulation shall not affect any conventions to which the Member States are parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.
(…)

Framework

Image by JayMantri from Pixabay

Disconnection clause mechanism

EN2BRIa database

Image by Colossus Cloud from Pixabay

5 countries

300 decisions

Results

Denial

Integrative approach

Combination

Decline of **public policy**

Results

Increase of requests of
preliminary rulings to EUCJJ

Further research

Further research

Judges **profiling**

Extend the **scope** of research

Justice is freedom in action

Joseph Joubert (1754-1824)

Thanks for your attention

LAW, POLITICAL SCIENCE AND MANAGEMENT
GRADUATE SCHOOL AND RESEARCH

UNIVERSITÉ CÔTE D'AZUR

Giulio Cesare GIORGINI
Associate Professor
Université Côte d'Azur – GREDEG CNRS
giulio-cesare.giorgini@univ-cotedazur.fr

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

"INTERNATIONAL JURISDICTION IN THE FIELD OF COMMUNITY DESIGNS AND EU TRADEMARKS: BETWEEN BRUSSELS IA AND REGULATIONS IN SPECIFIC MATTERS"

Prof. Dr. Guillermo Palao Moreno
University of Valencia (Spain)

COORDINATING BRUSSELS IA WITH OTHER INSTRUMENTS OF EU LAW:
A ROUNDTABLE ON THEORETICAL AND PRACTICAL ISSUES
Tirana roundtable (online)
15 October 2020

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

INDEX:

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

I. GENERAL REMARKS ON THE COORDINATION OF BRUSSELS IA REGULATION AND OTHER EU INSTRUMENTS IN THE FIELD OF ETM AND ON CD

EU Instruments in the field of IP Law (with jurisdiction rules):

- Regulation (EC) No 207/2009, on the Community trade mark (codified version) (CTM)
- Regulation (EU) 2017/1001, on the European Union trade mark (codification) (repealing Regulation (EC) No 207/2009, by art. 211) (ETM)
- Regulation (EC) No 6/2002, on Community designs (CD)
- Regulation (EC) No 873/2004, amending Regulation (EC) No 2100/94 on Community plant variety rights (CPV)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

"Unitary Patent Package" (UP)

- Regulation (UE) No 1257/2012, implementing enhanced cooperation in the area of the creation of unitary patent protection
- Regulation (EU) No 1260/2012, implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements
- Regulation (EU) No 542/2014, amending Regulation (EU) No 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice
- Agreement on a Unified Patent Court of 2013

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

THE *LEX SPECIALIS* PRINCIPLE AND ART. 67 OF THE BRUSSELS IA REGULATION

In respect to:

- Regulation (EU) 2017/1001 (Chapter X, Arts. 122-135) and
- Regulation (EC) No 6/2002 (Title IX, Arts. 79-94)

ECJ Case C-360/12, Coty Germany (27) (28)
ECJ Case C-617/15, Hummel Holding (26)
ECJ Case C-433/16, Bayerische (39)
ECJ Cases C-24/16 y C-25/16, Nintendo (43) (44)
ECJ Case C-172/18, AMS Neve (34) (35) (36)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

THE COORDINATION RULES IN REGULATIONS ON THE ETM AND THE CD

Two main principles:

a) Jurisdiction rules of Regulation (EU) 2017/1001 and Regulation (EC) No 6/2002 take priority over those of Brussels Ia Regulation

b) Some provisions of Brussels Ia Regulation still retain a subsidiary application in relation to specific situations

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

THE COORDINATION RULES IN REGULATIONS ON THE ETM AND THE CD

a) Art. 122 Regulation (EU) 2017/1001 and Art. 79 Regulation (EC) No 6/2002

- FIRST RULE: Unless otherwise specified in those Regulation, the Brussels Ia Regulation, SHALL APPLY to proceedings relating to ETM and CD
- SECOND RULE:

(a) Articles 4, 6, 7(1), (2), (3) and (5), and 35 of the Brussels Ia Regulation SHALL NOT APPLY (restrictively);
(b) Articles 24 and 25 of the Brussels Ia Regulation SUBJECT TO THE LIMITATIONs in Articles 124 or 82(4) of these Regulations;
(c) the provisions of Chapter Title II of the Brussels Ia Regulation ("Recognition and Enforcement") ARE APPLICABLE to persons domiciled in a Member State SHALL ALSO BE APPLICABLE to persons who do not have a domicile in any Member State but have an establishment therein.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

b) Art. 82 Regulation (EC) No 6/2002 and Art. 125 Regulation (EU) 2017/1001 ("International jurisdiction") "Subject to the provisions of this Regulation as well as to any provisions of Regulation (EU) No 1215/2012", "proceedings in respect of the actions and claims (referred to Art. 81 Regulation (EC) No 6/2002 and Art. 124 Regulation (EU) 2017/1001) shall be brought in the courts of the Member State (…)"

ECJ Cases C-24/16 y C-25/16, Nintendo

c) Art. 90 Regulation (EC) No 6/2002 and Art. 131 Regulation (EU) 2017/1001 ("Provisional and protective measures")

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

II. AN OVERVIEW OF THE JURISDICTION RULES CONTAINED IN THE REGULATIONS ON THE ETM/ CD

The Community Design and Trade Mark courts shall have exclusive jurisdiction over infringement and validity actions related to those EU IPRs:

- Art. 81 Regulation (EC) No 6/2002; and
- Art. 124 Regulation (EU) 2017/1001

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

a) 82 Regulation (EC) No 6/2002 and Art. 125 Regulation (EU) 2017/1001 ("International jurisdiction") a combination of successive (exclusive) and a alternative (territorial) grounds of jurisdiction

A chain of (four) successive and (one) alternative connecting factors:
a) Prorogation of jurisdiction and jurisdiction by appearance (exclusive jurisdiction); if not
b) Defendant´s domicile or establishment; if not
c) *Forum actoris* (Plaintiff's domicile or establishment); if not
d) Seat of the Office (EUIPO); or
e) Place where act of infringement has been committed or threatened (territorial jurisdiction: "Mosaic principle")

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

ECJ Case C-360/12, Coty
ECJ Case C-617/15, Hummel Holding
ECJ Case C-433/16, Bayerische
ECJ Cases C-24/16 y C-25/16, Nintendo
ECJ Case C-172/18, AMS Neve

b) Art. 90 Regulation (EC) No 6/2002 and Art. 131 Regulation (EU) 2017/1001 ("Provisional measures, including protective measures")
c) Art. 91 Regulation (EC) No 6/2002 and Art. 133 Regulation (EU) 2017/1001 ("Specific rules on related actions")

ECJ Case C-678/18, Procureur-Generaal bij de Hoge Raad der Nederlanden

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

III. A practical example from both Spanish and ECJ Case Law

SPANISH *TRIBUNAL SUPREMO*, JUDGEMENT 1/2017

FACTS:

- In 2011 BMW brought an action against Acacia -an Italian company which manufactures and markets alloy rims for automobile wheels, registered as Community designs- and Autohaus Motorsport –a Spanish domiciled car repair shop who sells Acacia products-, before the Commercial Court of Alicante (Spain), seeking a declaration of infringement of Community designs (of which BMW is the proprietor) and to cease the use the protected designs at issue throughout the European Union.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

- Acacia entered an appearance by lodging a defence before that court contesting the jurisdiction of the Spanish courts. The Alicante Community trade mark Court accepted its jurisdiction (2012), and held that there had been an infringement and that Acacia should to cease the use the protected designs (2013).

- In 2014 Acacia lodged before the referring court, the *Audiencia Provincial de Alicante* (Higher Provincial Court), who accepted the arguments of Acacia and declined its jurisdiction. BMW referred the case to the Spanish *Tribunal Supremo*, alleging *inter alia* the wrong application of Art. 6(1) Regulation No 44/2001 and objecting that the Spanish courts had jurisdiction to hear the case.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

RULING:

Art. 6.1 Regulation (EC) No 44/2001 cannot avoid the application of arts. 79 and 82 Regulation (EC) No 6/2002, with the objective to determine the jurisdiction of the Court of a Member State which is not closely connected to avoid the risk of irreconcilable judgments resulting from separate proceedings, when the infringement of several Community designs took place in another Member State where the defendant was also domiciled, to avoid "forum shopping" practices.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

ECJ: Case C-433/16, Bayerische

FACTS:

- In 2013, Acacia –an Italian company which manufactures and markets alloy rims for automobile wheels, registered as Community designs-, brought an action against BMW before the *Tribunale di Napoli* (Italy) seeking a declaration of both non-infringement of Community designs (of which BMW is the proprietor), and of abuse of a dominant market position and unfair competition by BMW. Acacia also sought an injunction to prevent BMW from taking any action hindering the marketing of the replica rims.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

- BMW entered an appearance by lodging a defence before that court: objecting that the notification of the application was non-existent or void, and contesting the jurisdiction of the Italian courts. Furthermore, BMW claimed that Acacia's applications should be rejected as having no basis in fact or in law. In May 2014, the *Tribunale di Napoli* set time limits for lodging further submissions on questions of procedure.
- In October 2014, BMW lodged before the referring court, the *Corte suprema di cassazione*, an application for the question of jurisdiction, still pending before the *Tribunale di Napoli*, to be settled as a preliminary issue. It repeated its argument that the Italian courts have no jurisdiction to hear the case brought by Acacia. Acacia, for its part, contends that the jurisdiction of the Italian courts was tacitly accepted by BMW given that, after raising the objection that notification of Acacia's application was non-existent or void, as was the mandate of its counsel, before the *Tribunale di Napoli*, BMW raised the objection that the Italian courts had no jurisdiction to hear the case only in the alternative.

.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

RULING:

"1) Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted to the effect that a challenge to the jurisdiction of the court seised, raised in the defendant's first submission in the alternative to other objections of procedure raised in the same submission, cannot be considered to be acceptance of the jurisdiction of the court seised, and therefore does not lead to prorogation of jurisdiction pursuant to that article.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

2) Article 82 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs must be interpreted to the effect that actions for declaration of non-infringement under Article 81(b) of that regulation must, when the defendant is domiciled in an EU Member State, be brought before the Community design courts of that Member State, except where there is prorogation of jurisdiction within the meaning of Article 23 or Article 24 of Regulation No 44/2001, and with the exception of the cases of *litis pendens* and related actions referred to in those regulations.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

3) The rule on jurisdiction in Article 5(3) of Regulation No 44/2001 does not apply to actions for a declaration of non-infringement under Article 81(b) of Regulation No 6/2002.

4) The rule on jurisdiction set out in Article 5(3) of Regulation No 44/2001 does not apply to actions for a declaration of abuse of a dominant position and of unfair competition that are connected to actions for declaration of non-infringement, in so far as granting those applications presupposes that the action for a declaration of non-infringement is allowed".

.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

faleminderit
faleminderit
faleminderit

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

THANK YOU!
FALEMINDERIT!
¡GRACIAS!

Guillermo.palao@uv.es .

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

The new Hague Judgment Convention; *Will it foster free circulation of judgments between EU and Albania?*

Aida Gugu Bushati (PhD, LLM)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague Judgment Convention) :

A game-changer in international dispute resolution: one of the three pillars of private international law :

Harmonizing the regime for recognition and enforcement of judgments
Enhancing access to justice
Facilitating cross border trade dispute -effective and cheaper

BUT:
Results for the “distance” future – not yet in force
Will it have the same success as NY Convention
Coexisting with other instruments
Practical implication- autonomous interpretation

Investigation conducted in the framework of “Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Material Scope

Civil and commercial matters (art 1 of HJC, revenues, customs, or administrative matters excluded,

List of civil matters excluded (art. 2 of HJC), i.e maintenance obligation (family matters), defamation, carriage of passages and goods, etc

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Harmonized rules on recognition and enforcement of judgments civil and commercial matters :

Jurisdictional filters- indirect jurisdiction (art.5 of HJC)
Exclusive base for recognition (art.6 of HJC)
Grounds for non recognitions (art. 7 of HJC)
Procedures

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Bases for recognition and enforcement – indirect jurisdiction (art.5)

habitual residence of the person against whom the enforcement is sought
principal place of business of companies
performance of obligation in contractual relation
place of act causing the harm in case of non contractual obligation
…

Exclusive basis for recognition – *immovable property in state of origin (art.6)*

Refusal for recognition (art.7): problems with *services of doc, judgment by fraud, public policy.. etc*

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Free circulation of judgments between contracting state?:

EU - Albanian

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

EU legislation – Recognition and enforcement of judgments

Regulation (EU) No. 1215/2012 "On Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters" (only between MS)- Arts.4 and 6 of Brussels Ia

Third Countries - MS legislations (bilateral and multilateral agreements) -

Two parallel discussions:

EU join Hague Convention EU join the HJC as ROO (arts.26 / 27of HJC) ,

EU Regulation on third countries relations: jurisdiction, parallel proceedings and recognition and enforcement of judgments, *vis a vis* third state.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Draft Decision to join HJC (under discussion):

This convention makes it easier for rulings in civil or commercial cases to be recognized and enforced in foreign jurisdictions.

This should ensure that:
rulings in favor of EU businesses/citizens by a court in the EU are enforced in countries and territories outside the bloc

rulings affecting EU businesses/citizens that are made outside the EU can be enforced here only if they comply with EU law.

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Policy options:

Option 1aThe Union will accede to the Judgments Convention without making any declaration.

Option 1b: The Union will accede to the Judgments Convention, excluding certain matters, such as weaker parties, exclusive jurisdiction

Option 1 c: EU exclude state entities from the application of the convention

Option d: a combination between 1b and 1c

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

How to asses the advantages of HJC:

Comparison between MS rules and HJC rules on Recognition (art.5)

Comparison between MS rules and HJC rules on exclusive jurisdiction (art. 6)

Comparison between MS rules and HJC rules on refusal grounds (art.7)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

The EUMS will filter judgments coming from Albania based on articles 5 and 6 of HJC –

Addressing :

Jurisdictional competition between between Brussels Ibis and MS law- if this was the case in MS

Jurisdictional gaps within MS legislation

However
The HJC is the “floor and not the ceiling” art/15 MS rules in filtering jurisdiction will apply based on a “favor recognition principle”.

Some of the indirect filters correspond with direct jurisdiction of MS/EU law – helps free circulation

Investigation conducted in the framework of “Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Filters of jurisdictions: exclusive* jurisdictions

Right in rem of the state of origin (HJC

Consumer and employment contracts* (EU law)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

- Grounds for refusal (EUMS)
- Public policy
- Service of docs/deficiencies in the proceedings
- Irreconcilable judgments
- Earlier judgment between same parties same subject matter

- Grounds for refusal (HJC)
- Public policy 1(c)
- Service of doc/deficiencies in the proceedings 1 (a)
- Irreconcilable judgments 1 (e)
- Earlier judgment between the same parties same subject matter (f)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Ground for refusal

Reciprocity* (MS law)
Judgment obtained by fraud (HJC)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

EU MS judgments Albanian Courts

CPrC Art 393 -399 + Bilateral agreements
Private Internal Law Act 2011

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

Data obtained from Tirana Court of Appeal

Year	Family cases EU	Family cases Non -EMS	Civil Commercial EU MS	Civil Commercial Non- EU MS
2017	192	15	8	2
2018	203	12	10	4
2019	112	32	10	0

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Bilateral agreement with Greece (1993)
Bilateral agreement with RDGJ 1959*
Bilateral agreement with Rumania (1961)
Bilateral agreement with Bulgaria (2005)

Grounds for Refusal:

Enforceable decisions under NL
Exclusive jurisdiction
Procedural issues
Irreconcilable judgment
Public policy

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Recognition –art 393 CpC

the recognition of the foreign decision is subject to conditions specified in the CPC and in separate laws (article 393/1).
separate laws imply the in multilateral and bilateral agreements as well domestic laws
CPC does not contain any specific provision which indicating the conditions under which a foreign judgment can be recognized and enforced- to be read with – art.394 CpC

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

CPC art. 94 -Court incompetence- Refusal ground- not subject to harmonization of indirect jurisdiction list with direct jurisdiction of NL will affect free circulation

Article 5 of HCJ and rules of direct jurisdiction under Alb PPIL (art.73, art 80)
habitual residence of defendant
performance obligation (contractual relation)
act causing damage (non contractual obligations)
statutory seat of branch

Article 6 of HJC and rules on exclusive jurisdiction under AlPIL (art.72)- right in rem, registration of intelectual property, tenancie contracts (no time matter specified)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

- Grounds for Refusal
- CPC art. 94
- Procedural deficiencies (b)
- Irreconcilable judgments (c)
- Irreconcilable earlier judgments (ç)
- Public policy* (dh) – low threshold any decision that is against Albanian legislation

- Grounds for Refusal
- HCJ art 7
- Procedural deficiencies 1 (a)
- Irreconcilable judgments 1 (e)
- Irreconcilable earlier judgment 1 (f)
- Public policy (manifestly against public policy-high threshold)1 (c)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Preliminary Conclusions

HJC is a positive step for free circulation of judgments between Albania and EU;

Increased predictability and mutual trust
Uniform interpretation (ECJ ruling will be the guide also due to integration process)
Albanian public policy exceptions can be reconsidered

BUT
MS/Albanian regime is already liberal with few exceptions
Scope of HJC is limited (family cases are more present in relations EU)

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

UNIVERSITÀ DEGLI STUDI
DI GENOVA

EN2BRIa
Enhancing Enforcement under Brussels Ia

This Project is funded by the European Union
Justice Programme 2014-2020
JUST-JCOO-AG-2018 JUST 831598

Brussels Ia and 'other EU law Instruments' in the Internet Governance

University of Tirana, online
15 April 2020

Stefano Dominelli
Researcher in International Law, University of Genoa

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

The content of the Brussels Ia – EN2BRIa, Project, and its deliverables, represent the views of the author only and is his sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

Overview

- *The En2Bria Project*
- *The relevant provision: Art. 67 Brussels Ia*
- *GDPR and Brussels Ia – trigger of art 67 Brussels Ia and non-regulated matters*
- *Directive on Electronic Commerce*
- *Geo-blocking Regulation*
- *Conclusions*
- *(Possible) proposal*

The En2Bria Project

- *Enhancing Enforcement under Brussels Ia – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598*

- *https://dispo.unige.it/node/1042*

- Shed light on the terms whereby the relationship between Regulation 1215/2012 and other EU law instruments is to be handled, with a view to investigating the impact that the above mentioned issue produces upon the effective application of the EU law

- Increase capacity address issues related to judicial cooperation in civil and commercial matters; improve awareness about the complexities of the relations between Brussels Ia regulation and other EU instruments; improve the legal framework and regulations concerning judicial cooperation in civil matters through the identification of possible solutions to mitigate the main criticalities examined

The Relevant Provision: Art 67

- *"This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in instruments of the Union or in national legislation harmonised pursuant to such instruments"* (cf Art 67 Reg 44/2001)

- Unilateral coordination

- Choice: *lex specialis*

GDPR - General Data Protection Regulation (2016/679)

- Rights of the "data subject" against "data controllers" and "data processors"
  - Right to access personal data (art. 15)
  - Right to rectification (art. 16)
  - Right to erase / right to be forgotten (art. 17)

- Actions to be taken to ensure the right: set by lex fori of the seised court

GDPR – Transfer of data to third countries

- Transfer of personal data to third countries or international organizations are admissible provided that a sufficient guarantee of protection is ensured
- A transfer may take place where the Commission has decided that the third country… ensures an adequate level of protection (art. 45(1))
- Standard contracts developed by the Commission are deemed to offer sufficient guarantees (2010/87/: Commission Decision of 5 February 2010)
- Clause 7: Data importer and data exporter may conclude choice of court agreements – anyhow "*The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject: … to refer the dispute to the courts in the Member State in which the data exporter is established*"
- Effect: the data subject has the possibility of starting proceedings against the non-EU domiciled party before the court of a Member State

GDPR – Judicial actions

- Recital 147 (principle of non-interference): *Where specific rules on jurisdiction are contained in this Regulation, in particular as regards proceedings seeking a judicial remedy including compensation, against a controller or processor, general jurisdiction rules such as those of Regulation (EU) No 1215/2012 of the European Parliament and of the Council (13) should not prejudice the application of such specific rules*
- Art 79(2): *Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has his or her habitual residence, unless the controller or processor is a public authority of a Member State acting in the exercise of its public powers*
- Art 81(2) (parallel proceedings): *Where proceedings concerning the same subject matter as regards processing of the same controller or processor are pending in a court in another Member State, any competent court other than the court first seized may suspend its proceedings.*

GDPR and Brussels Ia – Judicial actions

- An action for erase
  - Can be brought *only* before courts under art 79 GDPR?
  - Recital 147 merely speaks of "non-interference"
  - Is it consistent to open the *forum contractus* – also to avoid *similar* parallel proceedings?
  - How should the verb *"shall"* be read, as opposed to other provisions prescribing *"may"* (art 6 Posting of workers Directive)?

- Can the parties derogate by way of agreement (art 25 Brussels Ia) the fora of art 79 GDPR?
  - As choice of court agreements are not regulated: can Brussels Ia take up its "fill the gap role"?
  - Are general principles on the protection of weaker parties applicable to the GDPR?

GDPR and Brussels Ia – Recognition and enforcement

- Can art 81(2) GDPR be used to the detriment of the 'weaker party'
  - Negative declaratory action of the data controller at the seat of the data processor, to frustrate the action of the data subject at his habitual residence?
  - The court wrongfully assumes to be the court of the establishment (place of central administration *ex* recital 36 GDPR)

- If it is possible – can we supplement art. 45(1)(e)(i) Brussels Ia Regulation with an additional ground to refuse recognition and enforcement to revise the jurisdiction of the court of origin under art 45(3) Brussels Ia?

Directive 2000/31/EC ('Directive on electronic commerce')

- Art 3(1) *Directive: Each Member State shall ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field*
  - Country of origin principle
- Recital 23: *Directive neither aims to establish additional rules on private international law relating to conflicts of law nor does it deal with the jurisdiction of Courts*
- No rule on jurisdiction for the purposes of art 67 Brussels Ia
- Is it a conflict of laws rule?
- Doubts on the proper juxtaposition of applicable law and jurisdiction

Regulation 2018/302 on unjustified geo-blocking

- Recital 13 (and art 1): *This Regulation should be without prejudice to Union law concerning judicial cooperation in civil matters, ... in particular regulation 1215/2012. ... The mere fact that a trader complies with this Regulation should not be construed as implying that a trader directs activities to the consumer's Member State within the meaning of ... point (c) of Article 17(1) of Regulation (EU) No 1215/2012*
- What is the relationship between substantive law and international civil procedure? Is this "principle of non-interference" fully respected taking into consideration possible practices of economic operators?

Conclusions

There are a number of «direct» and «indirect» connections and disconnections in the Brussels regimes, most of which still appear to be somewhat hidden, making the task for coordination particularly harder in a very fragmented scenario, particularly to practitioners who deal with highly technical matters in a relatively small number of cases.

(Possible) proposal

Can the "codification" of EU international civil procedure better settle (some of) the problems?

Thank you for your attention!

stefano.dominelli@unige.it