

***European Private
International Law/2***

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Overview of instruments regulating jurisdiction

- Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and enforcement of judgements in civil and commercial matters (Regulation Brussels I)
- Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Overview of instruments regulating jurisdiction

- Brussels Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
- „New“ Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Regulation Brussels IIbis)
- Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings

Overview of instruments regulating jurisdiction

- Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
- Proposal for the Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters

Overview of instruments regulating jurisdiction

- Green Paper on Succession and Wills
- Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition

Regulation Brussels I

- 2 important questions of international civil litigation
 - Jurisdiction
 - Recognition and enforcement of judgements

Regulation Brussels I

- Purposes
 - 1) To facilitate the judicial treatment of suits and judgements among the Member States
 - Easier and more uniform rules
 - Faster and simpler procedures
 - Differences between national laws on jurisdiction and recognition of judgements impede the judicial cooperation within the internal market
 - Difficulties to enforce civil claims in other Member States discourage persons to establish cross-border relations

Regulation Brussels I

- To enable and ensure the free movement of judgements
- The principle of mutual trust in the legal system and judicial institutions of each other Member State -> expectation that each MS is willing to obey to the provisions of the Regulation

Regulation Brussels I

- 2) To base jurisdiction on uniform and fair connecting factors
 - The defendant must defend himself only at places to which the dispute is sufficiently related to

Regulation Brussels I

- 3) To secure the principle of legal certainty
 - Predictable system of provisions
 - A reasonable defendant should be able to foresee in which courts in the EC he could be sued

Regulation Brussels I

- 4) To grant the parties the widest possible freedom to select the competent court
 - Choice of court agreements
 - Silent prorogation
- 5) Avoidance of concurrent proceedings
- 6) Automatic recognition and efficient enforcement
 - Recognition can be refused only for few reasons

Regulation Brussels I

- 7) Continuity with respect to the Brussels Convention
 - ECJ judgements remain valid

Regulation Brussels I

- Scope of application
- 1) International element
 - The Regulation is only invoked where an international element is involved
 - The Regulation applies only to proceedings involving an international element
 - > no definition of international element
 - > Article 65 of the EC Treaty
 - > *Owusu v Jackson*

Regulation Brussels I

-> **Case C-281/02 Owusu v Jackson**

- *For the jurisdiction rules of the BC to apply at all the existence of an international element is required*
- *The international nature of the legal relationship need not necessarily derive from the involvement of a number of Contracting States*
- *The involvement of a Contracting State and a non-Contracting State would also make the legal relationship international in nature*

Regulation Brussels I

- Regulation applies only to the recognition and enforcement of judgements rendered by a court in another Member State

Regulation Brussels I

- 2) Territorial scope application
 - Corresponds to the territorial scope of application of Community law (Art. 299 EC Treaty)
 - Territory of 26 present MS (except Denmark)

Regulation Brussels I

- Situation of Denmark
 - > Denmark abstained from the communitarisation of the measures under Title IV of the EC Treaty (*Protocol on the Position of Denmark to the Treaty of Amstredam*)
 - > Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Regulation Brussels I

- The provisions of the Brussels Regulation are applicable with respect to the relations between Denmark and the EC (via international treaty)
- Denmark is obliged to adopt future amendments of the Regulation and to take account of the decisions of the ECJ

Regulation Brussels I

3) Personal scope of application

- The defendant must have its domicile in a Member State (rather the necessary territorial connection between the dispute and the forum seised)

X

- Art. 22, 23, 24 (other factors are decisive)

Regulation Brussels I

- 4) Temporal scope of application (Art. 66)
 - Suits brought and judgements rendered on or after the day it entered into force in the Member States whose courts are seised
 - 1st March 2002, 1st May 2004, 1st January 2007

Regulation Brussels I

- Material scope (Art. 1)
 - 1) Civil and commercial matters
 - Not defined in the Regulation
 - Autonomous meaning
- > *Case 29/76 LTU v Eurocontrol*

Regulation Brussels I

Case 29/76 LTU v Eurocontrol

- *It is necessary, in order to ensure that the rights and obligations which derive from the Convention for the Contracting States and the persons to whom it applies are equal and uniform, that the terms of Art. 1 should not be interpreted as a mere reference to the internal law of one or other of the states concerned.*
- *The concept civil and commercial matters must be regarded as independent and must be interpreted by reference, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems.*

Regulation Brussels I

- The nature of the court or tribunal is irrelevant
 - > civil claims brought before criminal courts (Art. 5/4, *Sonntag v Waidmann*)
 - > civil matters brought before administrative tribunals
- Litigation involving a public authority as a party
 - > the nature of the legal relationship is not excluded
 - > the public authority acts in a private law capacity

Regulation Brussels I

LTU v Eurocontrol

- *Certain types of judicial decisions must be regarded as excluded from the area of application of the Convention, either by reason of the legal relationship between the parties to the action or of the subject-matter of the action*
- *Although certain judgements given in actions between a public authority and a person governed by private law may fall within the area of application of the Convention, this is not so where the public authority acts in the exercise of its powers*
- *The recovery of charges payable by a person governed by private law to a body governed by public law for the use of equipment and services provided by such body is excluded from the Convention*
- *The use of equipment and services was obligatory and exclusive*
- *The rate of charges, the method of calculation and the procedures for collection are fixed unilaterally*

Regulation Brussels I

Case 814/79 Netherlands State v Rüffer

- *The action for the recovery of the costs involved in the removal of a wreck in a public waterway, administered by the state responsible in performance of an international obligation and on the basis of provisions of national law which confer on it the status of public authority in regard to private persons, must be excluded*
- *Member States' provisions on the administration of public waterways precisely show that the agent administering those waterways does so in the exercise of public authority*
- *The fact that the action does not concern the actual removal of the wreck but the costs involved in that removal and that the state is seeking to recover those costs by means of a claim for redress and not by administrative process cannot be sufficient to bring the matter within the ambit of the Convention*

Regulation Brussels I

Case C-172/91 Sonntag v Waidmann

- *The fact that a teacher has the status of civil servant and acts in that capacity is not conclusive.*
- *Even though he acts on behalf of the State, a civil servant does not always exercise public powers.*
- *In the majority of the legal systems of the Member States the conduct of a teacher in a state school does not constitute an exercise of public powers, since such conduct does not entail the exercise of any powers going beyond those existing under the rules applicable to relations between private individuals.*
- *A teacher in a state school assumes the same functions vis-à-vis his pupils as those assumed by a teacher in a private school*

Regulation Brussels I

Case C-271/00 Gemeente Steenberghe v Luc Baten

- *The concept of civil matters encompasses an action under a right of recourse whereby a public authority seeks from a private individual recovery of sums paid by it by way of social assistance to the divorced spouse and child of that individual provided that:*
 - > *the basis and the detailed rules relating to the bringing of that action are governed by the rules of the ordinary law in regard to maintenance obligations.*
 - > *Where the action under a right of recourse is founded on provisions by which the legislature conferred on the public body a prerogative on its own, that action cannot be regarded as being brought in civil matters.*
- *The public authority was allowed to disregard an agreement between spouses approved by a judicial decision -> it is no longer acting under rules of the civil law*

Regulation Brussels I

Case C-266/01 *Préservatrice foncière TIARD v Staat der Nederlanden*

- *Civil and commercial matters covers a claim by which a state seeks to enforce against a person governed by private law a private law guarantee contract which was concluded in order to enable a third person to supply a guarantee required by that state, in so far as the relationship between the creditor and the guarantor does not entail the exercise by the state of powers going beyond those existing under the rules applicable to relations between private individuals.*

Regulation Brussels I

- *According to the general principles a guarantee contract represents a triangular process, by which the guarantor gives an undertaking to the creditor that he will fulfil the obligations assumed by the principal debtor if the debtor fails to fulfil them himself.*
- *Such a contract creates a new obligation, assumed by a guarantor. The guarantor does not take the place of the debtor, but guarantees only to pay his debt, according to the conditions specified in the guarantee contract.*

Regulation Brussels I

- *The obligation thus created is accessory. The creditor cannot bring proceedings against the guarantor unless the debt is payable and, the obligation assumed by the guarantor cannot be more extensive than that of the principal debtor.*
- *The accessory nature does not mean that the legal rules applicable to the obligation assumed by the guarantor must be in every particular identical to the legal rules applicable to the principal obligation.*

Regulation Brussels I

- *ECJ gave some guidelines as to the factors to be taken into consideration in deciding whether the relationship at issue is characterised by an exercise of public powers on the part of the state*
 - > *the relationship between the State and PFA is not governed by the TIR Convention*
 - > *account must be taken of the circumstances surrounding the conclusion of the contract -> PFA's undertaking vis-à-vis the State was freely given, PFA freely determined the amount of its remuneration for providing the guarantee, PFA is free to terminate the contract*
 - > *it is necessary to take into considerations the terms of the contract*

Regulation Brussels I

- Employment law issues fall within the Regulation

Regulation Brussels I

- 2) Excluded questions
 - a) Revenue, customs or administrative matters
 - Added by first accession convention
 - Avoidance of doubt
 - Matter of clarity

Regulation Brussels I

- b) Status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession
 - Status or legal capacity
 - > voidability and nullity of marriages, dissolution of marriage, death of a person, status and legal capacity of a minor, legal representation of a person who is mentally ill, right to custody after the divorce, care, custody and control of children, adoption of children

Regulation Brussels I

- rights in property arising out of a matrimonial relationship
- > not only property arrangements specifically and exclusively envisaged by certain national legal systems in the case of marriage but also any proprietary relationships resulting directly from the matrimonial relationship or the dissolution thereof
- > disputes relating to assets of spouses may concern or are closely connected:
 - with questions relating to the legal status of persons
 - with proprietary legal relationships between spouses resulting directly from the matrimonial relationship or the dissolution thereof
 - proprietary legal relations existing between the spouses which have no connection with the marriage

(Case 143/78 Cavel v Cavel)

Regulation Brussels I

- > maintenance issues are included (*Case C-220/95 Van den Boogard v Laumen*)
- Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition

Regulation Brussels I

- Wills and succession
 - > interpretation or validity of a will, claims to testate or intestate succession, the appointment and removal of administrators
 - > Green Paper on succession and wills

Regulation Brussels I

- c) Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings
 - This exclusion must be read in conjunction with Regulation on Insolvency -> the Regulations should be interpreted so that proceedings should fall within one or the other, but not both and leaving no gap between them -> practical problems

Regulation Brussels I

- Proceedings which depending on the system of law involved, are based on the suspension of payments, the insolvency of the debtor or his inability to raise credit, and which involve the judicial authorities for the purpose either of compulsory and collective liquidation of the assets or simply of supervision.

Regulation Brussels I

Case 133/78 Gourdian v Nadler

- *It is necessary, if decisions relating to bankruptcy are to be excluded from the scope of the convention, that they must derive directly from the bankruptcy and be closely connected with the proceedings for the liquidation des biens or the reglement judiciaire*

Regulation Brussels I

- d) Social security
 - Independent definition
 - Disputes between the administrative authorities and employers or employees
 - The concept of social security must be interpreted in the light of the substance of the concept in community law -> Regulation 1408/71 (*Gemeente Steenbergen v Luc Baten*)

Regulation Brussels I

- e) Arbitration
 - Case C-190/89 Marc Rich – wide exclusion of arbitration
 - Proceedings and decisions concerning application for the revocation, amendment, recognition and enforcement of arbitration awards
 - Court proceedings which are ancillary to arbitration – appointment or removal of an arbitrator, fixing the place of arbitration, answer some point of law raised in an arbitration

Regulation Brussels I

- Proceedings where the validity of the arbitration agreement is the principal issue, proceedings in which the arbitration agreement is used to challenge jurisdiction, declaratory proceedings as to the validity of the arbitration agreement, proceedings to recognise or enforce a judgement which has been given in violation of an arbitration agreement – less clear

Regulation Brussels I

- System of rules of jurisdiction
 - 1) General jurisdiction
 - 2) Alternative jurisdiction
 - 3) Special jurisdiction
 - 4) Exclusive jurisdiction
 - 5) Prorogation
 - 6) Silent prorogation

Regulation Brussels I

- A person domiciled in a Member State must be in general sued in the courts of that state (Art. 2)
- A person domiciled in a MS may be sued in the courts of another MS only if the courts are competent by virtue of the Regulation (Art. 3)
- If a person is not domiciled in a MS, the rules of jurisdiction in force in each MS are applicable (x Art. 22, 23, 24)

Maintenance regulation

- All the measures necessary to the recovery of maintenance obligations within the Community
 - Jurisdiction
 - Conflict of laws
 - Recognition and enforcement
 - Cooperation

Maintenance regulation

- only maintenance relations having cross-border implications
- maintenance obligations arising from family relationships or relationships deemed by the law applicable to such relationships as having comparable effects (replacement of the Brussels I in the field of maintenance obligations)

Maintenance regulation

- Rules of jurisdiction
 - General jurisdiction
 - > the court for the place where the defendant is habitually resident
 - > the court for the place where the creditor is habitually resident
 - > the court which has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties
 - > the court which has jurisdiction to entertain proceedings concerning parental responsibility, under the Regulation (EC) n° 2201/2003, if the matter relating to maintenance is ancillary to those proceedings.

Maintenance regulation

- Prorogation of jurisdiction
 - > at least one party must have habitual residence in a Member State
 - > agreement must be in writing
 - > jurisdiction is exclusive
 - > dispute relating to a maintenance obligation towards a child below the age of 18 – prorogation is not possible

Maintenance regulation

- Jurisdiction based on the appearance of the defendant (similar to Art. 24 of the Brussels I)
- a court of a Member State before which a defendant enters an appearance shall have jurisdiction
- this rule shall not apply where appearance was entered to contest the jurisdiction or where another court has exclusive jurisdiction by virtue of Article 4 (prorogation)

Maintenance regulation

- Residual jurisdiction
- > Where no court of a Member State has jurisdiction pursuant to above mentioned rules, the following courts shall have jurisdiction:
 - a) the courts of the Member State of the common nationality of the creditor and the debtor, or
 - b) in the case of maintenance obligations between spouses or ex-spouses, the courts of the Member State of was the last common habitual residence of the spouses provided such habitual residence had still existed at least one year before the institution of the proceedings