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Regulation (EC) 1896/2006 on the European Order for Payment and Jurisdiction

Ivana Kunda
University of Rijeka, Faculty of Law



Contents of the application for an EOP

Article 7 Application for a European order for payment

1. An application for a European order for payment shall be made using standard form A as set out in Annex I.

2. The application shall state:

(a) the names and **addresses of the parties**, and, where applicable, their representatives, and of the court to which the application is made;

...

(f) **the grounds for jurisdiction**;

and

(g) the cross-border nature of the case within the meaning of Article 3.



Examination of the application for an EOP

On the basis of Article 8 and in a view of Article 7(1), the court seised for an application (submitted in form A) for a EOP has to examine whether:

- the application falls within the scope of the regulation, including whether it is a cross-border case;
- the pecuniary claim refers to a specific amount that has fallen due;
- **the court seised has jurisdiction with regard to the application;**
- all the information provided is complete and correct;
- the claim is justified.

If information is lacking, the court gives the claimant the opportunity to complete or rectify the application within the time limit specified by the court (using form B), unless the claim is clearly unfounded or the application is inadmissible.

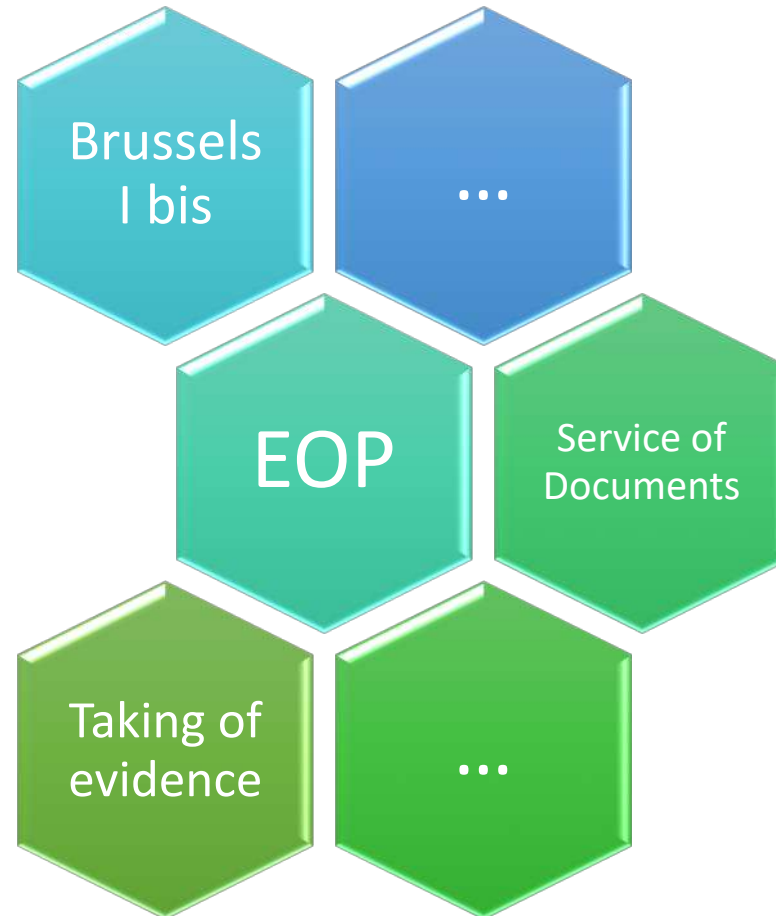


Recital 16

- The court should **examine the application, including the issue of jurisdiction** and the description of evidence, **on the basis of the information provided in the application form**. This would allow the court to examine *prima facie* the merits of the claim and *inter alia* to exclude clearly unfounded claims or inadmissible applications. The examination should not need to be carried out by a judge.



Interplay among different legal instruments





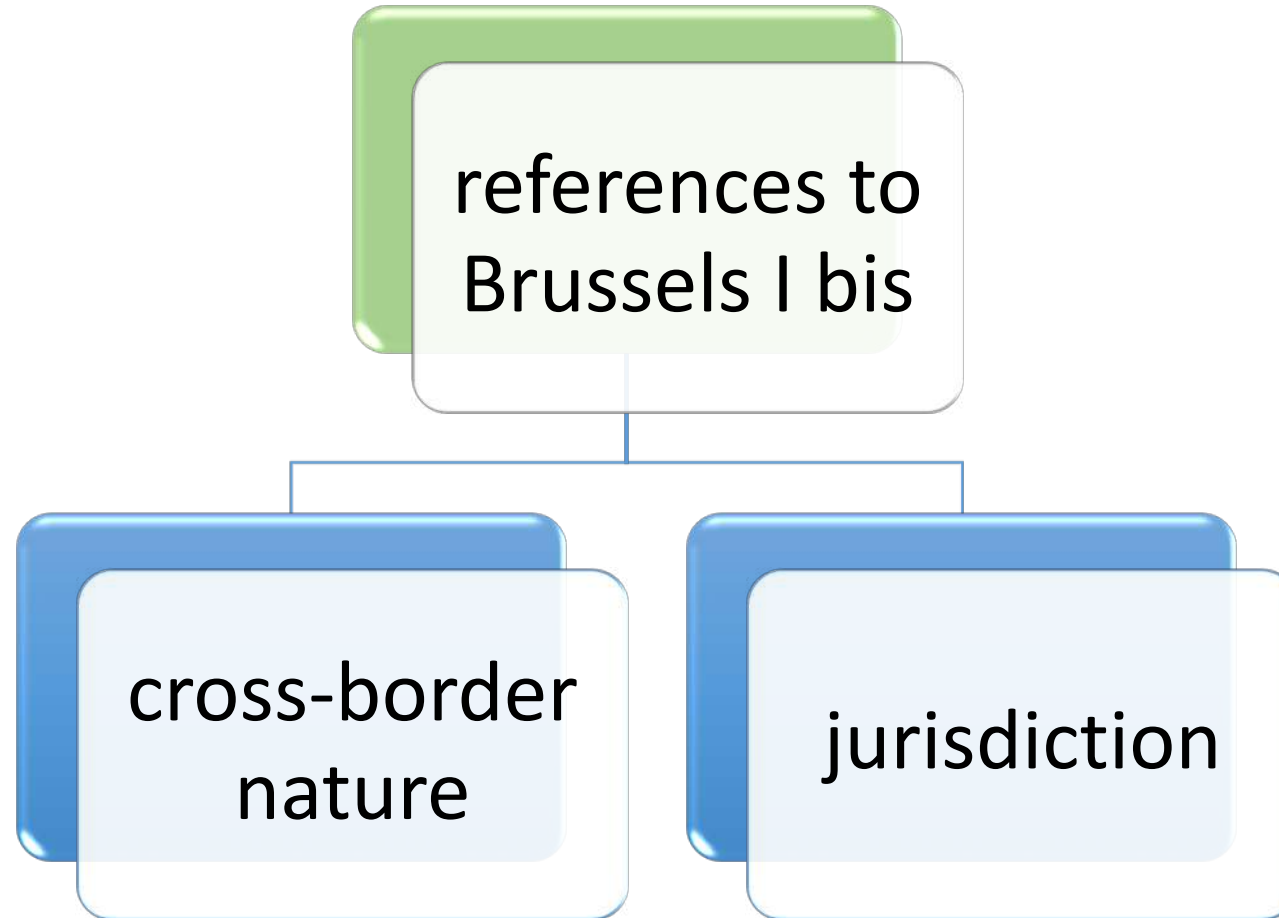
Scope of application – Article 2

1. This Regulation shall apply to **civil and commercial matters** in **cross-border cases**, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (*'acta iure imperii'*).
2. This Regulation shall not apply to:
 - (a) rights in property arising out of a matrimonial relationship, wills and succession;
 - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - (c) social security;
 - (d) claims arising from non-contractual obligations, unless:
 - (i) they have been the subject of an agreement between the parties or there has been an admission of debt,
or
 - (ii) they relate to liquidated debts arising from joint ownership of property.
3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.



Civil and commercial matters

- negative parts of the definition: **with the exclusion of in particular the revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority ('*acta iure imperii*')**
 - the former is standard, while the latter was the legislator's reaction to CJEU ruling in C-292/05 *Lechouritou*, but does not imply any difference and makes part of the consistence equasion
 - the same concept in the Brussels I bis, Rome I and Rome II
 - the single concept, no distinction between civil and commercial
- **AUTONOMOUS INTERPRETATION** no resort to any national law, but derives from the objectives and scheme of the EU legislation concerned and the general principles underlying the entire corpus of the EU national legal systems





Cross-border cases – Article 3

1. For the purposes of this Regulation, a **cross-border case** is one in which **at least one of the parties** is **domiciled or habitually resident** in a Member State other than the Member State of the court seised.
2. Domicile shall be determined in accordance with Articles 59 and 60 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 (now replaced by Regulation 1215/2012 – Brussels I bis).
3. The relevant moment for determining whether there is a cross-border case shall be the time **when the application for a European order for payment is submitted** in accordance with this Regulation.



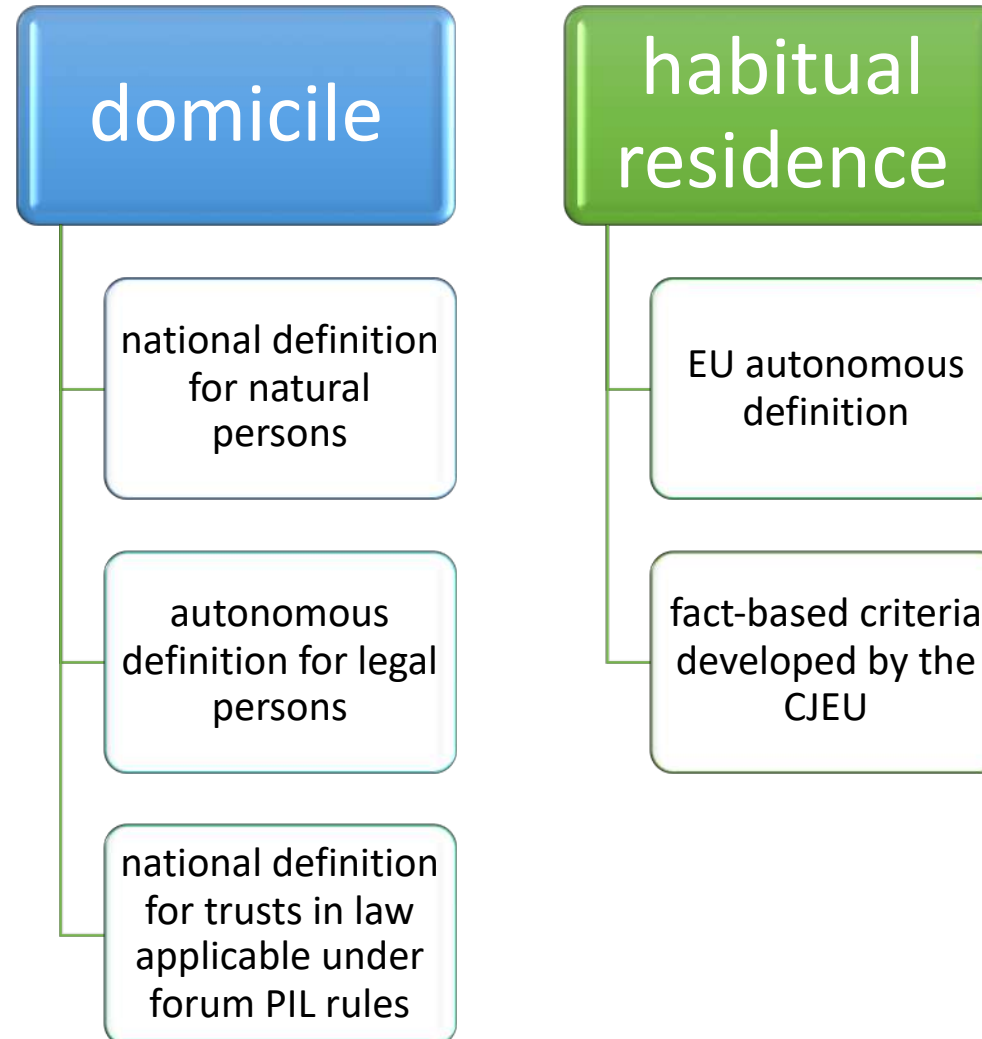
Cross-border cases – Article 3

Variations when there is a cross-border case:

- 1) **Plaintiff** domiciled/habitually resident in a MS different from the forum MSs and **defendant** domiciled/habitually resident anywhere:
 - 1) Forum MS
 - 2) MS other than forum MS
 - 3) Non-MS
- 2) **Defendant** domiciled/habitually resident in a MS different from the forum MSs and **plaintiff** domiciled/habitually resident anywhere:
 - 1) Forum MS
 - 2) MS other than forum MS
 - 3) Non-MS



Cross-border cases – Article 3





Cross-border cases – Article 3

- **DOMICILE for natural persons** in Article 62 of the Brussels I bis

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply **its internal law**.

2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply **the law of that Member State**.

- National court applies the law of the MS in which the domicile is claimed to be located
- It should not be automatically the same as the legal fiction of address for service of documents (Jenard report)
- analogy to the principle of *perpetuatio fori (iurisdictionis)* tying the jurisdiction to the moment when the proceedings have been instituted



Cross-border cases – Article 3

- **DOMICILE for legal persons** in Article 63 of the Brussels I bis

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

- (a) **statutory seat;**
- (b) **central administration;** or
- (c) **principal place of business.**

2. For the purposes of Ireland and Cyprus, 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

3. In order to determine whether a **trust** is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.



Cross-border cases – Article 3

- **DOMICILE for legal persons** in Article 63 of the Brussels I bis
 - autonomous definition
 - exhaustive and alternative criteria – resulting in maximum three MSs where a legal person may have its domicile
 - analogy to the principle of *perpetuatio fori (iurisdictionis)* tying the jurisdiction to the moment when the proceedings have been instituted



Cross-border cases – Article 3

- **DOMICILE for legal persons** in Article 63 of the Brussels I bis
 - (a) **statutory seat** – usually the place of incorporation or the place named as a seat in the articles of incorporation/statute/company register (special rules for Ireland and Cyprus)
 - (b) **central administration** – actual centre of management and control over the company depending on the facts of the case (real seat)
 - (c) **principal place of business** – where the main business activities are located depending on the facts of the case



Cross-border cases – Article 3

- **HABITUAL RESIDENCE for natural persons** according to the CJEU case law in family matters
 - based on **factual assessment** of the criteria provided in the CJEU case law
 - analogy to principle of *perpetuatio fori (iurisdictionis)* tying the jurisdiction to the moment when the proceedings have been instituted



Cross-border cases – Article 3

- **HABITUAL RESIDENCE for natural persons** according to the CJEU case law in family matters
 - **two basic criteria** set by the CJEU:
 - 1) physical presence at the territory and
 - 2) the intention to remain there
 - „**in addition to the physical presence** [...] in a MS other factors must be chosen which are capable of showing that that presence is **not in any way temporary or intermittent** and that the residence [...] reflects **some degree of integration in a social and family environment**”
 - the two criteria may be balanced so that the weakness of one may be compensated by the strength of the other



Cross-border cases – Article 3

- **HABITUAL RESIDENCE for natural persons** according to Article 19 Rome I
– may this be relied upon **????**

1. For the purposes of this Regulation, the **habitual residence of companies and other bodies**, corporate or unincorporated, shall be the **place of central administration**.

The **habitual residence of a natural person acting in the course of his business activity** shall be his **principal place of business**.

2. Where the contract is concluded in the course of the operations of a **branch, agency or any other establishment**, or if, under the contract, performance is the responsibility of such a branch, agency or establishment, the **place where the branch, agency or any other establishment is located** shall be treated as the place of habitual residence.

3. For the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the contract.



Jurisdiction – Article 6

1. For the purposes of applying this Regulation, **jurisdiction shall be determined in accordance with the relevant rules of European Union law**, in particular Regulation No 1215/2012 (Brussels I bis).
2. However, if the claim relates to a **contract concluded by a person, the consumer**, for a purpose which can be regarded as being outside his trade or profession, and **if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled**, within the meaning of Article 59 of Regulation 1215/2012 (Brussels I bis), **shall have jurisdiction**.



Jurisdiction – Article 6

Jurisdiction in CONSUMER CONTRACTS in special provision of Article 6(2)

- definition of consumer contract as in Article 17(1) of the Brussels I bis – contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, **but no further requirements** for application of Section 4 Brussels I bis as in Article 17(1) of the Brussels I bis: are these requirements applicable to widen the scope of consumer protection?
- special provision in Article 6(2) applicable only **if the defendant is the consumer**, leading to the exclusive jurisdiction of the **the courts in the Member State in which the defendant is domiciled** – domicile to be determined under the substantive law of the MS for which domicile is ascertained



Jurisdiction – Article 6

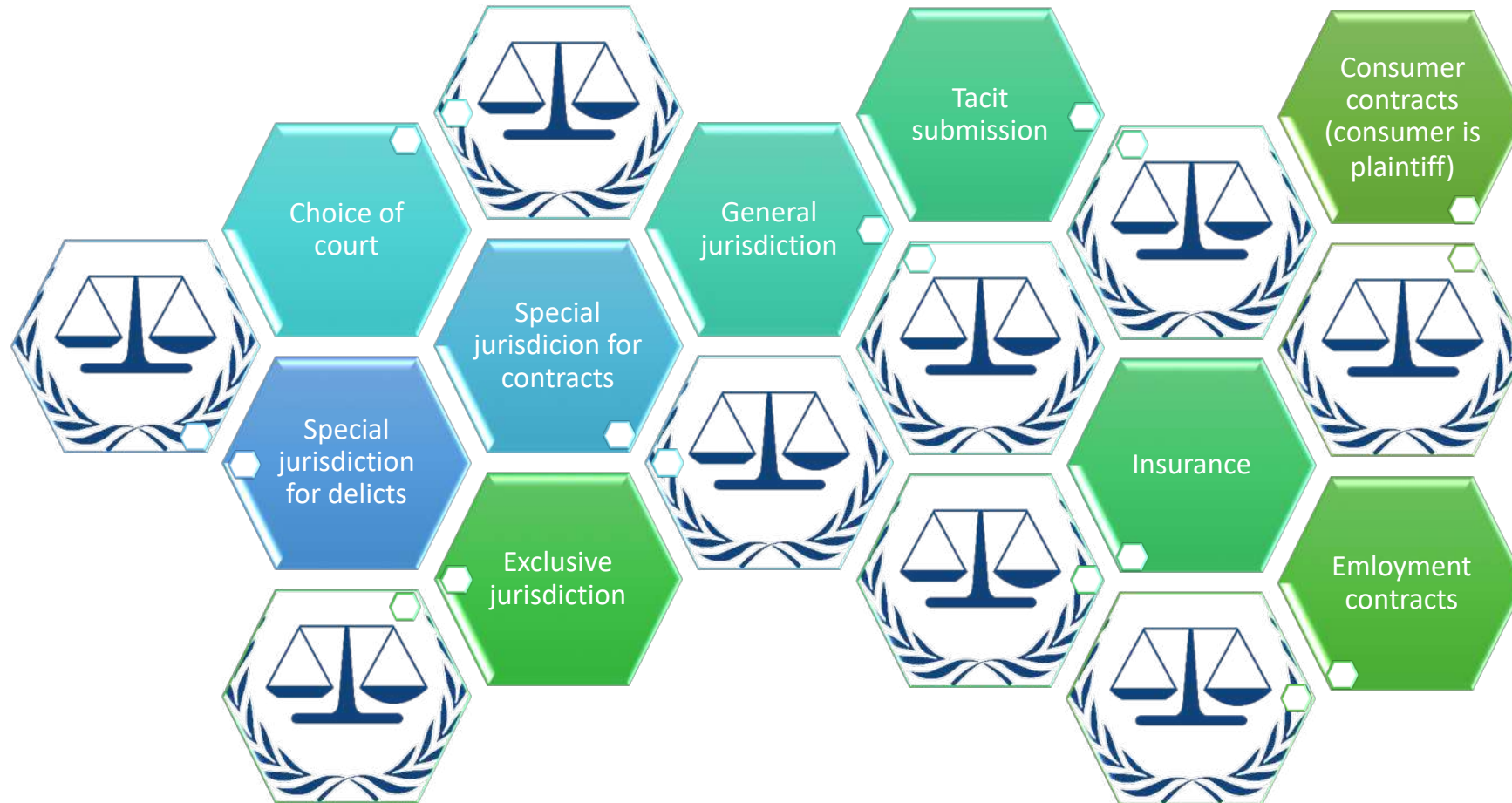
Jurisdiction in CONSUMER CONTRACTS in special provision of Article 6(2)

- defendant-consumer's domicile

- to be determined under the substantive law of the MS for which domicile is ascertained
- The concept of 'consumer's domicile' in Article 18(2) of Regulation (EU) No 1215/2012 must be interpreted as designating the consumer's domicile at the date on which the court action is brought (CJEU, *mBank*).
- Regulation No 44/2001 must be interpreted as meaning that in a situation in which a consumer who is a party to a long-term mortgage loan contract, which includes the obligation to inform the other party to the contract of any change of address, renounces his domicile before proceedings against him for breach of his contractual obligations are brought, the courts of the MS in which the consumer had his last known domicile have jurisdiction, pursuant to Article 16(2) of that regulation, to deal with proceedings in the case where they have been unable to determine, pursuant to Article 59 of that regulation, the defendant's current domicile and also have no firm evidence allowing them to conclude that the defendant is in fact domiciled outside the European Union (CJEU, *Lindner*).



Most relevant jurisdiction under Brussels I bis





General jurisdiction – Article 4(1) Brussels I bis

- Subject to this Regulation, **persons domiciled in a Member State shall**, whatever their nationality, **be sued in the courts of that Member State.**
- domicile of the defendant
- principle of *actor sequitur forum rei*
- principle of *perpetuatio fori (iurisdictionis)*: change to the defendant's domicile after the proceedings have been instigated does not affect the jurisdiction of the court



Special jurisdiction – Article 7 Brussels I bis

A person domiciled in a Member State may be sued in another Member State:

- (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
 - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
 - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;(c) if point (b) does not apply then point (a) applies;
- (2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
- (3) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
- (4) as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised;
- (5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;
- (6) as regards a dispute brought against a settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;
- (7) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question: (a) has been arrested to secure such payment; or (b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.



Special jurisdiction – Article 7 Brussels I bis

A person domiciled in a Member State may be sued in another Member State:

(1) (a) in **matters relating to a contract**, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if point (b) does not apply then point (a) applies;

(2) in **matters relating to tort, delict or quasi-delict**, in the courts for the place where the harmful event occurred or may occur;



Differentiation between 7(1) and 7(2)

matters related to a contract **matters related to a delict or quasi-delict**

AUTONOMOUS INTERPRETATION no resort to any national law,
but derives from the objectives and scheme of the EU legislation concerned
and the general principles underlying the entire corpus of the EU national
legal systems

THEY ARE COMPLEMENTARY
if there is an obligation and it is not a
contractual one, it is a non-contractual
obligation and *vice versa*



Differentiation between 7(1) and 7(2)

- **CONTRACTUAL obligations**

>> **obligations freely assumed by one party towards another**

CJEU Handte C-26/91

- ✓ need not be mutual
- ✓ may be a unilateral promise
- ✓ may concern validity or existence of the contract

- **NON-CONTRACTUAL obligations**

>> **action which seek to establish liability of the defendant and is not related to a contract**

CJEU

CJEU Kalfelis C-189/87

- ✓ both strict (objective) and fault-based (subjective) liability
- ✓ obligations arising out of dealings prior to the conclusion of the contract



Special jurisdiction – Article 7(1) Brussels I bis

sale of goods & provision of services

- the place in a MS where, under the contract, the **goods were delivered** or should have been delivered/the **services were performed** or should have been performed
- jurisdiction constant with the same court regardless of the disputed obligation
- determining the place of performance based on factual circumstances

other contracts

- the place of **performance of the obligation in question**
- jurisdiction may vary within a single contract depending on the disputed obligation
- determining the place of performance based on the law applicable to the contract (pursuant to PIL rules in Rome I) – *Tessili* doctrine



Special jurisdiction – Article 7(2) Brussels I bis

- jurisdiction criterion: place **where the harmful event occurred** or may occur
- interpreted to the ubiquitous effect by the CJEU to include both:
 - 1) place in which the **event giving rise to the damage occurred** (*locus actus*) and
 - 2) place in which the **direct consequences of that event occur** (*locus damni directi*)



Special jurisdiction – Article 8 Brussels I bis

A person domiciled in a Member State may also be sued:

(1) where he is **one of a number of defendants**, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(2) as **a third party** in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

(3) on a **counter-claim** arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

...



Protective jurisdiction – Art. 11 Brussels I bis

1. An insurer domiciled in a Member State may be sued:
 - (a) in the courts of the Member State in which **he is domiciled**;
 - (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the **claimant is domiciled**; or
 - (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought **against the leading insurer**.
2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the **branch**, agency or establishment, be deemed to be domiciled in that Member State.



Protective jurisdiction – Art. 14 Brussels I bis

1. Without prejudice to Article 13(3), an insurer may bring proceedings only in the courts of the Member State in which the **defendant is domiciled**, irrespective of whether he is the policyholder, the insured or a beneficiary.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.



Protective jurisdiction – Art. 15 Brussels I bis

The provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen;
- (2) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section;
- (3) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State;
- (4) which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or
- (5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.



Protective jurisdiction – Art. 18 Brussels I bis

ONLY for consumer contracts IF CONSUMER IS NOT A DEFENDANT + further requirements under Article 17 Brussels I bis

1. A consumer may bring proceedings against the other party to a contract either in the courts of the **Member State in which that party is domiciled** or, regardless of the domicile of the other party, in the courts for the **place where the consumer is domiciled**.



Protective jurisdiction – Art. 17 Brussels I bis

ONLY for consumer contracts IF CONSUMER IS NOT A DEFENDANT + Article 17

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

(a) it is a contract for the sale of goods on instalment credit terms;

(b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.



Protective jurisdiction – Art. 19 Brussels I bis

ONLY for consumer contracts IF CONSUMER IS NOT A DEFENDANT + Article 17

The provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen;
- (2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
- (3) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.



Protective jurisdiction – Art. 22 Brussels I bis

1. An employer may bring proceedings only in the courts of the Member State in which the **employee is domiciled**.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.



Protective jurisdiction – Art. 21 Brussels I bis

1. An employer domiciled in a Member State may be sued:
 - (a) in the courts of the Member State in which **he is domiciled**; or
 - (b) in another Member State:
 - (i) in the courts for the place **where or from where the employee habitually carries out his work** or in the courts for the last place where he did so; or
 - (ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the **place where the business which engaged the employee is or was situated**.
2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with **point (b)** of paragraph 1.



Protective jurisdiction – Art. 20 Brussels I bis

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.
2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.



Protective jurisdiction – Art. 23 Brussels I bis

The provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen; or
- (2) which allows the employee to bring proceedings in courts other than those indicated in this Section.



Exclusive jurisdiction – Art. 24 Brussels I bis

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the **Member State in which the property is situated**.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which **the defendant is domiciled** shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

...



Explicit prorogation – Art. 25 Brussels I bis

1. If the parties, regardless of their domicile, have agreed that **a court or the courts of a Member State** are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing;

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

3. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between those persons or their rights or obligations under the trust are involved.

4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 24.

5. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.



Tacit prorogation – Art. 26 Brussels I bis

1. Apart from jurisdiction derived from other provisions of this Regulation, 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 24.
2. In matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.



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THANK YOU!

ivana.kunda@uniri.hr