JURISDICTION AND RECOGNITION OF JUDGMENTS

NOVEMBER 2018 UPDATE
CHAPTER 1

INTRODUCTION

1.02. European judicial cooperation in civil matters

Intervening with increasing frequency, the European legislator has constituted a body of rules aimed both at eliminating obstacles to the proper operation of civil procedures and reinforcing legal certainty in the European Judicial Area. The preamble of Regulation No 44/2001 states that, "The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. In order to establish progressively such an area, the Community should adopt, amongst other things, the measures relating to judicial cooperation in civil matters which are necessary for the sound operation of the internal market". Regulation No 1215/2012 moves even further towards integration. The exequatur procedure is abolished in order to ensure that judgments in civil and commercial matters can circulate more freely: a decision rendered in one Member State shall be recognized and enforced in all the other Member States without any other specific measure required. The Brussels I Regulation has been supplemented by: - Regulation No 1393/2007 of 13 November 2007 (which replaces Regulation No 1348/2000 of 29 May 2000) on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters; - Regulation No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure (less than EUR 2,000); - Regulation No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims; - Regulation No 1896/2006 of 12 December 2006 creating a European order for payment procedure, and above all Regulation No 1346/2000 of 29 May 2000 on insolvency.

1 In order to facilitate judicial cooperation between the Member States, the Council has created by decision of 28 May 2001 No 2001/470 (OJ L 174 of 26 June 2001), the European Judicial Network in civil and commercial matters.
2 The recognition or enforcement of a judgment can however still be contested and refused on the same grounds as those provided by Articles 34 and 35 of Regulation No 44/2001. Article 45 of Regulation No 1215/2012 which merges the two articles, provides that recognition - or enforcement (see Art. 46, Reg. 1215/2012) - of a judgment may be refused if it conflicts with section 3 (jurisdiction in matters relating to insurance), section 4 (jurisdiction over consumer contracts), and also section 5 (jurisdiction over individual contracts of employment) of Chapter II - which is new - "where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the claimant". Failure to comply with the rules regarding the courts having exclusive jurisdiction provided under section 6 of Chapter II can also be relied on to justify a refusal of recognition or enforcement.
7 OJ L 399 of 30 December 2006.
proceedings\(^8\), a hybrid regulation which not only governs judicial competence and conflicts of jurisdictions, following the example of Regulation No 44/2001 but also the applicable law on international bankruptcy. In late 2012, the Commission issued proposals for the modernization of Regulation No 1346/2000. The purpose of this review was mainly to improve the efficiency of cross-border insolvency proceedings in order to ensure the proper functioning and resilience of the internal market in times of economic crisis\(^9\) and led to the adoption of Regulation No 2015/848 of 20 May 2015\(^10\), replacing Regulation No 1346/2000.

\(^8\) OJ L 160 of 30 June 2000.
\(^9\) In brief, the reform proposals widen the scope of application of the regulation by amending the definition of insolvency proceedings, clarify the rules on the determining of which court has jurisdiction, aim to improve the management of secondary insolvency proceedings, require Member States to implement measures for the publication of insolvency proceedings and the lodging of claims and improve coordination of proceedings with regard to members of the same group of undertakings.
\(^10\) OJ L 141 of 5 June 2015.

\(^11\) Case 29/76 LTU v Eurocontrol [1976] ECR 1541, LawLex091822: “it is necessary, in order to ensure, as far as possible, that the rights and obligations which derive from [the regulation] for the Contracting States and the persons to whom it applies are equal and uniform, that the terms of [Article 1 of the regulation] should not be interpreted as a mere reference to the internal law of one or other of the States concerned”.

\(^12\) The 'independent' concept, found for the first time by the Court in the aforementioned Eurocontrol judgment, has then been used to define the contractual matter (Case 9/87 Arcado v Haviland [1988] ECR 1539, LawLex092313), matters relating to tort, delict and quasi-delict (Case 189/87 Kalfelis v Schröder and others [1988] ECR 5565, LawLex091633), the concepts of sale of goods on installment credit terms (Case 150/77 Ott [1978] ECR 1431, LawLex091568), secondary establishment (Case 33/78 [1978] Somafer SA, LawLex11625), proceedings concerned with the registration or validity of patents (Case 288/82 Duijstee [1983] ECR 3663, LawLex091501), related actions

**CHAPTER 2**

**JURISDICTION**

**Section 1 Scope of application**

**II. Material scope of application**

2.03. Concept of 'civil and commercial matters'

Regulation No 1215/2012 applies in civil and commercial matters whatever the nature of the court or tribunal (Article 1). As there is no definition of the concept of 'civil and commercial matters', the Court of Justice\(^11\) has chosen a principle of interpretation aimed at ensuring that the rights and obligations of the Member States and their respective citizens do not vary from State to State. The concept of civil and commercial matters must be regarded "as independent\(^12\) and must be interpreted
by reference, first, to the objectives and scheme [of the regulation] and, secondly, to the general principles which stem from the corpus of the national legal systems". According to the Court of Justice, what falls within civil and commercial matters must be determined essentially "by reason of the legal relationships between the parties to the action or of the subject-matter of the action". The legal relationship between the payee of a promissory note, issued in incomplete form and subsequently completed, and the giver of an aval thereon falls within the concept of matters relating to a contract pursuant to Article 7(1) of Regulation No 1215/2012, insofar as by signing the promissory note on its face under the indication 'per aval', the giver of the aval voluntarily consented to act as the guarantor of the obligations of the maker of that promissory note.

Therefore, a judgment rendered in a dispute between a public authority and a person governed by private law, where the public authority does not exercise powers conferred by public law, proceedings under employment law, an action for the removal of unfair terms brought by a consumer protection association, or an action for compensation for injury to an individual resulting from a criminal offense, joined to criminal proceedings, or the dispute the object of which is the authorization of enforcement of six orders by which the court referred to for patent infringement prohibited one of the parties to the proceedings from importing, possessing and marketing certain pesticides, on pain of a fine, even if the order imposing the fine explicitly mentions the penal and punitive nature of that fine fall within the scope of the Regulation. The action brought by an applicant on the basis of an assignment of claims which has been granted by the liquidator appointed in insolvency proceedings

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15 Case C-419/11 Česká sporitelna v Gerald Feichter, Judgment of 14 March 2013, LawLex13367.
16 Case C-266/01 Préservatrice Foncière Tiard [2003] ECR I-4867, LawLex091337: a claim by which a Member State seeks to enforce a private-law guarantee contract falls within the concept of civil and commercial matters within the meaning of Article 1, insofar as the legal relationship between the creditor and the guarantor does not entail the exercise by the State of powers are going beyond those existing under the rules applicable to relations between private individuals; along the same lines, C-433/01 Blijdenstein [2004] ECR I-981, LawLex09802: an action for recovery whereby a public body seeks from a person governed by private law reimbursement of sums paid by way of an education grant to a maintenance creditor, to whose rights it is subrogated, falls within civil matters within the meaning of the regulation, where the subrogation in question is governed by civil law.
18 Case C-167/00 Henkel [2002] ECR I-8111, LawLex09666: an action for the removal of unfair terms brought by a consumer protection organization is a civil and commercial matter insofar as it seeks to make relationships governed by private law subject to review by the courts.
19 Case C-172/91 Sonntag v Waidmann [1993] ECR I-1963, LawLex09718: a civil action for compensation for injury to an individual resulting from a criminal offence falls within the material scope of application of the regulation, even though it is joined to criminal proceedings, insofar as "in the legal systems of the [Member] States the right to obtain compensation for injury suffered as a result of conduct regarded as culpable in criminal law is generally recognized as being a civil-law right".
20 Case C-406/09 Realkemie Nederland, not available in English.
the subject-matter of which is the right to have a transaction set aside which the national law applicable in these proceedings confers upon the liquidator also falls within the concept of civil and commercial matters where the action is exercised by the assignee in his own interest and for his personal benefit and is not closely connected with the insolvency proceedings as do actions seeking legal redress for damage resulting from infringements of European Union competition law.

The fact that the wording of Article 1 is very general has raised the issue of whether ancillary claims - and in particular interim or protective measures referred to in Article 35 of the regulation - may come within civil and commercial matters.

According to the Court of Justice, ancillary measures fall within the scope of application of the regulation according to the subject-matter with which they are concerned and not according to the subject-matter involved in the principal claim. The fact that the judgments are provisional or definitive is irrelevant to assess whether they have a civil and commercial nature. The applicability of the regulation to provisional measures is determined only by the nature of the rights which they serve to protect. Therefore, provisional measures relating to matters excluded from the scope of application of the regulation pursuant to Article 1 may not fall within its scope of application. This is the case for provisional measures which are closely connected to questions as to the status of the persons involved in divorce proceedings or proprietary legal relations resulting directly from the matrimonial relationship or the dissolution thereof, such as the application for provisional measures to secure the disclosure of a document which might be used as evidence in an action concerning the husband’s management of his wife’s property connected with rights in property arising out of a matrimonial relationship.

2.04. Exclusion of fiscal, customs and administrative matters

Regulation No 1215/2012 does not cover revenue, customs or administrative matters (Article 1). However, the public authority’s action is not sufficient for the proceedings to fall outside the scope of application of the regulation.

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21 Case C-213/10 F-Tex [2012], LawLex12634.
23 Case 120/79 De Cavel [1980] ECR 731, LawLex091514: maintenance obligations which themselves fall within the concept of civil and commercial matters, fall within the scope of Brussels I Regulation, regardless of whether the proceedings relating to maintenance obligations are the ancillary to divorce proceedings which, by their object, fall outside the regulation.
In the Eurocontrol judgment\(^{28}\), the Court of Justice considered that a judgment given in an action between a public authority and a person governed by private law does not fall within the regulation where the right on which the action relies arises from an act of the public authority in the exercise of its powers, even if the action brought has a civil nature\(^{29}\). This is the case for the removal of a wreck\(^{30}\), acts perpetrated by armed forces\(^{31}\) or for an action for recovery of sums not due on the ground of unjust enrichment having its origin in the repayment of a fine imposed in competition law proceedings\(^{32}\). However, enforcement proceedings brought by a company owned by a local authority against a natural person domiciled in another Member State, for the purposes of recovering an unpaid debt for parking in a public car park fall within the scope of Regulation No 1215/2012 insofar as they are not of a punitive nature but merely constitute consideration for a service provided\(^{33}\). The civil servant status of the person against whom the action is brought is not sufficient to set aside application of the regulation, since a civil servant does not necessarily exercise public powers, even if he acts on behalf of the State. Thus, an action for recovery against a State school teacher having caused injury to a pupil during a school trip by reason of a breach of his official duties does not fall within administrative matters insofar as the conduct of the teacher in his function as a person in charge of pupils does not constitute an exercise of public powers going beyond those existing under the rules applicable to relations between private individuals and where a teacher in a State school assumes the same functions vis-à-vis pupils as those assumed by a teacher in a private school\(^{34}\).

The 'public authority acting in the exercise of public powers' criterion also applies to distinguish proceedings falling under civil matters and those falling under customs matters. A claim by which a Member State seeks to enforce a guarantee contract governed by private law intended to guarantee the payment of a customs debt does not fall within the concept of 'customs matters' expressly excluded from the regulation, where the legal relationship between the creditor and the guarantor, as resulting


\(^{31}\) Case C-292/05 Lechouriotou and others [2007] ECR I-1519, LawLex091416: the action for recovery brought in a Member State by the successors of the victims of war massacres against another Member State by reason of acts perpetrated by its armed forces does not fall within the scope of the regulation, insofar as the acts which are at the origin of the calmed loss result from the exercise of public powers on the part of the State concerned.

\(^{32}\) Case C-102/05 Gazdasági Versenyhivatal, Judgment of 28 July 2016, LawLex1711.

\(^{33}\) Case C-551/15 Pula Parking d.o.o, Judgment of 9 March 2017, LawLex17463.

\(^{34}\) Case C-172/91 Sonntag v Waidmann [1993] ECR I-1963, LawLex09718.
from the guarantee contract, does not entail the exercise by the State of powers going beyond those existing under the rules applicable to relations between private individuals.

2.05. Exclusion of arbitration

Article 1(2)(d) expressly excludes arbitration from the scope of Regulation No 1215/2012. According to the Schlosser report, the regulation does not apply to court judgments determining whether an arbitration agreement is valid or not or ordering the parties not to continue arbitration proceedings because they are invalid, or to proceedings and decisions concerning applications for the revocation, amendment, recognition and enforcement of arbitration awards or those used as basis for the implementation of arbitration proceedings, such as the appointment and dismissal of arbitrators, the fixing of the place of arbitration or the extension of the time-limit for making awards. Thus, proceedings pending before a national court concerning the appointment of an arbitrator do not fall within the scope of application of the regulation, even if a preliminary issue is raised as to whether an arbitration agreement exists or is valid. On the other hand, the fact that arbitration proceedings are pending does not preclude the regulation from applying to interim relief, where the purposes of the provisional measures do not concern arbitration as such, but the protection of the rights falling within its scope ratione materiae. Likewise, as the recast Brussels I regulation does not govern the recognition and enforcement, in a Member State, of an arbitral award issued by an arbitral tribunal in another Member State, it does not preclude the court of a Member State from recognizing and enforcing, or from refusing to recognize and enforce, an arbitral award prohibiting a party from bringing certain claims before a court of that Member State.

2.07. Exclusion of bankruptcy

Issues relating to bankruptcy, judicial arrangements, compositions and analogous proceedings, governed by Regulation No 2015/548, do not fall within the scope of application of Regulation No 1215/2012 (Article 1(2)(b)). The exclusion covers decisions which must "derive directly from the bankruptcy or winding-up and be closely connected with the proceedings for 'liquidation des biens' or
Jurisdiction and Recognition of Judgments Update

the ‘règlement judiciaire’\textsuperscript{42}, such as proceedings which lead to the de facto manager of a legal person to be ordered to pay a sum to the general body of creditors\textsuperscript{43} or an action for liability brought against the members of a committee of creditors on the basis of their conduct when voting on a restructuring plan in insolvency proceedings\textsuperscript{43}. According to the Court of Justice\textsuperscript{44}, applying the exclusion in Article 1(2)(b) depends on the closeness of the link between the insolvency proceedings and the court action at issue. Thus, an action for damages for unfair competition by which the assignee of part of the business acquired in the course of insolvency proceedings is accused of misrepresenting itself as being the exclusive distributor of articles manufactured by the debtor does not fall within the scope of the regulation on insolvency insofar as, even if there is a link between the action in the main proceedings and the insolvency proceedings, that link is neither sufficiently direct or sufficiently close so as to exclude Regulation No 44/2001 and therefore, so as to make Regulation No 2015/848 applicable\textsuperscript{45}. Likewise, an action for the payment of a debt taken by the insolvency administrator of an insolvent undertaking is covered by Regulation No 1215/2012, insofar as the action could have been brought by the creditor itself before its divestment by the opening of insolvency proceedings, and, in that situation, the action would have been governed by the rules concerning jurisdiction applicable in civil and commercial matters, not the derogating rules specific to insolvency proceedings\textsuperscript{46}. An action brought by a seller based on a reservation of title against a purchaser who is insolvent falls within Regulation No 1215/2012, where such an action is not based on the law of the insolvency proceedings and requires neither the opening of such proceedings nor the involvement of a liquidator\textsuperscript{47}, whilst the decision relating to the extent of the powers of the liquidator as part of insolvency proceedings (opened before the coming into force of Regulation No 1346/2000) is excluded\textsuperscript{48}.

\textsuperscript{42} Case 133/78 Gourdain v Nadler [1979] ECR 733, LawLex091538: proceedings which lead to the de facto manager of a legal entity to be ordered to pay a sum to the general body of creditors do not fall within the scope of application of the regulation where special provision is made in a law on bankruptcy, where they are made only to the court which made the order for the ‘règlement judiciaire’ or the ‘liquidation des biens’, where, if they succeed, it is the general body of creditors which benefits from them and, lastly, where, in the event of the winding-up of a commercial company, their object is to go beyond the legal person and proceed against its managers and their property.

\textsuperscript{43} Case C-641/16 Tünkers France, Judgment of 9 September 2017, LawLex171811.

\textsuperscript{44} Case C-111/08 SCT Industri [2009] ECR I-5655, LawLex11633.

\textsuperscript{45} Case C-640/16 Valach and others, Judgment of 20 December 2017, LawLex1838.

\textsuperscript{46} Case C-157/13 Nickel &amp; Goeldner Spedition v Kintra, Judgment of 4 September 2014, LawLex14928.


\textsuperscript{48} Case C-111/08 SCT Industri [2009] ECR I-5655, LawLex11633.
IV. Relation to other conventions or international treaties

2.12. Exception to the principle of the precedence of EU law

Article 71(1) of Regulation No 1215/2012 introduces an exception to the principle of primacy by setting forth that, where a Member State is also a party to a specialized convention including jurisdictional rules specific to the matter it covers, Brussels I Regulation recast does not apply to matters governed by the specialized convention. Article 71(1) does not however enable Member States to introduce, by concluding new specialized conventions or amending conventions already in force, rules which would prevail over those of the regulation.49

According to the Court of Justice, where a Member State is also a party to another convention on a specific matter containing rules on jurisdiction, this other convention precludes the provisions of the regulation from applying to cases governed by it, but the regulation is applicable in cases to which the convention does not apply.50

Pursuant to Article 71(2)(a), a court of a Member State which is a party to a convention on a particular matter may assume jurisdiction in accordance with that convention even where the defendant is domiciled in another Member State which is not a party to that convention. In any event, the court seized must apply Article 26 of the regulation, which imposes on the court - where the defendant who is domiciled in one Member State is sued in a court of another Member State and does not enter an appearance - to decline jurisdiction of its own motion, "unless its jurisdiction is derived from the provisions of this regulation". According to the Court of Justice,51 the jurisdiction of the court must be regarded as established insofar as Article 71 expressly mentions that the rules of the specialized conventions are not affected by those of the regulation. Thus, the court must take account of the jurisdiction rules set forth in the specialized conventions in question where it checks whether it has jurisdiction pursuant to Article 28.

However, although Article 71 is aimed at enforcing rules laid down for specific features of a particular matter, it cannot be interpreted as such when, in a field covered by the regulation, the application of a specialized convention may lead to results that are less favorable to the achievement of the proper running of the internal market than those to which the provisions of the regulation lead. Accordingly,

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49 Case C-533/08 TNT Express Nederland [2010] ECR I-4107, LawLex11255.
Jurisdiction and Recognition of Judgments Update

the rules governing jurisdiction, recognition and enforcement that are laid down by a specialized
collection apply provided that they are highly predictable, facilitate the sound administration of
justice and enable the risk of concurrent proceedings to be minimized, and that they ensure, under
conditions at least as favorable as those provided for by the regulation, the free movement of
judgments in civil and commercial matters and mutual trust in the administration of justice in the
Union\textsuperscript{52}, as the fact that the convention offers more choice than the regulation in terms of the rules on
jurisdiction cannot compromise the principles which underlie judicial cooperation in civil and
commercial matters in the EU\textsuperscript{53}.

Section 2 Content

I. Principle of jurisdiction of courts of the Member State in which the
defendant is domiciled

2.13. Courts of the Member State in which the defendant is domiciled

According to Recital 15 of Regulation No 1215/2012, "The rules of jurisdiction should be highly
predictable and founded on the principle that jurisdiction is generally based on the defendant's
domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in
which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting
factor". The rules of jurisdiction laid down by Regulation No 1215/2012 are thus founded on the
principle that jurisdiction is based on the defendant's domicile, complemented by the rules of special
jurisdiction\textsuperscript{54} or the exclusive jurisdictions which derogate from that principle.

Article 4 of Regulation No 1215/2012\textsuperscript{55} lays down the general principle of jurisdiction of the courts of
the Member State in which the defendant is domiciled\textsuperscript{56}. By allowing both the plaintiff to identify
easily the court he may seize and the defendant to reasonably plan the court in which he may be
sought, Regulation No 1215/2012 pursues an objective of legal certainty which consists in

\textsuperscript{52}Case C-533/08 TNT Express Nederland [2010] not yet published in the ECR, LawLex11255.
\textsuperscript{53}Case C-157/13 Nickel &amp; Goldner Spedition v Kintra, Judgment of 4 September 2014, LawLex14928.
\textsuperscript{54}Case C-533/07 Falco Privatstiftung and Rabitsch [2009] ECR I-3327, LawLex11254. Article 6 of the regulation, insofar as it lays down
that the jurisdiction of the courts to rule on a dispute in which the defendant is domiciled in a non-Member State is not determined by the
regulation, but by the law in force in the Member State in the territory of which the seized court is located, subject to application of the
provisions of Articles [24 and 25], is a confirmation of the fundamental principle set forth in Article [4]; See on this issue, Case C-412/98
\textsuperscript{55}"1. Subject to this regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member
State. 2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction
applicable to nationals of that Member State”.
\textsuperscript{56}Regarding legal entities, the domicile must be defined autonomously so as to make the common rules more transparent and avoid conflicts
of jurisdictions (Regulation No 1215/2012, recital 15).
strengthening the legal protection of persons established in the European Union. The objective of Article 4 is above all to protect the defendant as the party who, being the person sued, is generally in a weaker position\(^{57}\): it is easier for a defendant to defend himself before the courts of the Member State in which he is domiciled\(^{58}\). Thus the general jurisdiction precludes the 'forum non conveniens' theory, which gives the national court that normally has jurisdiction to hear a case the possibility to decline to exercise jurisdiction and to suspend its decision, where it considers that another court located in another State, which also has jurisdiction, would objectively be a more appropriate forum for the trial of the action for the interests of all the parties and the ends of justice\(^{59}\). According to the Court of Justice, that exception which was not initially set forth by the authors of the Brussels Convention cannot be admitted without undermining the predictability of the rules of jurisdiction laid down by the regulation, and consequently, the principle of legal certainty on which it is based. Furthermore, the uniform application of the rules of jurisdiction could no longer be ensured insofar as the "forum non conveniens" exception is recognized only in a limited number of Member States. It should however be noted that Articles 33 and 34 of Regulation No 1215/2012 apply the "forum non conveniens" exception by allowing the courts of the Member States to stay the proceedings in favor of the court of a third State where certain conditions are met\(^{60}\). The rule of Article 4 is also a counterpoise to the facilities that the regulation provides with regard to the recognition and enforcement of foreign judgments\(^{61}\).

The rule laid down by Article 4 is mandatory in nature and there can be no derogation except in cases expressly provided for by the regulation\(^{62}\). The jurisdiction of the courts in which the defendant is domiciled thus includes derogations, either in the form of a special jurisdiction, which constitutes concurrent jurisdiction, or in the form of exclusive jurisdiction which substitutes for it. The


\(^{59}\) Case C-281/02 Owusu [2005] ECR I-1383, LawLex091376.

\(^{60}\) Regulation No 1215/2012, Art. 33 (in the event of a lis pendens): "1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and proceedings are pending before a court of a third State at the time when a court in a Member State is seized of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings if: a) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and b) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice(…)". Article 34 (related actions): "1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and an action is pending before a court of a third State at the time when a court in a Member State is seized of an action which is related to the action in the court of the third State, the court of the Member State may stay the proceedings if: a) it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings b) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and c) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice. (…)".


\(^{62}\) Case C-281/02 Owusu [2005] ECR I-1383, LawLex091376.
jurisdiction rules referred to as 'lex specialis', regarding insurance, consumer contracts and contracts of employment, however, just like all the other jurisdiction rules - except for the exceptions in Articles 18(1) and 21(2) and the rules of exclusive jurisdiction in Articles 24 and 25 - are subject to the condition that one defendant at least is domiciled in the territory of a Member State in order to be applied. Thus in a case concerning the termination of an agreement for the sale of goods, Article 4 precludes the application of a national rule of jurisdiction conferring jurisdiction on the court seized, where the plaintiff/distributor is established on the national territory and when the distribution agreement covers all or part of that territory, irrespective of the fact that the defendant/grantor of the exclusive distribution has its registered office on the territory of another Member State. Regulation No 1215/2012, which has been applicable since January 2015, extends its application to defendants not domiciled in a Member State where Articles 18(1) and 21(2) apply, i.e. respectively where the defendant is a trader sued by a consumer or an employer sued by an employee.

Article 4 lays down a general rule by referring without distinction to the courts of a Member State, the domestic law of which then determines which court has special jurisdiction, by opposition to the rules of special jurisdiction which directly and precisely determine the court of the Member State which has jurisdiction to hear the case. Account is taken neither of the defendant's nationality, nor of the location of the plaintiff's domicile, which is relevant only in cases exhaustively listed in the regulation. However, where the defendant is a foreign national and has no known place of domicile in the State of the court seized, the courts of the Member State of which the defendant is a national may also consider themselves to have jurisdiction under the rules of jurisdiction laid down by regulation.

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63 Case C-318/93 Brenner and Noller v Dean Witter Reynolds [1994] ECR I-4275, LawLex092122: in an action relating to a contract concluded by a consumer which, by essence, falls within the scope of application of the consumer 'lex specialis' in Section 4, Chapter II, of the regulation, the Court of Justice reminded that, insofar as the defendant is domiciled in a non-Member State and does not have a secondary establishment in a Member State, the jurisdiction does not fall within the regulation and can be determined only in view of the domestic law of the Member State of the court seized.

64 Case C-9/12 Corman-Collins SA, Judgment of 19 December 2013, LawLex131876.

65 Regulation No 1215/2012, Art. 6.


II. Special jurisdiction
A. Options

2.16. Concept of 'matters relating to a contract'

The concept of matters relating to a contract is an independent concept which must be interpreted chiefly according to the system and objectives of Regulation No 1215/2012 and should not be taken as referring to how the legal relationship in question before the national court is classified by the relevant national law. The special jurisdictional rule in Article 7(1) of Council Regulation No 1215/2012 does not require a contract to have been concluded, but assumes that an obligation is identified. Thus the plaintiff may benefit from the choice of jurisdiction, even though the defendant claims by way of plea that the contract has not been concluded. The concept of matters relating to a contract covers in practice all situations in which there is an obligation freely assumed by one party towards another. The Paulian action, once it is brought on the basis of the creditor's rights created upon the conclusion of a contract, falls within matters relating to a contract, as, by this action the creditor seeks a declaration that the transfer of assets by the debtor to a third party has caused detriment to the creditor's rights deriving from the binding nature of the contract and which correspond with the obligations freely consented to by the debtor. The cause of this action therefore lies essentially in the breach of these obligations towards the creditor to which the debtor agreed. Actions seeking the annulment of a contract and the restitution of the amounts paid on the basis of a document the nullity of which is established are thus regarded as matters relating to a contract. This is also the case of a recourse claim between jointly and severally liable debtors under a credit agreement or a claim brought by air passengers for compensation for the long delay of a connecting flight, against the operating air carrier with which the passenger concerned does not have contractual relations.

70 Case C-334/00 Tacconi [2002] ECR I-7357, LawLex09373.
72 Case C-26/91 Handte v TMCS [1992] ECR I-3967, LawLex092082: the action of a sub-buyer against the manufacturer does not fall within matters relating to a contract insofar as "there is no contractual relationship between the sub-buyer and the manufacturer because the latter has not undertaken any contractual obligation towards the former" and "particularly where there is a chain of international contracts, the parties' contractual obligations may vary from contract to contract, so that the contractual rights which the sub-buyer can enforce against his immediate seller will not necessarily be the same as those which the manufacturer will have accepted in his relationship with the first buyer".
73 Case C-337/17 Feniks sp. z o.o., Judgment of 4 October 2018, LawLex181765.
75 Case C-249/16 Saale Kareda, Judgment of 15 June 2017, LawLex171073.
76 Joined Cases C-274/16, C-447/16, C-448/16 Flightright GmbH, Judgments of 7 March 2018, LawLex18427.
repudiation of a commercial agency agreement and all relating claims such as compensation in lieu of notice and compensation for the wrongful repudiation of that agreement, or the claims for payment of commissions due under the contract\textsuperscript{77}, membership of an association which creates close links between the members of the same kind as those which are created between parties to a contract\textsuperscript{78}, or the fact that a vendor sends a letter of its own initiative to the consumer's home, without any request by that consumer, giving that consumer the impression that a prize would be awarded to him if he returned the payment notice attached to the letter, if he had accepted the conditions laid down by the vendor and did in fact claim payment of the prize announced\textsuperscript{79}, constitute obligations freely assumed falling within Article 7(1).

The criterion of 'freely assumed commitments between the parties' also enables matters relating to a contract to be distinguished from matters relating to tort, delict and quasi-delict, which are defined negatively in relation to matters relating to tort\textsuperscript{80}. The action brought by a sub-buyer against the manufacturer for damages on the ground that the goods are not in conformity\textsuperscript{81}, an action for liability brought by an insurer on the basis of a bill of lading which discloses no contractual relationship freely entered into between the consignee of the damaged goods and the actual maritime carriers\textsuperscript{82}, or the obligation of which the guarantor claims the performance on the basis of a guarantee agreement concluded without the debtor knowing\textsuperscript{83} do not fall within matters relating to a contract but with matters relating to tort, delict or quasi-delict. Likewise, the dispute in which national legislation renders a legal person liable for the debts of a company which he controls, where that person did not comply with the reporting obligations following the acquisition of that company, cannot be regarded as concerning matters relating to a contract due to lack of consent\textsuperscript{84}. Further, proceedings concerning the avoidance of a contract of gift of immovable property on the ground of the donor's incapacity to contract do not fall within the exclusive jurisdiction of the courts of the Member State in which the property is situated, but within the special jurisdiction of the courts of the place of performance of the obligation in question, given that, as regards mixed actions based on a right in personam and seeking

\textsuperscript{78} Case 34/82 Peters v Zuid Nederlandse Aannemers vereniging [1983] ECR 987, LawLex092184.
\textsuperscript{79} Case C-27/02 Engler [2005] ECR I-481, LawLex091364.
\textsuperscript{80} Case 189/87 Kalfelis v Schröder and others [1988] ECR 5565, LawLex091633: "The concept of 'matters relating to tort, delict or quasi-delict' must be regarded as an autonomous concept including all actions which seek to establish the liability of a defendant and which are not related to a contract".
\textsuperscript{81} Case C-26/91 Handte v TMCS [1992] ECR I-3967, LawLex092082.
\textsuperscript{82} Case C-51/97 Réunion européenne and others [1998] ECR I-6511, LawLex091016.
\textsuperscript{83} Case C-265/02 Frahuil [2004] ECR I-1543, LawLex091046.
\textsuperscript{84} Case C-519/12 OTP Bank, Judgment of 17 October 2013, not available in English.
to obtain a right in rem, there are numerous factors which support the view that such actions are predominantly actions in personam\(^85\). On the other hand, civil liability claims which are classified as matters relating to tort under national law must be regarded as concerning matters relating to a contract where the conduct complained of may be considered a breach of the terms of the contract, which is established by taking into account the purpose of the contract\(^86\). This is also the case for an action for damages founded on the sudden termination of a long-standing business relationship, where there existed between the parties a tacit contractual relationship based on a body of consistent evidence: good faith, the regularity of the transactions and their development over time expressed in terms of quantity and value, any agreements as to prices charged and/or discounts granted, and the correspondence exchanged\(^87\).

Lastly, matters relating to a contract expressly cover the sale of goods and the provisions of services referred to in Article 7(1)(b). These concepts have been specified by the Court of Justice. Thus, a contract under which the owner of an intellectual property right grants its contractual partner the right to use it in return for remuneration, is not a contract for the provision of services\(^88\). On the other hand, a contract for the supply of goods containing specific terms concerning the distribution by the distributor of the goods sold by the grantor constitutes a contract for the sale of goods within the meaning of the second indent of Article 7(1)(b) of the regulation\(^89\). Contracts of which the object is the supply of goods to be manufactured or produced even though the purchaser has specified certain requirements with regard to the supply, fabrication and delivery of the goods, the purchaser has not supplied the materials, and the supplier is responsible for the quality of the goods and their compliance with the contract, must be classified as contracts for the sale of goods within the meaning of the regulation\(^90\).

### 2.18. Determining the place of performance of the obligation

The concept of place of performance of the obligation forming the basis of the action has raised many concerns as to interpretation which Regulation No 44/2001 had tried to address by objectively defining that place for contracts for the sale of goods and provisions of services, which, from a statistical point of view, constitute the essential part of the contracts. However, the issue of

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\(^{85}\) Case C-417/15 Schmidt, Judgment of 16 November 2016, LawLex162121.

\(^{86}\) Case C-548/12 Brogsitter, Judgment of 13 March 2014, LawLex141656.

\(^{87}\) Case C-196/15 Granarolo, Judgment of 14 July 2016, LawLex161361.

\(^{88}\) Case C-533/07 Falco Privatstiftung and Rabitsch [2009] ECR I-3327, LawLex11254.

\(^{89}\) Case C-9/12 Corman-Collins SA, Judgment of 19 December 2013, LawLex131876.

\(^{90}\) Case C-381/08 Car Trim, LawLex11407.
determination of the place of performance of the obligation at issue remains where it arises of another type of contract and the parties have not agreed thereto in advance 91. The Court of Justice, in the Tessili judgment 92, laid down the rule according to which the place in which the obligation was or should have be performed must be determined in accordance with the law that governs the obligation at issue, according to the rules of conflict of the court seized. Coming at a time when there were many divergences between the national laws in matters relating to a contract due to lack of unification of the applicable substantive law, the principle of referral to the rules of conflict of the court seized has been set out by the Court of Justice: the place of performance is determined pursuant to the rules of private international law of the Member State of the court seized, as well as to the substantive law 93, even where those rules refer to the application to the contract of provisions such as those of the Uniform Law on the International Sale of Goods, annexed to the Hague Convention of 1 July 1964 94. The Court of Justice, which has consistently restated the principle of determination of the place of performance of the basic obligation in accordance with the law governing the obligation at issue, according to the rules of conflict of the court seized, justifies this solution by the need that "the competent court [be] the court of the place where the obligation in question is to be performed in accordance with the law applicable to it" and adds that by reason of the harmonization carried out within the Union 95, the law applicable to the determination of the place of performance is no longer likely to vary depending on the court seized 96.

91 Case 56/79 Zelger v Salinitri [1980] ECR 89, LawLex092029: the parties are free to agree on a place of performance for contractual obligations - forming the basis of jurisdiction of the court under Article 7(1) - which differs from that which would be determined under the law applicable to the obligation at issue, without having to comply with specific formal conditions regarding jurisdiction clauses, provided that the localization clause is valid under the law applicable to the contract; Case C-106/95 MSG v Les Gravières Rhénanes [1997] ECR I-911, LawLex09336: however, the parties cannot choose a fictitious place of performance which has no real connection with the reality of the contract and the obligations arising out thereof, as this would amount to agree on the jurisdiction of a court without complying with the formal conditions under the regulation relating to forum election clauses.

92 Case 12/76 Industrie Tessili italiana v Dunlop AG [1976] ECR 1473, LawLex091509: in this case, the obligation forming the basis of the claim in question consisted in a payment obligation which, according to the laws of the Member States, was payable at the debtor's domicile or at the creditor's domicile. From that finding, the Court favored the method of conflict of law and the 'lege causae' qualification which, if applicable, may lead to the application of a foreign substantive law, rather than the 'lege fori' qualification which, in Member States where the payment is due at the debtor's domicile would have resulted in removing all substance from the option recognized to the plaintiff-creditor in Article 7(1) (since the place of performance is, in such a case, necessarily superposed to the domicile of the defendant-debtor), whereas in the Member States where the payment is due at the creditor's domicile, the plaintiff (creditor) would have benefited from the possibility to sue the debtor in the court of his domicile [which the regulation intends precisely to avoid since it is not normally based on the criterion of the plaintiff's domicile].


95 Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations, replaced by Rome (I) Regulation, applicable to all contracts concluded from 17 December 2009.

96 Case C-440/97 GIE Groupe Concorde and others [1999] ECR I-6307, LawLex09831: to the Court of Cassation which was wondering whether the national courts might determine the place of performance of the obligation by seeking to establish, having regard to the nature of the relationship creating the obligation and the circumstances of the case, the place where the performance actually took place or should have taken place, without having to refer to the law which, under the rules on conflict of law, governs the obligation at issue, the ECJ answered...
Jurisdiction and Recognition of Judgments Update

However the Tessili case law has the major disadvantage of leading to a fragmentation of the case and a dispersion of jurisdiction where there is more than one claim based on distinct contractual obligations. Therefore, where an action is founded on two obligations of equal ranking arising from the same contract, the court does not have jurisdiction to hear the whole of the action, where under the conflict rules of the State in which that court is situated the obligations are to be performed in another Member State. Thus, where the contractual obligation forming the basis of the claim consists in an obligation not to do something, applicable without any geographic limit, is not capable of fixing a single place of performance and where the multiplicity of courts having jurisdiction might encourage forum shopping on the part of the plaintiff, the Court prefers not to apply the Tessili case law and will designate the court having jurisdiction depending on the defendant's domicile.

In the case of the sale of goods, Regulation No 1215/2012, under the first indent of Article 7(1)(b), grants jurisdiction to the court of the place of performance where the goods were delivered or should have been delivered. The place of delivery of the goods, as autonomous linking factor, applies "to all claims founded on one and the same contract for the sale of goods rather than merely to the claims founded on the obligation of delivery itself". Establishing the place of performance of 'the tasks which characterize the contract' as the autonomous linking factor, the regulation excludes resorting to the rules of private international law of the Member States of the court seized, and to the substantive law which, under that law, would be applicable to determine the place of performance of the basic obligation in accordance with the De Bloos and Tessili case law. The place in which the goods were or should have been delivered under the contract must therefore be determined on the basis of the contractual provisions. The national court must take into account all the relevant contractual terms and clauses enabling the place of delivery to be clearly identified, including the terms and clauses that the reference, in Article 7(1) of the regulation, to the place of performance of the contractual obligations can only be understood as a referral to the applicable substantive law, pursuant to the conflict rules of the court seized, and such referral is even more justified because there is no risk that the law applicable to the determination of the place of performance will vary depending on the court seized, since the conflict rules enabling the law applicable to the contract to be determined have been standardized in the Member States.

97 Although most of the time the law governing the obligation that forms the basis of the claim is in fact the law of the contract, some obligations at issue may fall within a specific law - See on that issue, Case 14/76 De Bloos v Bouyer [1976] ECR 1497, LawLex091547, having retained that it is for the national court to ascertain whether, under the law applicable to the contract, the compensation sought penalizes the non-performance of an obligation arising out of the contract, or whether it is based on an independent obligation, even a public-order provision, with the consequence that, depending on whether the law applicable to the obligations at issue is that of the contract or another law, their place of performance may be localized in distinct States and therefore lead to grant jurisdiction to the courts of a Member State for certain claims, while another court will have international jurisdiction to hear other claims.

100 Case C-386/05 Color Drack [2007] ECR I-3699, LawLex09623.
generally recognized and applied in international commercial usage, such as Incoterms\textsuperscript{102}. Where it is impossible to determine the place of delivery of the goods on that basis, without reference to the substantive law applicable to the contract, that place is the place where the physical transfer of the goods took place, as a result of which the purchaser obtained, or should have obtained, actual power of disposal over those goods at the final destination of the sales transaction\textsuperscript{103}. In case of sale of goods involving several places of delivery within a single Member State, the plaintiff may sue the defendant in the court for the principal place of delivery, which must be understood as the place with the closest linking factor between the sales contract and the court having jurisdiction\textsuperscript{104}. Where the principal place of delivery cannot be determined, the plaintiff is free to choose the court for the place of delivery it wishes\textsuperscript{105}.

In the case of the provision of services, the second indent of Article 7(1)(b) designates as the court having jurisdiction that of the place where the services were provided or should have been provided. According to the Court of Justice\textsuperscript{106}, the rules of special jurisdiction for the provision of services, where the services are provided at several places, cannot be applied a differentiated approach from that adopted in case of plurality of places of delivery of the goods, insofar as they have the same origin, pursue the same objectives and occupy the same place in the scheme established by the regulation. As a result, in case of air transport of persons from one Member State to another, the places of departure and arrival of the aircraft must be regarded as the principal place of the provision of services insofar as the air transport services consist, by their very nature, of services provided in an indivisible and identical manner. The court having jurisdiction to deal with a claim for compensation founded on an air transport contract will therefore be that, at the applicant's choice and in addition to that of the defendant's domicile, which has territorial jurisdiction over the place of departure or place of arrival of the aircraft. Where the claim for compensation for the long delay of a connecting flight is based on an irregularity which took place on the first leg of the flight operated by an air carrier which is not the contracting party of the passengers in question, the place of arrival of the second flight must be regarded as the place of performance of the flight in its entirety, where the carriage on both flights was

\textsuperscript{102} Case C-87/10 Electrosteel Europe SA, Judgment of 9 June 2011, LawLex111090.
\textsuperscript{103} Case C-381/08 Car Trim [2010] ECR I-1255, LawLex11407.
\textsuperscript{104} Case C-386/05 Color Drack [2007] ECR I-3699, LawLex09623: the first indent of Article 7(1)(b) applies whether there is one place of delivery or several, in a same Member State, which "[is] without prejudice to the answer to be given where there are several places of delivery in a number of Member States".
\textsuperscript{105} Case C-386/05 Color Drack [2007] ECR I-3699, LawLex09623.
\textsuperscript{106} Case C-204/08 Rehder [2009] ECR I-6073, LawLex11495.
operated by two different air carriers\(^{107}\). Lastly, the Court has specified that the second indent of Article 7(1)(b) is applicable in the case of the provision of services in more than one Member States. Thus, for a commercial agency contract implying the provision of the services in several Member States, the court having jurisdiction to hear and determine all the claims is the court within whose jurisdiction the place of the main provision of services is situated, determined on the basis of the provisions of the contract or, in the absence of such provisions, the actual performance of the contract or, where it cannot be determined on that basis, the place where the agent is domiciled\(^{108}\). Similarly, where a credit institution grants a loan to two jointly and severally liable debtors, the place in a Member State where, under the contract, the services were provided or should have been provided, is, unless otherwise agreed, the place where that institution has its registered office, and this also applies with a view to determining the territorial jurisdiction of the court called upon to hear an action for recourse between those debtors\(^{109}\).

3° Delict or quasi-delict

2.20. Concept of delict

Article 7(2) of Regulation No 1215/2012 lays down, in favor of the plaintiff, an option of jurisdiction in matters relating to tort, delict or quasi-delict, which allows that plaintiff to refer the matter to the court where the harmful event occurred or may occur.

The concept of 'matters relating to tort, delict or quasi delict', which is an autonomous concept, includes all actions which seek to establish the liability of a defendant and which are not related to a contract\(^{110}\). Therefore a situation in which there is no 'obligation freely assumed by one party towards another' falls within matters relating to tort, delict or quasi-delict\(^{111}\). This is the case for a claim seeking to obtain fair compensation in the context of the private copying exception in application of Directive No 2001/29\(^{112}\) and for an action for liability brought by an insurer on the basis of a bill of lading which discloses no contractual relationship freely entered into between the consignee of the damages goods and the maritime carriers\(^{113}\), of an action founded on the defendant's pre-contractual

\(^{107}\) Joined Cases C-274/16, C-447/16, C-448/16 Flightright GmbH, Judgment of 7 March 2018, LawLex18427.


\(^{109}\) Case C-249/16 Saale Kareda, Judgment of 15 June 2017, LawLex171073.


\(^{113}\) Case C-51/97 Réunion européenne and others [1998] ECR I-6511, LawLex091016.
liability due to the unjustified breaking-off of negotiations\textsuperscript{114}, of an action brought by the sub-buyer against the manufacturer for damages on the ground that the goods are not in conformity\textsuperscript{115}, of an action for the removal of unfair contract terms brought by a consumer protection organization\textsuperscript{116}, or of proceedings relating to the legality of industrial action\textsuperscript{117} or an action brought by the creditor of a limited company seeking to hold liable for its debts a member of the board of directors and one of that company's shareholders, as they have allowed it to continue to carry on business although it was undercapitalized and was forced to go into liquidation\textsuperscript{118}.

2.21. Harmful event

The concept of 'harmful event' is broad in scope and includes physical, pecuniary, non-pecuniary loss or damage. Injury to the reputation and good name of a natural or legal person due to defamatory publication may thus fall within Article 7(2)\textsuperscript{119}. With regard to consumer protection, it covers not only situations where an individual has personally sustained damage but also the undermining of legal stability by the use of unfair terms\textsuperscript{120}.

The concept of harmful event also encompasses the 'knock-on' damage, i.e. the damage suffered by a victim who is not the principal victim\textsuperscript{121} and the indirect damage, i.e. that follows the initial damage\textsuperscript{122}. According to the Court of Justice, a loss of income may be regarded as initial damage\textsuperscript{123}.

Moreover, application of Article 7(2) is not subject to the fact that any actual concrete damage has occurred\textsuperscript{124}: a merely preventive action seeking to prevent the occurrence of a future harmful event also falls within matters relating to tort and delict\textsuperscript{125}.

\textsuperscript{114} Case C-334/00 Tacconi [2002] ECR I-7357, LawLex09373: the action founded on the pre-contractual liability of the defendant is not based on obligations freely assumed by one party towards another but on the rule of law which requires the parties to act in good faith in negotiations with a view to the formation of contracts.

\textsuperscript{115} Case C-26/91 Handte v TMCS [1992] ECR I-3967, LawLex092082: the action of the sub-buyer against the manufacturer falls within matters relating to tort and delict insofar as "there is no contractual relationship between the sub-buyer and the manufacturer because the latter has not undertaken any contractual obligation towards the former" and "particularly where there is a chain of international contracts, the parties' contractual obligations may vary from contract to contract, so that the contractual rights which the sub-buyer can enforce against his immediate seller will not necessarily be the same as those which the manufacturer will have accepted in his relationship with the first buyer".

\textsuperscript{116} Case C-167/00 Henkel [2002] ECR I-8111, LawLex09666.

\textsuperscript{117} Case C-18/02 DFDS Torline [2004] ECR I-1417, LawLex09748.

\textsuperscript{118} Case C-147/12 ÖFAB, Judgment of 18 July 2013, LawLex131254.

\textsuperscript{119} Case C-220/88 Dumez France and others v Hessische Landesbank and others [1990] ECR I-49, LawLex09696.

\textsuperscript{120} Case C-18/02 DFDS Torline [2004] ECR I-1417, LawLex09748: *the finding that the courts for the place where the harmful event occurred are usually the most appropriate for deciding the case, in particular on the grounds of proximity and ease of taking evidence, is
2.22. Place where harmful event occurred

Article 7(2) of Regulation No 1215/2012 makes it possible to sue the defendant in the courts for the place where the harmful event occurred or might occur. According to the Court of Justice, the courts for the place where the harmful event occurred are in principle "the most appropriate for deciding the case, in particular on the grounds of proximity and ease of taking evidence [...]"\textsuperscript{126}.

As determining the place where the harmful event occurred is often difficult, in particular in case of plurality of damages in time or in space, the Court of Justice has laid down a rule according to which if the place where the event took place may give rise to liability in tort, delict or quasi-delict and the place where that event results in damage are not identical, the expression 'place where the harmful event occurred' must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the plaintiff, in the courts of either of the places\textsuperscript{127}. Where a manufacturer faces a claim of liability for a defective product, the place of the event giving rise to the damage is the place where the product in question was manufactured\textsuperscript{128} whereas the place where the harmful event occurred refers to the place where the initial damage occurred as a result of the normal use of the product for the purpose for which it was intended\textsuperscript{129}. Thus, under competition law, in the event of a single and continuous infringement, the victim may bring a damages action against the participants either before the courts of the place in which the cartel was concluded or the place in which one agreement in particular was concluded which is identifiable as the sole causal event giving rise to the loss suffered, or before the courts of the place where its own registered office is located by virtue of the place where the loss occurred\textsuperscript{130}. The jurisdiction option must however be exercised in compliance with the requirements laid down by the regulation regarding foreseeability and close connecting factor with the dispute\textsuperscript{131}.

Article 7(2) only covers the place where the harmful event directly produced effects on the person who is the immediate victim. In the context of an action seeking compensation for damage caused by

\textsuperscript{126} Case C-18/02 DFDS Torline [2004] ECR I-1417, LawLex09748.
\textsuperscript{127} Case 21/76 Handelskwekerij Bier v Mines de Potasse d'Alsace [1976] ECR 1735, LawLex091660.
\textsuperscript{128} Case C-45/13 Andreas Kainz, Judgment of 16 January 2014, LawLex1432, specifying that the interpretation of the place of the event giving rise does not take into account the interests of the victim thus enabling him to bring his action before a court of the Member State in which he is domiciled insofar as Article 5(3) [7(2) Regulation No 1215/2012] is specifically not designed to offer the weaker party stronger protection.
\textsuperscript{129} Case C-189/08 Zuid-Chemie v Philippo's, Judgment of 16 July 2009, LawLex1485.
\textsuperscript{130} Case C-352/13 Cartel Damage Claims, Judgment of 21 May 2015, LawLex15644.
\textsuperscript{131} Case C-51/97 Réunion européenne and others [1998] ECR I-6511, LawLex091016.
anticompetitive conduct, the term 'place where the harmful event occurred' may be understood to mean either the place of conclusion of an anticompetitive agreement contrary to Article 101 TFEU, or the place of commission of acts exploiting the financial benefit resulting from that agreement, consisting, inter alia, in the application of predatory prices amounting to abuse of a dominant position under Article 102 TFEU; the "place where the harmful event occurred" may cover the place of the market which is affected by that conduct and on which the victim claims to have suffered those losses. In case of succession of damages in time, the place where the harmful event occurred cannot be construed so extensively as to encompass the place where the claimant is domiciled by reason only of the fact that he has suffered financial damage there resulting from the initial damage which arose and was incurred in another Member State, any place where the adverse consequences can be felt of an event which has already caused damage actually arising elsewhere, or the place where the indirect victim ascertained a damage resulting from the initial damage on its own assets. Where the damage consists in a purely financial loss occurring directly in the applicant's bank account and is the direct result of an unlawful act committed in another Member State, the place where the damage occurred may not be construed as being, failing any other connecting factors, the place in a Member State where the harmful event occurred. On the other hand, in a situation where an investor brings, on the basis of the prospectus relating to a certificate in which he or she invested, a tort action against the bank which issued that certificate, the courts of that investor's domicile, as the courts for the place where the harmful event occurred have jurisdiction to hear and determine that action, where the damage the investor claims to have suffered consists in financial loss which occurred directly in that investor's bank account with a bank established within the jurisdiction of those courts and the other specific circumstances of that situation also contribute to attributing jurisdiction to those courts.

Where there are a number of perpetrators, Article 7(2) of Regulation No 1215/2012 does not allow jurisdiction to be established on the ground of a harmful event imputed to one of the presumed

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133 Case C-168/02 Kronhofer [2004] ECR I-6009, LawLex09674: the jurisdiction option cannot cover the place where the claimant is domiciled and where 'his assets are concentrated' by reason only of the fact that the claimant has suffered financial damage there resulting in the loss of part of his assets which arose and was incurred in another Contracting State.
135 Case C-220/88 Dumez France and others v Hessische Landesbank and others [1990] ECR I-49, LawLex092346: the indirect victim - to whom the European court tacitly recognizes a right to compensation - does not have other jurisdiction options than those of the immediate victim, i.e., the court where the defendant is domiciled, that of the generating fact took place, or that of the place where the damage occurred.
137 Case C-304/17 Helga Löber v Barclays Bank, Judgment of 12 September 2017, LawLex181272.
perpetrators of damage, who is not a party to the dispute, over another presumed perpetrator of that
damage who has not acted within the jurisdiction of the court seized\textsuperscript{138}.

The generating fact or the damage may also take place in several places. Thus, regarding libel by a
newspaper article distributed in several Member States, which implies a plurality of damages located in
different places, the place of the event giving rise to the damage is the place where the publisher of the
newspaper in question is established, whilst the place where the damage occurred corresponds to all
the places where the publication was distributed, provided that the victim is known there. The victim
may then sue the defendant either before the courts of the Member State of the place where the
publisher is established for all the harm caused by defamation, or before the courts of each Member
State in which the article was published, which have jurisdiction to rule solely in respect of the harm
caused in their territory\textsuperscript{139}. Likewise, in the event of infringement of personality rights by means of
content placed online on an internet website, the victim has the option of bringing an action for
liability, in respect of all the damage caused, either before the courts of the Member State in which the
publisher of that content is established or before the courts of the Member State in which the center of
his activities is based\textsuperscript{140}. Although the center of interests of a legal person and holder of personality
rights which have been infringed by the publication of incorrect information concerning it on the
internet and by a failure to remove comments relating to that person may coincide with the place of its
registered office, when all or the main part of its activities are carried out in a different Member State
from the one in which its registered office is located, and the commercial reputation of that legal
person is greater in that Member State than in any other, it is presumed that the courts of that
Member State are best placed to assess the existence and the potential scope of that alleged injury.
That legal person cannot, however, bring an action for rectification of that information and removal of
those comments before the courts of each Member State in which the information published on the
internet is or was accessible\textsuperscript{141}.

As regards infringements of intellectual property rights the center of interest of the victim criterion
cannot be implemented for determining the court having jurisdiction\textsuperscript{142}. The occurrence of the harmful

\textsuperscript{138} Case C-228/11 Melzer v MF Global UK Ltd, Judgment of 16 May 2013, LawLex13846.
\textsuperscript{139} Case C-68/93 Shevill and others v Presse Alliance [1995] ECR I-415, LawLex091093.
\textsuperscript{140} Case C-509/09 eDate Advertising and others [2011], LawLex12126.
\textsuperscript{141} Case C 194/16 Bolagsupplysningen OÜ, Ingrid Ilsjan, Judgment of 17 October 2017, LawLex171692.
\textsuperscript{142} Case C-523/10 Wintersteiger [2012], LawLex12635: in the case of infringement of a trade mark registered in a Member State by the
publication on the internet site of a search engine of a keyword identical to that trade mark, the criterion of center of interests of the person
whose rights have been infringed does not apply also to the determination of jurisdiction in respect of infringements of intellectual property
rights, insofar as the protection afforded by the registration of a national mark is, in principle, limited to the territory of the Member State in
which it is registered, so that, in general, its proprietor cannot rely on that protection outside the territory.
event giving rise to an infringement of copyright does not depend on whether the website concerned is directed to the Member State in which the court seized is situated but whether the photographs covered by that copyright are accessible in that State. In the case of an infringement of a trade mark registered in a Member State through the use, by an advertiser, of a keyword identical to that trade mark on the website of an internet search engine operating under a top-level domain different from that of the Member State where the trade mark is registered, in this case "google.de", an action may be brought in the courts of the Member State in which the trade mark is registered, or in the courts of the place of establishment of the advertiser. Where the harmful event consists of an infringement of copyrights protected by the Member State of the court seized, the latter has jurisdiction to hear an action to establish liability brought by the author of a work against a company established in another Member State and which has, in the latter State, reproduced that work on a material support which is subsequently sold by companies established in a third Member State through an internet site also accessible with the jurisdiction of the court seized. For an infringement of the prohibition on resale outside a selective distribution network and via a marketplace by means of online offers for sale on a number of websites operated in various Member States, the authorized distributor has the right to bring an action seeking an injunction prohibiting the resulting unlawful interference in the courts of the place where the damage occurred, i.e. the territory of the Member State which protects the prohibition on resale and on which the appellant alleges to have suffered a reduction in its sales. On the other hand, in the event of unlawful comparative advertising or unfair imitation of a sign protected by a Community trade mark, Article 7(2) of Regulation No1215/2012 does not allow jurisdiction to be established, on the basis of the place where the event giving rise to the damage resulting from the infringement occurred, for the court in that Member State whose unfair competition law has been infringed, where the presumed perpetrator who is sued there did not himself act there.

Lastly, the place where the event giving rise to the damage occurred or the place where the damage occurred may be impossible to find. The Court of Justice then chooses that of the places which does not raise any difficult localization. Where it is impossible to determine the place where the event

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143 Case C-170/12 Peter Pinckney, Judgment of 3 October 2013, LawLex131433.
144 Case C-523/10 Wintersteiger [2012], LawLex12635: in this case, the event giving rise to the harm is the activation by the advertiser of the technical process displaying, according to pre-defined parameters, the advertisement which it created for its own commercial communications which should be considered to be the event giving rise to an alleged infringement, and not the display of the advertisement itself, and the place of said event is the place of establishment of the advertiser.
145 Case C-170/12 Peter Pinckney, Judgment of 3 October 2013, LawLex131433.
146 Case C-618/15 Concurrence SARL, Judgment of 21 December 2016, LawLex162144.
147 Case C-360/12 Colty Germany GmbH, Judgment of 5 June 2014, LawLex142050.
Jurisdiction and Recognition of Judgments Update

giving rise to the damage occurred, the addressee of the goods damaged during the international maritime transport may bring proceedings before the courts in the place where the damage occurred, i.e. the court in the place where the actual carrier was to deliver the damaged goods. Likewise, in the event of damages resulting from industrial action and consisting in financial loss as a result of immobilizing a ship and leasing a replacement ship, the place of the event giving rise to the damage is the place where the notice of industrial action was served.

5° Operation of a secondary establishment

2.24. Concept of secondary establishment

In case of dispute arising out of the operations of a branch, an agency or other establishment, Article 7(5) of Regulation No 1215/2012 makes it possible to sue the defendant in the courts of the place in which the branch, agency or other establishment is situated.

The concept of agency or branch was first used by the Court of Justice in the event of entities being subject to the direction and control of a parent company. Thus, the grantee of an exclusive sales concession cannot be regarded as being at the head of a branch, an agency or an establishment of the grantor where it is not subject either to the control or to the direction of that grantor. The Court of Justice has then ruled that it was necessary to adopt an independent definition, common to all Member States and which shows, without difficulty, the link.

The concept of 'branch, agency or other establishment' implies an effective place of business which has the appearance of permanency, such as the extension of a parent body but which has a management and is materially equipped to negotiate business with third parties, without those third parties having to deal with that parent body. This is not the case for a commercial agent who is an independent intermediary and cannot be regarded as the extension of a parent body insofar as he is free to organize his work, to determine his hours of work, to represent several rival firms and is restricted to transmitting orders to the head office without effectively participating in the completion and execution of those orders. When negotiating contracts, a branch or an agency must be an entity capable of

148 Case C-51/97 Réunion européenne and others [1998] ECR I-6511, LawLex091016; the place where the damage occurred cannot be either the place of final delivery, which can be changed in mid-voyage, or the place where the damage was ascertained, which would lead to attribute jurisdiction to the courts for the place of the plaintiff's domicile, which the regulation precisely intends to avoid.
being the principal, or even exclusive, interlocutor of third parties\textsuperscript{154}, which should be able to rely on the appearance thus created, even if, from a legal standpoint, the two companies in question are independent from one another\textsuperscript{155}. The place of establishment of the branch and the place where the commitments at issue taken by the branch in the parent body's name should be performed do not however have to be the same\textsuperscript{156}.

The concept of 'operations' of a branch, an agency or other establishment includes "actions relating to rights and contractual or non-contractual obligations concerning the management properly so-called of the agency, branch of other establishment itself such as those concerning the situation of the building where such entity is established or the local engagement of staff to work there" and "those relating to undertakings which have been entered into […] in the name of the parent body and which must be performed in the [Member] State where the place of business is established and also actions concerning non-contractual obligations arising from the activities in which the branch, agency or other establishment […] has engaged at the place in which it is established on behalf of the parent body"\textsuperscript{157}. Disputes specific to the internal organization of the other establishment and disputes relating to undertakings entered into by the other establishment in the name of its parent body and with respect to third parties therefore fall within Article 7(5)\textsuperscript{158}, as does an action seeking compensation for damage allegedly caused by abuse of a dominant position consisting of the application of predatory pricing, where a branch of the undertaking which holds the dominant position actually and significantly participated in that abusive practice\textsuperscript{159}.

B. Derived jurisdiction

2.25. Multiple defendants

With respect to special jurisdiction, the regulation provides rules of derived jurisdiction which have the effect of extending the jurisdiction of the court initially seized in very precise cases. Pursuant to Article 8(1), where there is a number of defendants, the plaintiff may therefore sue a defendant who has his domicile on the territory of a Member State, in another Member State, in the courts where one of

\textsuperscript{154} Case C-439/93 Hauptzollamt Heilbronn v Temic Telefunken [1995] ECR I-1687, LawLex09828.


\textsuperscript{156} Case 218/86 SAR Schotte v Parfums Rothschild [1987] ECR 4905, LawLex091671.

\textsuperscript{157} Case 33/78 Somafer SA v Saar-Fergas AG [1978] ECR 2183, LawLex11625.

\textsuperscript{158} Case C-439/93 Hauptzollamt Heilbronn v Temic Telefunken [1995] ECR I-1687, LawLex09828: the concept of claim arising out of the operations of a branch, agency or other establishment within the meaning of Article [7(5) of Regulation No 1215/2012] does not presuppose that the undertakings in question entered into by the branch in the name of its parent body are to be performed in the Member State in which the branch is established.

\textsuperscript{159} Case C-27/17 AB "IlyLAL-Lithuanian Airlines", Judgment of 25 July 2018, LawLex181095.
them is domiciled, provided that the claims are so closely connected that it is expedient to hear and determine them together to avoid the risks of irreconcilable judgments resulting from separate proceedings. Under competition law, the victim of a single and continuous infringement, as found by a decision of the Commission, in which several undertakings have participated in different places and at different times may sue in the courts for the place where any one of them is domiciled, even where the applicant has withdrawn its action against the sole co-defendant domiciled in the same State as the court seized160.

The extension of jurisdiction in Article 8(1) assumes that the court seized is that in which a defendant is domiciled on the territory of a Member State161. It cannot be the court of a Member State which is recognized as having jurisdiction as regards a defendant not in view of the criterion of the place where he is domiciled - located outside the European Union -, but of Article 7(2)162.

The connecting factor between the claims lodged against the various defendants, laid down first by case law163, is established by successive regulations. In practice, actions brought by the same plaintiff against multiple defendants must be related when the proceedings are instituted and it is for each national court to verify whether that condition is satisfied in each individual case164. However, the plaintiff does not have to establish, in addition to the connection, that the claims against different defendants were not brought with the sole object of ousting the jurisdiction of the courts of the Member State where one of the defendants is domiciled165.

The connection is insufficient in itself: the fact that companies belong to the same group and have acted in an identical or similar manner in accordance with a common policy devised by one of them cannot justify the extension of jurisdiction in Article 8166. There must be a risk that 'irreconcilable' decisions might be rendered167. For example, the mere fact that the result of one of the procedures

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160 Case C-352/13 Cartel Damage Claims, Judgment of 21 May 2015, LawLex15644: the withdrawal of the action by the victim of a cartel against the sole participant domiciled in the State of the court seized does not affect the jurisdiction of that court to pursue the cases against the other participants, unless it is found that the applicant and that defendant had colluded to artificially fulfil, or prolong the fulfilment of the rule of jurisdiction.

161 See Case C-645/11 Land Berlin v Ellen Mirjam Sapir and others, Judgment of 11 April 2013, LawLex13574, stating that Article 6(1) of Regulation No 44/2001 [8 Reg. No 1215/2012] is not intended to apply to defendants who are not domiciled in a Member State in the case where they are sued in proceedings brought against several defendants, some of whom are also persons domiciled in the European Union.


166 Case C-533/03 Roche Nederland and others [2006] ECR I-6535, LawLex091039.

167 Case C-616/10 Solvay SA, Judgment of 12 July 2012, LawLex122021, holding that the existence of a risk of irreconcilable judgments in a situation where two or more undertakings established in different Member States are accused, separately, in proceedings pending before a court of one of those Member States, of committing the same infringements - with respect to the same products - of the same national parts of the European patent.
may have an effect on the result of the other - in particular the potential impact of the amount to be repaid in the context of a claim for a declaration of nullity and restitution of the sums paid but not due on the evaluation of the potential loss suffered in the context of a damages claim - does not suffice to characterise the judgments to be delivered in the two procedures as irreconcilable. In order that decisions may be regarded as contradictory it is not sufficient that there be a divergence in the outcome of the dispute, but that divergence must also arise in the context of the same situation of law and fact. Two claims in one action directed against different defendants and based in one instance on contractual liability and in the other on liability in tort or delict cannot be regarded as connected. Conversely, where a court’s jurisdiction is based on the general rule of Article 4 of Regulation No 1215/2012, it is not necessary for the actions brought under Article 8 to have identical legal bases.

2.26. Action on a warranty or guarantee or third party proceedings

Pursuant to Article 8(2) of Regulation No 1215/2012, a person domiciled in a Member State may be sued in another Member State in an action on a warranty or guarantee or in any other third party 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. The regulation does not specify the concepts of action on a warranty or guarantee of third party proceedings but the Jenard report defines the action on a warranty or guarantee as an action "brought against a third party by the defendant in an action for the purpose of being indemnified against the consequences of that action". Article 8(2) is also applicable to an action brought by a third party, in accordance with national law, against the defendant in the original proceedings, and closely linked to those original proceedings, seeking reimbursement of

\[169\] Case C-539/03 Roche Nederland and others [2006] ECR I-6535, LawLex091039: insofar as there can be no finding of the existence of a same situation of fact - the defendants being different and the infringements they are accused of, committed in different Member States, being not the same - and where possible divergences between decisions given further to infringements engaged in different Member States would not arise in the context of the same factual situation - the defendants being different and the infringements they are accused of, committed in different Member States, being not the same - and where possible divergences between decisions given further to infringements engaged in different Member States would not arise in the context of the same factual situation - under the Munich Convention of 5 October 1973, any action for infringement of a European patent must be examined in the light of the relevant national law in force in each of the States for which the patent has been granted, there is no risk that contradictory decisions within the meaning of Article [8(1)] be rendered.
\[170\] Case C-51/97 Réunion européenne and others [1998] ECR I-6511, LawLex091016: the findings of the Court, regarding the application of Article 8(1), were taking place in a legal and factual context that was different from that of the Freeport judgment, insofar as the Réunion européenne judgment covered the accumulation of a special jurisdiction based on Article [7(2)] to hear an action of a criminal nature, and another special jurisdiction based on Article [7(1)] to hear an action of a contractual nature, on the ground that there was a connecting factor between the two actions and where it related to an action brought in the court of a Member State where none of the principal defendants was domiciled. The Court considered that it was possible to admit in these conditions that a jurisdiction based on Article [7] of the regulation, which is a special jurisdiction restricted to exhaustively listed cases, might be used as basis to hear other actions. On the other hand, where the jurisdiction of the court is based on Article [4] of the regulation, as in the Freeport decision, the possible application of Article [8(1)] becomes possible, where the conditions laid down in that provision are met.
\[172\] Report drawn up by the expert committee who prepared the text of the Brussels Convention: OJ 1979, C 59, 1, 27.
compensation paid by that third party to the applicant in those original proceedings. In order to benefit from the extension of jurisdiction as laid down in Article 8(2), it is not necessary for the court seized to be that of the defendant’s domicile. Irrespective of the basis on which it has jurisdiction in the principal proceedings, the court of a Member State seized of the original proceedings also has jurisdiction to hear an action on a warranty or guarantee brought against a person domiciled in another Member State.

In order to enable the entire dispute to be heard by the same court, Article 8(2) provides for a special jurisdiction, which the plaintiff may choose because of the existence of a particularly close connecting factor between a dispute and the court which may be called upon to hear it, with a view to the efficacious conduct of the proceedings. It is sufficient that the connection between the original proceedings and the third party proceedings enables the court to find that the choice of forum does not amount to an abuse. Article 8(2) determines jurisdiction without fixing the admissibility conditions which are governed by the procedural rules of the national law of the court seized, provided that they do not have “the effect of restricting the application of the rules of jurisdiction laid down in the [regulation]”.

2.27. Counterclaim

In case of a counterclaim deriving from the contract or the fact on which the original claim is based, Article 8(3) of Regulation No 1215/2012 allows jurisdiction to be granted to the court seized of the original claim.

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174 See French Court of Cassation, 14 May 1992, Alireza v BIAO, LawLex093443: the Article [8(2)] is applicable even though the jurisdiction of the court seized of the original claim is the result of the application of its national law, and not the rules of jurisdiction laid down by the regulation.
175 Case C-365/88 Kongress Agentur Hagen v Zeehaghe [1990] ECR I-1845, LawLex09535: the fact that the jurisdiction of the court seized of the the original claim was based on Article [7(1)] does not conflict with the applicability of Article [8(2)] to the dispute in the main proceedings.
176 Case C-365/88 Kongress Agentur Hagen v Zeehaghe [1990] ECR I-1845, LawLex09535: “the related nature of the main action and the action on a warranty or guarantee suffices to found jurisdiction on the part of the court in which the action on a warranty or guarantee has been brought, irrespective of the basis on which it has jurisdiction in the original proceedings”.
177 Case C-77/04 GIE Réunion européenne and others [2005] ECR I-4509, LawLex091175: Article [8(2)] is applicable to third-party proceedings based on multiple insurance, insofar as there is connection between the original proceedings and the third-party proceedings to support the conclusion that the choice of forum does not amount to an abuse.
178 Case C-365/88 Hagen v Zeehaghe [1990] ECR I-1845, LawLex09535: refusing an application to bring an action on a warranty or guarantee under Article [8(2)], even if it results from the application of the procedural rules of the court seized, cannot be based on the fact that the persons involved are domiciled in a Member State other than that of the court seized of the original claim, without impairing the effectiveness of the regulation.
According to the Court of Justice, counterclaim shall mean 'only' claims submitted by claimants for a separate judgment or decree\(^{179}\). Article 8(3) "does not apply to the situation where a defendant raises, as a pure defense, a claim which he allegedly has against the plaintiff"\(^{180}\). In other words, the counterclaim must not only derive from the contract or the fact on which the original claim is based, but also constitute a distinct claim from the defendant. It has also held that the court in which the original claim is pending has jurisdiction to hear a counterclaim seeking the reimbursement on the ground of unjust enrichment of a sum corresponding to the amount agreed in an extrajudicial settlement, where that claim is brought in fresh legal proceedings between the same parties, following the setting aside of the judgment delivered in the original proceedings between them, the enforcement of which gave rise to the extrajudicial settlement\(^{181}\).

### III. Exclusive jurisdiction

#### A. Immovable property

**2.30. Rights in rem in immovable property**

Article 24(1) of Regulation No 1215/2012 gives exclusive jurisdiction regarding "rights in rem in immovable property or tenancies of immovable property" to the courts of the Member State where the property is situated.

The assignment of exclusive jurisdiction to the courts of the Member State in which the property is situated satisfies the need for the proper administration of justice, insofar as, in this type of proceedings, disputes result frequently in checks, inquiries and expert assessments which must be carried out on the spot and as tenancies of immovable property are generally governed by special rules, it is preferable that these often complex rules be applied by the courts of the States in which they are in force\(^{182}\).

The concept of 'rights in rem in immovable property' does not encompass all actions concerning rights in rem in immovable property but only those which come within the scope of the regulation and are

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179 Case C-341/93 Danværn Production v Schuhfabriken Otterbeck [1995] ECR I-2053, LawLex09405: a claim by the defendant which seeks the pronouncement of a separate judgment or decree against the plaintiff assumes that the court seized has jurisdiction over the original claim, while a defense is an integral part of the action initiated by the plaintiff and therefore does not involve that the plaintiff be 'sued' in the court in which his action is pending.

180 Case C-341/93 Danværn Production v Schuhfabriken Otterbeck [1995] ECR I-2053, LawLex09405, paragraph 12: Article 8(3) would have applied where the defendant, by a separate claim in the context of the same proceedings, had sought a judgment or decree ordering the plaintiff to pay him a debt.

181 Case C-185/15 Kostanjevec, Judgment of 12 October 2016, LawLex161672.

182 Case 73/77 Sanders v Van der Putte [1977] ECR 2383, LawLex092011.
actions which seek to determine the extent, content, ownership or possession of immovable property or the existence of other rights in rem therein and to provide the holders of those rights with the protection of the powers which attach to their interest\(^{183}\). It is not sufficient that a right in rem immovable property be involved in the action or that the action have a link with immovable property: the action must be based on a right in rem and not a right in personam\(^{184}\). Actions in personam - except for matters relating to tenancies of immovable property - but also mixed actions\(^{185}\) based on a right in personam and seeking to obtain a right in rem, are in effect excluded form the scope of application of Article 24(1). Thus, the 'action paulienne' which seeks to render a donation of immovable property effected by a debtor in fraud of the creditor's rights ineffective as against the creditor\(^{186}\), an action for a declaration that a person holds immovable property as trustee\(^{187}\), an action for rescission of a contract for the sale of immovable property and consequential claim for damages to compensate for the alleged harm\(^{188}\), an action seeking to prevent nuisances affecting land emanating from a nuclear power station\(^{189}\), do not fall within Article 24(1). On the other hand, an action intended to terminate the co-ownership of immovable property\(^{190}\) or an action seeking the removal from the land register of notices evidencing the donee's right of ownership\(^{191}\) falls within the jurisdiction of the courts of the Member State in which the property is situated.

B. Companies and legal persons

2.32. Scope of application

Under Article 24(2) of Regulation No 1215/2012, the courts of the Member States in which the companies or other legal persons have their seat have exclusive jurisdiction regarding the "validity of the constitution, the nullity or the dissolution of companies [...] or the validity of the decisions of


\(^{184}\) Case C-294/92 Webb [1994] ECR I-1717, LawLex092116. The difference between a right in rem and a right in personam is that the former, existing in an item of property, has effect against the whole world, whereas the latter can only be claimed against the debtor, See Case C-292/93 Lieber v Göbel [1994] ECR I-2535, LawLex092118.

\(^{185}\) Case C-417/15 Schmidt, Judgment of 16 November 2016, LawLex162121: an action for the avoidance of a contract of gift on the ground of the donor's incapacity to contract, does not fall within the exclusive jurisdiction of the courts of the Member State in which the property is situated but within the special jurisdiction of the courts of the place of performance of the obligation in question - i.e. in this case consisting of the obligation to convey ownership of the immovable property, which was initially performed in Austria.


\(^{189}\) Case C-343/04 CEZ [2006] ECR I-4557, LawLex09408: an action seeking to prevent nuisances affecting land emanating from a nuclear power station does not fall within the exclusive jurisdiction provided for in proceedings relating to rights in rem in immovable property, even though its basis is the interference with a right in rem - in this case immovable property - since the real and immovable nature of that right is, in this context, of only marginal significance.

\(^{190}\) Case C-605/14 Virpi Komu, Hanna Ruotsalainen, Ritva Komu, Judgment of 17 December 2015, LawLex16701.

\(^{191}\) Case C-417/15 Schmidt, Judgment of 16 November 2016, cited above.
their organs’s. Furthermore, it is for the court to determine the seat of the companies applying its rules of private international law.

Since the objective of that provision is to centralize jurisdiction in order to avoid conflicting decisions being given as regards the existence of companies and the validity of the decisions of their organs, the courts of the Member State in which the company has its seat are those best placed to deal with such disputes because it is in that State that information about the company has been notified and made public.

It is not sufficient for the proceedings to have any link with a decision of an organ of the company; the dispute must relate to the validity of an organ of the company under the company law applicable or under provisions governing the functioning of its organs. This is not the case for the proceedings brought by a party who alleges that his rights in a company have been infringed by a decision of this company’s organs, or seeking legal redress for damage resulting from infringements of EU competition law, or concerning questions related to the validity of a decision to enter into a contract which are considered ancillary in the context of a contractual dispute. On the other hand, an action for review of the reasonableness of the consideration that the principal shareholder of a company is required to pay to the minority shareholders of that company in the event of the compulsory transfer of their shares to that principal shareholder comes within the exclusive jurisdiction of the courts of the Member State in which that company is established.

D. Intellectual property rights

2.34. Industrial property

Under Article 24(4), the registration or validity of patents, trade marks, designs, or other similar rights falls within the exclusive jurisdiction of the courts of the Member State in which the deposit or registration has been applied for, has taken place or is deemed to have taken place.

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192 Jenard report on the Brussels Convention, OJ C 59 1979, 1.
194 Case C-372/07 Hassett and Doherty [2008] ECR I-7403, LawLex09573: the dispute was between a professional association in charge of providing indemnity to doctors in cases involving professional negligence on their part, and certain of its members, who considers that the decisions refusing to grant compensation adopted by the association's board of management infringed their rights under the Articles of Association. The doctors did not challenge the fact that the association's board of management was actually empowered to adopt such a decision rejecting their claim, but challenged the manner in which that power was exercised as they considered that their claim had been rejected without the Board examining it in detail, thereby infringing the rights as members that they alleged to derive from the Articles of Association. Their dispute did not relate to the validity of the decisions of the association's organs, and therefore Article 24(2) did not apply to the dispute.
196 Case C-144/10 Berliner Verkehrsbetriebe (BVG), Judgment of 12 May 2011, LawLex111091.
197 Case C-560/16 E.ON Czech Holding AG, Judgment of 7 March 2018, LawLex18428.
Jurisdiction and Recognition of Judgments Update

Up to now, the Court of Justice has only ruled on proceedings concerned with the registration or validity of patents and defines the concept of proceedings 'concerned with the registration or validity of patents' as an independent concept which covers all proceedings relating to the validity, existence or lapse of a patent, as well as those relating to an alleged right of priority by reason of an early deposit. Proceedings for infringement of a patent does not fall within the scope of application of Article 24(4) insofar as it is not concerned with the validity of a patent but on the respective rights in that allegedly infringed patent. Such is not the case according to the Court of Justice for proceedings to determine whether a person was correctly registered as the proprietor of a trade mark.

In the field of patents, a number of Member States have set up a system of specific judicial protection which reserves these types of cases to specialized courts and the delivery of patents involves the national authorities' action. Thus, the exclusive jurisdiction conferred by Article 24(4), which is justified by the sound administration of justice, is applicable whatever the form of proceedings in which the issue of a patent's validity is raised, be it by way of an action or a plea in objection, at the time the case is brought or at a later stage.

IV. Rules on jurisdiction intended to protect the weaker party

2.36. Definition

Insurance contracts, contracts of employment or consumer contracts concern so-called 'weaker' parties which must be protected. Thus, Regulation No 44/2001 provided for specific jurisdictional rules which derogate from the jurisdiction in principle of the courts of the Member State in which the defendant is domiciled in order to protect the insured person, the employee or the contracting party, which is in a weaker situation in relation to his contracting party. These rules are now incorporated in Regulation No 1215/2012. Thus, the regulation offers to the weaker party, where he is the plaintiff, jurisdiction options in addition to the possibility to sue the defendant - insurer, employer or seller - in

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199 Case C-341/16 Hanssen Beleggingen BV, Judgment of 5 October 2017, LawLex171593: a dispute on the question of the individual estate to which an intellectual property right belongs which is not, generally, closely linked in fact and law to the place where that right has been registered, is not subject to Article 24(4) of Regulation No 1215/2012 insofar as there is no dispute regarding the registration of the trade mark as such or its validity.
200 Case C-4/03 GAT [2006] ECR I-6509, LawLex09681: a court seized of an action for infringement or for a declaration that there has been infringement, which, as an assumption, is not the court of the Member State in which the place of delivery of the patent is situated, cannot, even indirectly, establish the invalidity of a patent without undermining the binding nature of the rule of exclusive jurisdiction laid down in Article 24(4). Furthermore, it must declare of its own motion that it has no jurisdiction in favor of the court which has exclusive jurisdiction (See Regulation No 1215/2012, Article 27).
the courts of the Member State where he is domiciled. These so-called 'lex specialis' rules\textsuperscript{201} are binding, independently of the general or special jurisdiction rules, where the proceedings fall within their scope of application\textsuperscript{202}. Thus, where a company sues its director and manager in order to establish misconduct on the part of that person in the performance of his duties and to obtain redress from him, the provisions of the recast Brussels I regulation governing jurisdiction in matters relating to individual contracts of employment preclude the application of Article 5 on matters relating to a contract or matters relating to tort or delict, if that person, in his capacity as director and manager, for a certain period of time performed services for and under the direction of that company in return for which he received remuneration\textsuperscript{203}.

Also, a judgment which conflicts with the rules laid down in matters relating to insurance and consumer contracts\textsuperscript{204} cannot, under Article 45(e), be recognized and enforced according to the simplified mechanism laid down in the regulation. As a derogatory rule, the lex specialis system is strictly interpreted: it must not be applied to persons for whom that protection is not justified\textsuperscript{205}.

However, the rules which protect the weaker party only apply where a link between the proceedings and the court seized has taken place in a Member State\textsuperscript{206}. Under Regulation No 1215/2012\textsuperscript{207}, the establishment of a connecting factor with a Member State suffices for the rules to apply to defendants domiciled in non-member States, where they are traders sued by consumers in application of Article 18(1), or employers sued by their employees subject to Article 21(2).

\textsuperscript{201} Case C-96/00 Gabriel [2002] ECR I-6367, LawLex091213 and Case C-27/02 Engler [2005] ECR I-481, LawLex091364: Article 15 of Regulation No 44/2001 which specifically governs disputes relating to various types of contracts concluded by consumers, constitutes a lex specialis in relation to Article 5(1) which provides for the conferring of special jurisdiction in matters relating to a contract in general. Therefore, whether the action falls within the lex specialis must be determined in priority.

\textsuperscript{202} Chapter II, Sections 3, 4 and 4 of Regulation No 1215/2012 of 12 December 2012 establishes an independent system of jurisdiction rules in matters relating to insurance, consumer contracts and employment contracts, which substitutes, in principle, for the other jurisdiction rules, whether jurisdiction in principle in Article 4 or special jurisdiction in Articles 7 and 8, but uncertainty remains regarding exclusive jurisdiction. The 'lex specialis' system, like the general system of jurisdiction rules provided for in Sections 1 and 2, is structured around the jurisdiction in principle of the court of the State in which the defendant is domiciled.

\textsuperscript{203} Case C-47/14 Holterman Ferho Exploitatie BV, Judgment of 10 September 2015, LawLex151040.

\textsuperscript{204} Surprisingly, Article 45 does not cover the rules provided for in matters relating to employment contracts which, in the hierarchy of jurisdiction rules have the same position as the rules in Sections 3 (insurance) and 4 (consumer contracts) of the regulation.

\textsuperscript{205} Case C-412/98 Group Josi [2000] ECR I-5925, LawLex071646: the role of protection of the party deemed to be economically weaker and less experienced in legal matters than the other party to the contract, which is fulfilled in matters relating to insurance by the provisions of Section 3 of Chapter II of Council Regulation No 44/2001, implies that their application should not be extended to persons for whom that protection is not justified.

\textsuperscript{206} Regulation No 44/2001, recital 8.

\textsuperscript{207} Article 6(1) of Regulation No 1215/2012 (corresponding to Article 4(1) of Regulation No 44/2001) provides that, "If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1) [...] be determined by the law of that Member State". Article 18(1) provides: "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". Article 21(2) states that "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".
2.37. Insurance

The provisions of Section 3 of Chapter II of Regulation No 1215/2012, which afford the insured a wider range of jurisdiction than that available to the insurer, have had as their purpose to "protect the insured who is most frequently faced with a predetermined contract the clauses of which are no longer negotiable." Where the defendant is the insured, Article 14 of the regulation gives jurisdiction to the courts of the Member State in which the insured is domiciled. By contrast, where the defendant is the insurer, the 'actor sequitur forum rei' rule still applies, but the plaintiff is recognized jurisdiction options.

Article 11(1) makes it possible, in particular, to sue the insurer in the courts of the Member State where he is domiciled or in the courts for the place where the plaintiff is domiciled. In respect of liability insurance, insurance of immovable property or insurance of movable and immovable property covered by a same insurance and affected by the same contingency, the insured may, under Article 12, sue the insurer in the courts for the place where the harmful event occurred. The insured also enjoys facultative jurisdiction rules, copied on the derived jurisdiction in Article 8, in case there are several defendants, in case of counter-claim, or in case of junction in proceedings. By referring to Articles 10, 11 and 12, Article 13 affords the victim the jurisdiction options allowed by these provisions, in case of direct action against the insurer, provided that the law of the court seized permits such an action. Thus, the employer to which the rights of its employee have passed in order to be reimbursed for the salary paid to the latter during a period of incapacity to work, which, solely in that capacity, has brought an action for damages may be regarded as weaker than the insurer that it sues.

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209 Article 10 pursuant to which "[I]n matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to [...] point 5 of Article 7", makes it possible by reference to that provision to sue the insurer who is domiciled in a Member State, but has another establishment in another Member State, in the latter before the court where that establishment has its seat.
210 Article 11(2) however sets forth that where the insurer has not his domicile in the European Union, but has another establishment in a Member State, his domicile is deemed to be in that Member State.
211 Article 11(1)(c) provides that the insurer who is domiciled in a Member State may be sued in another Member State, if he is a co-insurer, in the courts of the Member State in which proceedings are brought against the leading insurer.
212 Article 14(2) provides for the possibility for the plaintiff to bring a counter-claim in the court in which the original claim is pending pursuant to the jurisdiction rule of that section.
213 Pursuant to Article 13(1), in respect of liability insurance, the insurer may be joined in proceedings which the insured has brought against him, if the law of the courts so permits.
214 Case C-463/06 FBTO Schadeverzekeringen [2007] ECR I-11321, LawLex08717: reference in Article [13(2)] to Article [11(1)(b)] allows the injured person to bring an action directly against the insurer domiciled in another Member State, before the court of the place where the injured party is domiciled, where a direct action is possible. By contrast, reference in Article [13(2)] to Article [11(1)(b)] cannot be afforded to a social security institution, to which the claims of the directly injured party have passed by operation of law, since it cannot be deemed to be an economically weaker party and less experienced legally than a civil liability insurer, see Case C-347/08 Vorarlberger Gebietskrankenkasse [2009] ECR I-8661, LawLex11397. In this case, the Court has however considered that the statutory assignee of the rights of a directly injured party - such as his heir -, should be able to benefit from the jurisdiction rules defined in said provisions, provided that he might be considered as a weaker party.
and, therefore, is able to benefit from the possibility to bring that action before the courts of the Member State in which it is established.\footnote{Case C-340/16 Landeskrankenanstalten-Betriebsgesellschaft - KABEG Judgment of 20 July 2017, LawLex171381: the notion of the "weaker party" has a wider acceptance in matters relating to insurance than those relating to consumer contracts or individual employment contracts and therefore pursuant to Article 13(2) of Regulation No1215/2012, employers to which the rights of their employees to compensation have passed may, as persons which have suffered damage and whatever their size and legal form, rely on the rules of special jurisdiction laid down in Articles 10 to 12 of that regulation.}

The jurisdiction rules set forth in matters of insurance are strictly interpreted and are not applicable to proceedings between well-informed professionals\footnote{Case C-106/17 Pawel Hofsoe, Judgment of 31 January 2018, LawLex18204: No special protection is justified where the parties concerned are professionals in the insurance sector, neither of whom may be presumed to be in a weaker position than the other, as the fact that a professional carries out his business on a small scale cannot lead to the conclusion that he is deemed to be a weaker party than the insurer.}, such as an insurer suing another insurer in the context of third-party proceedings\footnote{Case C-77/04 GIE Réunion européenne and others [2005] ECR I-4509, LawLex091175.}, or a reinsurer bringing proceedings against the reinsured person in connection with a reinsurance contract\footnote{Case C-412/98 Group Josi [2000] ECR I-5925, LawLex071646: in this case, the plaintiff is in a weaker position than the professional reinsurer.} or a natural person, whose professional activity consists in recovering claims for damages from insurers and who relies on a contract for the assignment of a claim concluded with the victim of a road accident\footnote{Case C-106/17 Pawel Hofsoe, Judgment of 31 January 2018, LawLex18204.}, as well as to disputes relating to insurance contracts in which the insured enjoys considerable economic power\footnote{Case C-77/04 GIE Réunion européenne and others [2005] ECR I-4509, LawLex091175. Concretely, are excluded from the protective system of the rules in Section 3 of the regulation, insurance taken out by large maritime and air companies covering large exposures, within the meaning of the directive on direct insurance other than life insurance.}. On the other hand, the \textit{lex specialis} system applies to the relationship between insured-reinsurer where, under the law of a Member State, the policy-holder, the insured person or the beneficiary of an insurance contract has the option to approach directly any reinsurer of the insurer to assert his rights under the contract\footnote{Article 25 on prorogation by contract in general deems as having 'no legal effect' clauses which are contrary to Article 15.}.

In principle, one cannot depart from the jurisdiction rules in matters relating to insurance by jurisdiction clauses included in the contract\footnote{The prohibition in principle of jurisdiction clauses (to the detriment of the insurer), laid down in Article 15, and the framing of prorogation by contract in matters relating to insurance (but also contract of employment or consumer contract), laid down in Recital 19 of the regulation, are justified by the will to protect the economically weaker person.}. However, the principle has five exceptions listed in Article 15 of the regulation\footnote{LawLex20204: No special protection is justified where the parties concerned are professionals in the insurance sector, neither of whom may be presumed to be in a weaker position than the other, as the fact that a professional carries out his business on a small scale cannot lead to the conclusion that he is deemed to be a weaker party than the insurer.}. The prorogation of jurisdiction by contract is authorized where it follows a dispute between the insurer and the weakest party, which should be more careful in such a context, or if it is in favor of the insured in the broader sense, i.e. included the policy-holder or the beneficiary of the insurance, by making other jurisdiction options available to them. The clause conferring jurisdiction which provides, in the event that the harmful event were to occur abroad, that...
the insurer’s action is brought before the courts of the Member State in which the insurer and the weakest party are domiciled, shall also be lawful if the law of that State so allows (Article 15(3)). In this respect, a clause which complies with Article 15(3) is not enforceable as against an insured beneficiary domiciled in a Member State other than the State where the insurance holder and the insurer are domiciled. The regulation also authorizes the insertion of clauses conferring jurisdiction in insurance contracts relating to large industrial and commercial exposures in which the insured benefits from such an economic power than he cannot be considered to be in a weaker position than the insurer (Article 15(5)).

2.38. Consumer contracts

Regulation No 1215/2012 provides for an independent system of jurisdiction rules regarding ‘consumer contracts’, initially inspired by the will to protect purchasers in an economically weaker position than sellers. The consumer thus has the possibility to bring proceedings either in the courts of the defendant or in those of the plaintiff. However, enforcing a jurisdiction clause conforming with Article 15(3) against a third party beneficiary is not contrary to the regulation where it does not undermine the aim of protecting the economically weakest party.

224 Case C-112/03 Société financière et industrielle du Peloux [2005] ECR I-3707, LawLex09382: a jurisdiction clause conforming with Article [15(3)] cannot be accepted against a third party beneficiary domiciled in a Member State other than the State of the policy-holder and the insurer, insofar as it would amount to the acceptance of a referral of jurisdiction for the benefit of the insurer, prohibited as a principle, and to disregarding the aim of protecting the economically weakest party, which the regulation seeks to ensure, by depriving the beneficiary of the opportunity to bring proceedings before the court of the place where the harmful event occurred and to bring proceedings before the court of his own domicile. However, enforcing a jurisdiction clause conforming with Article [15(3)] against a third party beneficiary is not contrary to the regulation where it does not undermine the aim of protecting the economically weakest party. See Comp., Case 201/82 Gerling Konzern Speziale Kreditversicherung AG and others v Amministrazione del Tesoro dello Stato [1983] ECR 2503, LawLex091653, in which the possibility for a third party to the insurance contract to rely on such a clause against the insurer was recognized instead of the possibility for the insurer to rely on a prorogation by contract against that third party beneficiary.

225 Concretely, this is the case of insurance taken out by large maritime or air companies and contracts covering large exposures, within the meaning of Directive No 73/239 on direct insurance other than life insurance, as amended by Directives No 88/537 and 90/618.

226 Case 201/82 Gerling Konzern Speziale Kreditversicherung AG and others v Amministrazione del Tesoro dello Stato [1983] ECR 2503, LawLex091653: a clause conferring jurisdiction inserted for the benefit of the insured who is not party to the insurance contract and is separate from the policy-holder, is enforceable as against the insurer, provided that the condition as to writing laid down in Article [25] of the regulation has been satisfied as between the insurer and the policy-holder and provided that the consent of the insurer in that respect has been clearly and precisely manifested.

227 Regulation No 44/2001 of 22 December 2000, replaced by the Regulation No 1215/2012, includes in Section 4 of Title II of the Brussels Convention - created following the adoption of the accession convention of 9 October 1978 in order to take into account the progress of consumer law within the various laws of the Member States - but extends its scope of application by referring to contracts other than contracts "for the supply of goods or a contract for the supply of services", only quoted by the Brussels Convention, alongside sale of goods on instalment credit terms, loan repayable by instalments, or for any other form of credit, made to finance the sale of goods.

228 Case 150/77 Ott [1978] ECR 1431, LawLex091568: the jurisdictional advantages laid down in Section 4 of the regulation are reserved only for "buyers who are in need of protection, their economic position being one of weakness in comparison with sellers by reason of the fact that they are private final consumers and are not engaged, when buying the product acquired on instalment credit terms, in trade or professional activities". Accordingly, they cannot apply to the sale of a machine granted by a company to another company; Case C-89/91 Shearson Lehman Hutton v TVB [1993] ECR I-139, LawLex091205: the possibility for a consumer to sue the defendant in the courts of the State in which the plaintiff is domiciled, which is justified by the concern to protect the party to the contract deemed to be economically weaker, as a derogation to the principle of jurisdiction of the court of the defendant's domicile, applies only to cases strictly provided for by regulation by nature clearly hostile towards the attribution of jurisdiction to the courts of the plaintiff's domicile.
of the Member State in which the other party to the contract is domiciled\(^{229}\), or in the courts of his own domicile, where the seller may only bring proceedings in the courts of the Member State in which the consumer is domiciled (Article 18(1) and(2)). Like for insurance, the voluntary prorogation of jurisdiction is, in principle, prohibited by Article 19, which provides for three similar derogations. It is allowed to include a clause conferring jurisdiction in a consumer contract a) if it is entered into after the dispute has arisen between the consumer and his contracting party, b) if it provides for other jurisdiction options in favor of the consumer/plaintiff or c) if it confers jurisdiction on the courts of the Member State in the territory of which the consumer and the other party to the contract are domiciled at the time of conclusion of the contract, where the law of that State so permits.

1) Types of contract.

Article 17(1) extends the scope of application of the system of consumer protection to any contract concluded by consumers, in particular where: a) the contract is for the sale of goods on installment credit terms, or b) the contract is for a loan repayable by installments, 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 Member States including that Member State, and the contract falls within the scope of such activities\(^{230}\).

The concept of 'sale of goods on installment credit terms' is to be understood as a transaction in which the price is discharged by way of several payments or which is linked to a financing contract\(^{231}\). Article 17(1)(a) tends to protect the purchaser to whom the seller has granted a credit, i.e. where it has transferred to the purchaser possession of the good concerned before that purchaser has paid the whole price. Thus, a transaction in which the agreed price is discharged by way of several payments with transfer of possession and property only taking place after the agreed price has been paid in full, does not constitute a sale of goods on installment credit terms\(^{232}\).

\(^{229}\) By referring to Article 7(5), Article 17 also allows the plaintiff to sue the contracting party who is domiciled in a Member State but has another establishment in another Member State, in the latter, before the court of the seat of that establishment. The same possibility is given by Article 17(2) to the consumer where his contracting party is domiciled outside the European Union. Where the defendant is not domiciled in the territory of a Member State, the jurisdiction cannot be settled by the regulation, but must be determined by the law of the Member State in the territory of which the referred court is located: Case C-318/93 Bremer and Noller v Dean Witter Reynolds [1994] ECR I-4275, LawLex092122.

\(^{230}\) Concretely, Article 17(1)(c) refers to all contracts entered into (with a consumer) by a professional for the purposes of his commercial business, including where it is exercised on the internet.


Outside sale by installments, the Brussels Convention only referred to a contract for 'the supply of goods or a contract for the supply of services' (Article 15(3)). Now, Article 17 of the regulation applies to all types of contracts. The contract under which an individual places an order for his personal use on the basis of an offer and in return for a price fixed by a mail-order company, is a contract for the supply of goods, having given rise to reciprocal and interdependent obligations between the parties to the contract. This is also the case in a contract of transport which, for an inclusive price, provides for a combination of travel and accommodation. Applying the consumer rules requires at least a contract: proceedings by which an individual seeks an order, under the law of the Member State in which he is domiciled, that a mail order company award a prize, does not fall within the consumer protection rules where the vendor's initiative was not followed by the conclusion of a contract relating to the supply of a good, even if the mail gave the impression that the award of the prize was only subject to the fact that he returned the 'payment notice', without being subject to order goods, and that the letter also contained a request for a 'trial without obligation'. Under the terms of Article 17, the commercial or professional activity must be directed to other Member States, i.e. the trader must have manifested its intention to establish commercial relations with consumers from one or more other Member States, including that of the consumer's domicile. That condition is not met by the mere use of a website by the trader. However, the regulation applies to a contract concluded between a consumer and a professional, which on its own does not come within the scope of the commercial or professional activity 'directed' by that professional 'to' the Member State of the consumer's domicile, but which is closely linked to a contract concluded beforehand by those same parties in the context of such an activity. The essential condition that the consumer contract is connected with the trader's

233 However, Article 17(3) provides that Section 4 does not apply to contracts of transport other than those which, for an inclusive price, provide for a combination of travel and accommodation.
234 Case C-96/00 Gabriel [2002] ECR I-6367, LawLex091213: as a result, judicial proceedings by which a consumer seeks an order, pursuant to the legislation of the Member State in which he is domiciled, requiring a mail-order company to award a prize ostensibly won, falls within the consumer protection rules.
236 Case C-27/02 Engler [2005] ECR I-481, LawLex091364. Along the same lines, Case C-180/06 Ilsinger [2009] ECR I-3961, LawLex11648: Article 17 applies only provided that the proceedings in question relate to a contract concluded by a consumer with a professional.
237 Case C-585/08 Pammer [2010] cited above: specifying the evidence on a trader's website establishing whether an activity is 'directed to' the Member State of the consumer's domiciled: the international nature of the activity in question, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States.
238 Case C-297/14 Rüdiger Hobohm, Judgment of 23 December 2015, LawLex151844.
professional activity directed to the Member State of the consumer's domicile does not presuppose that it is indispensable that the contract has been concluded at a distance\textsuperscript{239}.

2) Concept of consumer.

Article 17 applies to "a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession". Insofar as it may have different content depending on the national law of the Member States, the concept of 'consumer' must be interpreted independently, by reference principally to the system and objectives of the regulation\textsuperscript{240}. From the origin, the Court of Justice has specified that the jurisdictional advantage applies only to buyers who are in need of protection, their economic position being one of weakness in comparison with sellers by reason of the fact that they are private final consumers and are not engaged in trade or professional activities\textsuperscript{241}. The capacity of a consumer is concretely assessed, by reference to the position of the person in a particular contract, having regard to the nature and aim of that contract, and not to the subjective situation, since the self-same person may be regarded as a consumer in relation to certain transactions and as an economic operator in relation to others. Only contracts concluded for the purpose of satisfying an individual's own needs in terms of private consumption come under the court protection. The plaintiff who is acting in pursuance of his trade or professional activity may not enjoy the benefit of the rules of jurisdiction reserved for consumers\textsuperscript{242}, even if that activity insofar as this is a future activity does not divest it in any way of its trade or professional character\textsuperscript{243}. The user of a private Facebook account does not lose his status as a consumer by publishing books, lecturing, operating websites, fundraising and being assigned the legal claims of numerous consumers for the purpose of their enforcement\textsuperscript{244}. Furthermore, the regulation only protects a consumer who personally is the plaintiff or defendant in an action: this is not the case for a company acting as assignee of the rights of an individual\textsuperscript{245}, a consumer protection organization which brings an action as an association on behalf of consumers\textsuperscript{246} or the assignee of the rights of other consumers who brings a joint action\textsuperscript{247}.

\textsuperscript{239} Case C-190/11 Mühlleitner, LawLex122016.
\textsuperscript{240} Case C-269/95 Benincasa v Dentalkit [1997] ECR I-3767, LawLex091340.
\textsuperscript{241} Case 150/77 Ott [1978] ECR 1431, LawLex091568.
\textsuperscript{242} Case C-89/91 Shearson Lehman Hutton v TVB [1993] ECR I-139, LawLex091205.
\textsuperscript{243} Case C-269/95 Benincasa v Dentalkit [1997] ECR I-3767, LawLex091340.
\textsuperscript{244} Case C-498/16 Schrems v Facebook Ireland Limited, Judgment of 25 January 2018, LawLex18205.
\textsuperscript{245} Case C-89/91 Shearson Lehman Hutton v TVB [1993] ECR I-139, LawLex091205.
\textsuperscript{246} Case C-167/00 Henkel [2002] ECR I-8111, LawLex09666.
\textsuperscript{247} Case C-498/16 Schrems, Judgment of 25 January 2018, cited above: the rules on jurisdiction laid down as regards consumer contracts apply only to an action brought by a consumer against the other party to the contract, and therefore does not apply to the proceedings brought by a consumer for the purpose of asserting, in the courts of the place where he is domiciled, not only his own claims, but also claims assigned by other consumers domiciled in the same Member State.
In a contract with a dual purpose - professional and private-, the contracting party may not rely on the provisions for the protection of consumers, unless the trade or professional purpose is so limited as to be negligible in the overall context of the supply, with the fact that the private element is predominant being irrelevant. The person who claims standing as a consumer where he behaved in such a way as to give the other party to the contract the legitimate impression that he was acting for the purposes of his business, renounces the consumer protection rules.

In principle the court of the domicile of the defendant has jurisdiction, but proceedings brought against a consumer who is a party to a long-term mortgage loan contract which includes an obligation to inform the other party to the contract of any change of address, for breach of his contractual obligations, will be brought in the courts of the Member State in which the consumer had his last known domicile, where they have been unable to determine, in accordance with Article 62 of the regulation, the defendant's current domicile and also do not have any firm evidence allowing them to conclude that the defendant is in fact domiciled outside the European Union.

3) Concept of other party to a contract

Under Article 18(1) of Regulation No 1215/2012, "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 in the courts for the place where the consumer is domiciled". The regulation also applies to the contracting partner of the operator with which the consumer concluded that contract, which has its registered office in the Member State in which the consumer is domiciled.

VI. Review by national court of international jurisdiction

2.41_01. Extent of review

The recast Brussels I regulation provides no precise indication as to the extent of the power of the court seized during the examination of its international jurisdiction. The concern of ensuring legal
Jurisdiction and Recognition of Judgments Update

certainty makes it necessary for the court to be able readily to decide whether it has jurisdiction, without having to consider the substance of the case.\textsuperscript{252}

The Court of Justice, in a case based on matters relating to contract, held that the jurisdiction of the national court to rule on questions relating to a contract includes the power to consider the existence of the constituent parts of the contract itself, as the court may examine, even of its own motion, the essential preconditions for its jurisdiction having regard to conclusive and relevant evidence adduced by the party concerned, establishing the existence or the inexistence of the contract.\textsuperscript{253} For disputes concerning matters relating to tort, delict or quasi-delict, the court seized does not examine either the admissibility or the substance of the application for a negative declaration in the light of national law, but identifies only the points of connection with the State in which that court is sitting, which support its claim to jurisdiction.\textsuperscript{254} It may thus consider as established the applicant's assertions as regards the conditions for liability in tort, delict or quasi-delict.\textsuperscript{255} It is not necessary for the court seized to conduct a comprehensive taking of evidence at an early stage as regards the facts relevant both to jurisdiction and substance and to the existence of the claim, as this could prejudge the assessment of the substance.\textsuperscript{256} It is, however, permissible for the court seized to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the allegations made by the defendant.\textsuperscript{257}

Section 3 Jurisdictional rules

I. Prorogation of jurisdiction

A. Jurisdiction clause

2.44. Formal requirements

In order to be valid, the clause conferring jurisdiction must be the result of a clear and precise consensus between the parties, in compliance with the forms described in Article 25 of the regulation.\textsuperscript{258} According to that article, a clause conferring jurisdiction may be: "a) in writing or

\textsuperscript{252} Case C-269/95 Francesco Benincasa v Dentalkit Srl [1997] ECR I-3767, LawLex091340 at pt 27.
\textsuperscript{253} Case 38/81 Effer Spa v Kantner [1982] ECR 825, LawLex092155.
\textsuperscript{254} Case C-133/11 Folien Fischer AG, Judgment of 25 October 2012, LawLex122244.
\textsuperscript{255} Case C-387/12 Hi Hotel HCF, Judgment of 3 April 2014, LawLex14562.
\textsuperscript{256} Case C-375/13 Harald Kolassa v Barclays Bank plc, Judgment of 28 January 2015, LawLex15107.
\textsuperscript{257} Case C-375/13 Harald Kolassa v Barclays Bank plc, cited above.
evidenced in writing; or 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. Article 25 assimilates writing to "any communication by electronic means which provides a durable record of the agreement". The Court of Justice has thus held that the validity of a jurisdiction clause in general terms and conditions of a contract for sale concluded electronically is not affected by the "click-wrapping" method of acceptance of those terms insofar as that method makes it possible to print and save the text of those terms and conditions before the conclusion of the contract, even if the webpage containing that information does not open automatically on registration on the website and during each purchase.\(^{259}\)

1) Justification and scope

The formal requirements laid down in Article 25 are intended to ensure legal certainty and that the parties have given their consent.\(^{260}\) They "were inserted out of the concern not to impede commercial practice, yet at the same time to cancel out the effects of clauses in contracts which might go unread, such as clauses in printed forms for business correspondence or in invoices, if they were not agreed to by the party against whom they operate".\(^{261}\) They are strictly interpreted and are only imposed on the parties to the contract: a third party who benefits from a clause conferring jurisdiction made for his benefit cannot be required to expressly sign the clause so as to rely upon it.\(^{262}\) The conditions of application of that provision are to be interpreted "in the light of the effect of the conferment of jurisdiction by consent".\(^{263}\) The Member States are not authorized to lay down formal requirements other than those contained in Article 25 of the regulation which is intended to lay down itself the formal requirements which clauses conferring jurisdiction must meet.\(^{264}\) Accordingly, national law cannot object to the validity of an agreement solely on the ground that the language used is not that

\(^{259}\) Case C-322/14 Jaouad El Majdoub, Judgment of 21 May 2015, LawLex15649.


\(^{263}\) Case 201/82 Gerling Konzern Speziale Kreditversicherung AG and others v Amministrazione del Tesoro dello Stato [1983] ECR 2503, LawLex091653.


\(^{265}\) Case 150/80 Elefanten Schuh GmbH v Jacqmain [1981] ECR 1671, LawLex091569; pursuant to Article 25 of the regulation, the validity of a jurisdiction clause included in an international commercial agency contract is not subject to the capacity as trader, regardless of the provisions of Article 48 of the French Civil Procedural Code which consider that the clauses provided for non-traders are invalid.
prescribed by that law\textsuperscript{266}. Article 25(5) provides that "an agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract".

2) Types

Under Article 25(1), the clause conferring jurisdiction may be in writing or evidenced in writing\textsuperscript{267}. The written requirement may be materialized by an agreement which is specially drawn up and signed by the parties for that purpose only, or by a clause included in a contract which has another main subject-matter. In any events, it must be established with certainty that the parties have actually consented to a clause which derogates from the ordinary jurisdiction rules laid down in the regulation\textsuperscript{268}. Difficulties may arise when the clause is included in a document which is distinct from the contract signed by the parties. The written requirement is met where the clause conferring jurisdiction is contained in the by-laws of a company which are lodged in a place to which the shareholder may have access or are contained in a public register, and any shareholder is deemed to be aware of that clause\textsuperscript{269}. Where the clause is included among the general conditions of sale of one of the parties, printed on the back of a contract, the requirement of a writing is fulfilled only if the contract signed by both parties contains an express reference to those general conditions\textsuperscript{270}. This is not the case for the mere printing of a jurisdiction clause on the reverse of a bill of lading\textsuperscript{271}. Where a jurisdiction clause is included in a prospectus concerning the issue of bonds, the "in writing" requirement is met only if the contract signed by the parties upon the issue of the bonds on the primary market expressly mentions the acceptance of that clause or contains an express reference to that prospectus\textsuperscript{272}.


\textsuperscript{267} Cass. com., 27 February 1996, Pavan (SA) v Richard (SA); A clause mentioned in illegible characters does not meet the requirements of Article 25 of the regulation.

\textsuperscript{268} Case 71/83 Tilly Russ v Nova [1984] ECR 2417, LawLex092207.

\textsuperscript{269} Case C-214/89 Powell Duffryn v Petereit [1992] ECR I-1745, LawLex092079: a company's by-laws being regarded as a contract covering both the relations between the shareholders and also the relations between them and the company they set up, the clause conferring jurisdiction provided for therein, is therefore an agreement, within the meaning of Article 25, which is binding on all the shareholders.

\textsuperscript{270} Case 24/76 Estasis Salotti v Ruewa [1976] ECR 1831, LawLex091700. In this case, the Court of Justice has also considered that the same applies where, in the text of the contract, the parties expressly referred to a prior offer which, in turn, expressly referred to general conditions including a clause conferring jurisdiction, provided that the referral is express and can be checked by a party reasonably careful, and where it is established that the general conditions including the clause conferring jurisdiction have in fact been communicated to the other party with the offer to which reference is made.

\textsuperscript{271} Case 71/83 Tilly Russ v Nova [1984] ECR 2417, LawLex092207: where a jurisdiction clause appears in the conditions printed on a bill of lading signed by the carrier, the requirement of an agreement in writing within the meaning of Article 25 of the regulation is satisfied only if the shipper has expressed in writing his consent to the conditions contained in that clause, either in the document itself or in a separate written document. Along the same lines, Case 24/76 Estasis Salotti v Ruewa [1976] ECR 1831, LawLex091700: the mere fact that a clause conferring jurisdiction is printed among the general conditions of one of the parties on the reverse of a contract drawn up on the commercial paper of that party does not satisfy the requirement of a writing laid down in Article 25.

\textsuperscript{272} Case C-366/13 Profit Investment SIM SpA, Judgment of 20 April 2016, LawLex16854.
A clause conferring jurisdiction included in an oral agreement must specifically relate to the conferment of jurisdiction and be confirmed in writing. Without a written agreement, a jurisdiction clause does not satisfy the formal requirements of Article 25 ensuring that consensus between the parties has been reached, especially where the general terms containing the clause concerned were mentioned only in the invoices issued by one of the parties. After having required a written confirmation by both parties, which virtually amounted to require a written form, the Court of Justice has reverted to a more liberal interpretation of the provision. Now, the written confirmation may come from either of the parties, provided that it is received by the other party and that the latter raised no objection.

The San Sebastian Convention has given the parties the possibility to provide for a clause conferring jurisdiction “in a form which accords with practices which the parties have established between themselves”. This provision originates in the Segoura judgment according to which a confirmation in writing issued unilaterally by the vendor in the case of an orally concluded sale contract, is not sufficient to constitute an agreement on the effect of a jurisdiction clause appearing in its general

273 See as example Case C-106/95 MSG v Les Gravières Rhénanes [1997] ECR I-911, LawLex09336: an oral agreement on the place of performance of contractual obligations which is designed solely to establish that the courts for a particular place have jurisdiction, with no real connection with the contractual obligation, is not governed by Article 7(1), but by Article 25, and must therefore comply with the formal requirements prescribed by the latter as regards jurisdiction clauses.

274 Case 25/76 Segoura v Bonakdarian [1976] ECR 1851, LawLex091735: The purchaser who agrees to orally abide by the vendor's general conditions, is not to be deemed to have agreed to any clause conferring jurisdiction which might appear in those general conditions, insofar as the fact that one of the parties waives the advantage of the provisions conferring jurisdiction provided for by the regulation cannot be presumed.

275 Case C-64/17 Saey Home &amp; Garden NV/SA, Judgment of 8 March 2018, LawLex18386.

276 Case 25/76 Segoura v Bonakdarian [1976] ECR 1851, LawLex091735: a confirmation in writing of the contract by the vendor, accompanied by the text of his general conditions, is without effect, as regards the clause conferring jurisdiction, unless the purchaser agrees to it in writing, which amounted to require a written document signed by both parties.

277 Case 71/83 Tilly Russ v Nova [1984] ECR 2417, LawLex092207: a jurisdiction clause not signed by the carrier and contained in the conditions printed on a bill of lading, satisfies the formal requirements laid down in Article 25 of the regulation where an oral agreement expressly relating to that the clause was expressed by the parties, then confirmed by the carrier who signed the bill of lading.

278 Case 221/84 Berghoefer ASA [1985] ECR 2699, LawLex091680: the wording of Article 25 does not require that the written confirmation of an oral agreement should be given by the party who is to be affected by the agreement.

279 Case 221/84 Berghoefer ASA [1985] ECR 2699, LawLex091680. Along the same lines, Case 313/85 Iveco Fiat v Van Hool [1986] ECR 3337, LawLex092269: where a written agreement containing a jurisdiction clause and stipulating that an agreement can be renewed only in writing has expired but has continued to serve as the legal basis for the contractual relations between the parties, the jurisdiction clause satisfies the formal requirements in Article 25 if, under the law applicable, the parties could validly renew the original agreement otherwise than in writing, or if, conversely, one of the parties has confirmed in writing either the jurisdiction clause or the set of terms which has been tacitly renewed and of which the jurisdiction clause forms part, without any objection from the other party to whom such confirmation has been notified.

280 Case 25/76 Segoura v Bonakdarian [1976] ECR 1851, LawLex091735. See also Case 71/83 Tilly Russ v Nova [1984] ECR 2417, LawLex092207: a jurisdiction clause not signed by the carrier, may satisfy the requirements laid down in Article 25, even in the absence of a prior oral agreement relating to that clause, provided, however, that the bill of lading comes within the framework of a continuing business relationship between the shipper and the carrier, insofar as it is thereby established that that relationship is governed as a whole by general conditions containing the jurisdiction clause and the bills of lading are all issued on pre-printed forms systematically containing such a jurisdiction clause.
conditions, unless the oral agreement comes within the framework of a continuing trading relationship between the parties which is based on the general conditions of the party having given confirmation.

Lastly, Article 25 gives the possibility to the parties to carry out a prorogation by contract in a form which accords with a usage in international trade or commerce. Consensus on the part of the parties as to a jurisdiction clause is presumed to exist where their conduct is consistent with commercial practices in the relevant branch of international trade or commerce in which they operate and of which the parties are or ought to have been aware. According to the European Court of Justice, "[t]here is a practice in the branch of trade or commerce in question in particular where a particular course of conduct is generally and regularly followed by operators in that branch when concluding contracts of a particular type". It is for the national court to determine whether the contract in question comes under the head of international trade or commerce and to find whether there was a practice in the branch of international trade or commerce in which the parties are operating and whether they were aware or are presumed to have been aware of that practice. Awareness of a usage, which is assessed with respect to the parties regardless of their nationality, is established when "in the branch of trade or commerce in which which the parties operate a particular course of conduct is generally and regularly followed in the conclusion of a particular type of contracts, so that it may be regarded as an established usage". As part of an orally concluded contract, the fact that one of the parties did not react or remained silent in the face of a commercial letter of confirmation from the other party containing a pre-printed reference to the courts having jurisdiction and that one of the parties repeatedly paid without objection invoices issued by the other party containing a similar reference suggest that a clause conferring jurisdiction has been validly concluded by the parties, if such conduct is consistent with a practice in force in the area of international trade or commerce in which the parties are operating and the parties are or ought to have been aware of that practice.

282 Case C-106/95 MSG v Les Gravières Rhénanes [1997] ECR I-911, LawLex09336. The existence of a usage in relation to a branch of international trade or commerce, is sufficiently established where a particular course of conduct is generally and regularly followed by operators in the countries which play a prominent role in that branch without it being necessary for such a course of conduct to be established in all the Member States. Moreover, a course of conduct satisfying the conditions indicative of a usage does not cease to be a usage because it is challenged before the courts, provided that it still continues to be generally and regularly followed in the trade with which the type of contract in question is concerned, see Case C-159/97 Castelletti [1999] ECR I-1597, LawLex091569.
284 Case C-159/97 Castelletti [1999] ECR I-1597, LawLex091569. Along the same lines, See Case C-106/95 MSG v Les Gravières Rhénanes [1997] ECR I-911, LawLex09336: “actual or presumptive awareness of such practice on the part of the parties to a contract is made out where, in particular, they had previously had commercial or trade relations between themselves or with other parties operating in the sector in question or where, in that sector, a particular course of conduct is sufficiently well known because it is generally and regularly followed when a particular type of contract is concluded, with the result that it may be regarded as being a consolidated practice”.
2.45. Effects of the clause

Although Article 25 of the regulation requires compliance with certain forms in order to establish the parties’ consent and guarantee legal certainty, this provision also emphasizes on the independent will of the parties and contractual freedom. The prorogation of jurisdiction in a contract enables the parties to confer jurisdiction on courts which would not have jurisdiction under the general or special provisions of Regulation No 1215/2012 or exclude the jurisdiction of courts which would normally have jurisdiction under those rules. It may thus be made in favor of the plaintiff’s court although the two parties to the contract are domiciled in two distinct States.

The prorogation by contract does not only confer jurisdiction but also results in a foreclosure effect, which may have significant consequences for the position of the parties in the court proceedings, insofar as such a provision results in excluding both the general jurisdiction principle laid down in Article 2 of the regulation and the special jurisdiction rules set forth in Articles 7 and 8.

A court designated under Article 25 of Regulation No 1215/2012 has exclusive jurisdiction, unless otherwise agreed upon by the parties. Thus, a clause conferring jurisdiction concluded under Article 25 and referring to all disputes relating to the contract, gives jurisdiction to the court designated by the parties, even for actions which seek to challenge the validity of the contract providing for it. The jurisdiction of the designated court may also be extended to a claim for a set-off connected with the legal relationship in dispute if the court considers that course to be compatible with the letter and spirit of the clause conferring jurisdiction. The jurisdiction of the designated court is however set aside by the exclusive jurisdiction rules laid down in Article 24, which prevail in case of conflict of jurisdiction.

Likewise, the fact that an agreement conferring jurisdiction exists does not preclude the application of Article 26, which entails prorogation of jurisdiction in favor of the court of the Member State before which the defendant is voluntarily appearing. On the other hand, in matters of lis

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286 In effect, Article 25 is based on a recognition of the independent will of the parties to a contract in deciding which courts are to have jurisdiction to settle disputes falling within the scope of the regulation: Case 23/78 Meeth v Glacetal [1978] ECR 2133, LawLex091695.
291 Article 27 of Regulation No 1215/2012: “Where a court of a Member State is seized of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24, it shall declare of its own motion that it has no jurisdiction”.
292 Case 48/84 Spitzley v Sommer Exploitation [1985] ECR 787, LawLex092211: questioned on any implied prorogation of jurisdiction of the court seized to hear a claim for a set-off which only the court designated by the parties should ‘normally’ hear, the Court answered that the existence of such a clause conferring jurisdiction does not preclude the court of the place where the defendant appear from having its
Jurisdiction and Recognition of Judgments Update

*pendens*, Regulation No 1215/2012 now provides that where actions come within the exclusive jurisdiction of several courts (without specifying whether under the terms of Article 24 or 25), any court other than the court first seized shall decline jurisdiction in favor of that court (Article 31(1)). Further, the jurisdiction of the court elected by the parties, even if second seized, now has priority over another EU court (Art. 31(2)).

The designated court must verify whether the clause which gives it jurisdiction has actually been the subject of a consensus between the parties, without being forced to review the case as to the substance, since the legal certainty which the regulation seeks to secure could be jeopardized if one party to the contract could frustrate the application of Article 25 simply by claiming that the whole of the contract was void on grounds derived from the applicable substantive law. The final paragraph of Article 25 moreover expressly stipulates that "The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid". Generally, only the national court before which such a jurisdiction clause is invoked has jurisdiction to interpret it and determine the disputes falling within its scope of application, but does not have to review the validity of the clause conferring jurisdiction or the intention of the party which inserted it.

Lastly, in principle, a clause conferring jurisdiction is binding only on the parties to the contract. Thus, a jurisdiction clause in a contract between two companies cannot be relied upon by the representatives of one of them to dispute the jurisdiction of a court over an action for damages which aims to render them jointly and severally liable for supposedly tortious acts carried out in the performance of their duties insofar as such clauses in a contract may, in principle, produce effects only in the relations between the parties to the contract. Likewise, a victim entitled to bring a direct action against the insurer of the party which caused the harm which he has suffered is not bound by an agreement on jurisdiction concluded between the insurer and that party. However, in certain cases, the clause may

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293 These provisions annul the Gasser case law (Case C-116/02 Erich Gasser GmbH).
295 Case C-269/95 Benincasa v Dentalkit [1997] ECR I-3767, LawLex091340. Likewise, the designated court does not have to take the provisions of its national law on liability into account to assess the validity of the clause conferring jurisdiction: Case C-159/97 Castelletti [1999] ECR I-1597, LawLex091569.
296 Case C-214/89 Powell Duffryn v Peteriet [1992] ECR I-1745, LawLex092079. Along the same lines, Case C-269/95 Benincasa v Dentalkit [1997] ECR I-3767, LawLex091340: the national court designated by a clause conferring jurisdiction which is validly concluded under Article 25, has exclusive jurisdiction to decide whether that clause, which relates on any dispute relating to the interpretation, performance or other aspects of the contract, also refers to a dispute relating to the validity of the contract.
299 Case C-368/16 Assens Havn, Judgment of 13 July 2017, LawLex181764.
have effects with respect to third parties. Thus, a jurisdiction clause in the contract concluded between the manufacturer of goods and the buyer thereof cannot be relied on against a sub-buyer who, in the course of a succession of contracts transferring ownership concluded between parties established in different Member States, purchased the goods and wishes to bring an action for damages against the manufacturer, unless it is established that that third party has actually consented to that clause. This is the case for the insured third party to whom the European Court has given the possibility to rely on the benefit of the clause conferring jurisdiction provided in favor of the insured as against the insurer, whereas the insurer cannot rely on such a clause as against the third party who is the beneficiary of insurance. Likewise, the Court of Justice accepts, under certain conditions, the possibility to rely on a clause conferring jurisdiction with respect to a third party where that clause is contained in a bill of lading having been assigned. Lastly, a clause conferring jurisdiction in the by-laws of a company is enforceable as against all the shareholders, even if the shareholder against whom the clause in dispute is invoked opposed to its adoption or became a shareholder after the clause was adopted, insofar as by becoming and by remaining a shareholder, he agrees to be subject to the provisions appearing in the by-laws of the company and to the decisions adopted by the organs of the company, even if he does not agree with some of those provisions or decisions.

300 Case C-366/13 Profit Investment SIM SpA Judgment of 20 April 2016, LawLex16854: enforceability of a jurisdiction clause contained in a prospectus produced by the bond issuer concerning the issue of bonds against a third party who acquired those bonds from a financial intermediary if it is established that (i) that clause is valid in the relationship between the issuer and the financial intermediary, (ii) the third party, by acquiring those bonds on the secondary market, succeeded to the financial intermediary's rights and obligations attached to those bonds under the applicable national law, and (iii) the third party had the opportunity to acquaint himself with the prospectus containing that clause.

301 Case C-543/10 Refcomp, Judgment of 7 February 2013, LawLex13137.


303 Case C-112/03 Société financière et industrielle du Peloux [2005] ECR I-3707, LawLex09382: the fact of accepting that a clause conferring jurisdiction which conforms with Article 15(3) is enforceable with respect to the third party beneficiary of the insurance domiciled in a Member State other than the State of the policy-holder and the insurer, is contrary to the objectives sought by the regulation insofar as that measure would amount to the acceptance of a referral of jurisdiction for the benefit of the insurer and to disregard the aim of protecting the economically weakest party, by depriving the beneficiary of the opportunity to bring proceedings before the court of his own domicile.

304 Case 71/83 Tilly Russ v Nova [1984] ECR 2417, LawLex092207: a clause conferring jurisdiction incorporated in a bill of lading is effective with respect to the third party holding the bill of lading where that clause is valid, under Article 25, as between the shipper and the carrier and, under the relevant national law, the holder of the bill of lading has succeeded to the shipper's rights and obligations. However, if, under the national law applicable to the bill of lading, the third party holding it did not succeed to the rights and obligations of one of the original parties, it is for the court to ascertain, having regard to the requirements laid down in Article 25, whether he actually accepted the jurisdiction clause relied on against him, see Case C-387/98 Coreck Maritime [2000] ECR I-9337, LawLex062027.

B. Implied prorogation

2.46. Jurisdiction derived from appearance before court

Article 26 of Regulation No 1215/2012 provides for a particular case of prorogation of jurisdiction in favor of the 'court of a Member State before which a defendant enters an appearance', provided that the appearance is not entered to contest the jurisdiction or that no other court has exclusive jurisdiction by virtue of Article 24. By entering an appearance before the court seized of the proceedings by the plaintiff, without contesting that court’s jurisdiction, the defendant is by implication signifying his consent to the hearing of the case by a court other than that designated by the other provisions of the regulation. However, the Court of Justice would appear to interpret 'appearance' strictly. In a statement of opposition to the European order for payment under Regulation No 1896/2006 which did not contain any challenge to the jurisdiction of the courts of the Member State of origin, the fact that the defendant put forward arguments on the substance of the case does not mean that he entered an appearance within the meaning of Article 26 of Regulation No 1215/2012. Likewise, if a national court appoints a representative in absentia for a defendant upon whom the documents instituting proceedings have not been served because his place of domicile is not known, the appearance entered by that representative does not amount to an appearance being entered by that defendant. The challenge to jurisdiction prevents implied prorogation of jurisdiction from applying only where the plaintiff and the court seized of the matter are able to ascertain from the time of the defendant's first defense that it is intended to contest the jurisdiction of the court. The challenge, if it is not preliminary to any defense as to the substance, may not in any event occur after the making of the submissions which under national procedural law are considered to be the first defense addressed to the court seized.

Pursuant to Article 26, the court before which the defendant voluntarily enters an appearance may hear claims for which it has 'usually' no jurisdiction by virtue of the other rules of general or special

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306 Where the defendant contests the jurisdiction, he may also make submissions on the substance of the case without losing the right to raise a plea of jurisdiction: Case 150/80 Elefanten Schuh GmbH v Jacqmain [1981] ECR 1671, LawLex091569. Along the same lines, Case 25/81 C.H.W. v G.J.H. [1982] ECR 1189, LawLex091737 and Case 27/81 Rohr v Ossberger [1981] ECR 2431, LawLex091799: the defendant, when entering an appearance, may contest the jurisdiction and submit at the same time 'in the alternative' a defense on the substance of the action without the prerogative effect resulting from his appearance applying and thus without losing the right to raise an objection of lack of jurisdiction.


308 Case C-144/12 Goldbet Sportwetten GmbH, Judgment of 13 June 2013, LawLex13953.


Jurisdiction and Recognition of Judgments Update

jurisdiction - including the lex specialis\(^{312}\) -, except for exclusive jurisdiction in Article 24. In effect, the fact that the defendant enters an appearance before the court of a Member State confers to that court jurisdiction by implied prorogation, even where there is a prorogation by contract conferring jurisdiction to the courts of another Member State\(^{313}\) or a third country\(^{314}\) where that appearance is not intended to contest the jurisdiction or where no other court has exclusive jurisdiction under Article 24. The possibility for the parties to change their mind on the court jurisdiction after having concluded the clause conferring jurisdiction is thus tacitly recognized.

Lastly, in accordance with the 'need to avoid superfluous procedure'\(^{315}\), the European Court has extended the scope of Article 26, which expressly refers only to the defendant, to cases where the plaintiff accepts to defend himself as to the substance before the court he has seized regarding an ancillary claim submitted by the defendant and for which the court seized would not have jurisdiction, regardless of the basis of the ancillary claim\(^{316}\).

Since January 2015, in application of Regulation No 1215/2012, where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court must, before assuming jurisdiction, 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\(^{317}\).

\(^{312}\) See regarding insurance, Case C-111/09 CPP Vienna Insurance Group [2010] not yet published in the ECR, LawLex11628: Article 26 of Regulation No 1215/2012 must be interpreted as meaning that the court seized, where the rules in Section 3 of Chapter II of that regulation relating to insurance were not complied with, must declare itself to have jurisdiction where the defendant enters an appearance and does not contest that court's jurisdiction, since entering an appearance in that way amounts to a tacit prorogation of jurisdiction.

\(^{313}\) Case 48/84 Spitzley v Sommer Exploitation [1985] ECR 787, LawLex092211: “neither the general scheme nor the objectives of the [regulation] provide grounds for the view that the parties to an agreement conferring jurisdiction within the meaning of article 19 are prevented from voluntarily submitting their dispute to a court other than that stipulated in the agreement”.


\(^{315}\) The need to avoid superfluous procedure was raised, regarding the application of Article 25 on prorogation by contract, by the Court of Justice in a judgment of 9 November 1971, Case 23/78 Meeth v Glacetal [1978] ECR 2133, LawLex091695: it results from the need to avoid superfluous procedure, which forms the basis of the regulation, that Article 23 cannot be interpreted as preventing a court before which proceedings have been instituted pursuant to a clause conferring jurisdiction - which provides that the parties to a contract who are domiciled in different Member States can only be sued before the courts of their State - from taking into account a claim for a set-off connected with the legal relationship in dispute.

\(^{316}\) Case 48/84 Spitzley v Sommer Exploitation [1985] ECR 787, LawLex092211: a plaintiff who, when faced with a claim for a set-off made by the defendant and in respect of which the court seized of the proceedings does not have jurisdiction, submits arguments relating to the substance of that claim without contesting the jurisdiction of the said court, is in a similar position to that of a defendant who enters an appearance before the court seized of the proceedings by the plaintiff without contesting that court's jurisdiction. The basis of the ancillary claim cannot challenge the solution since the fact that the claim for a set-off relies in this case on a contract or a factual situation other than that on which is based the principal claim which per se falls within the conditions of admissibility to which the domestic law of the court seized submits claims.

\(^{317}\) Regulation No 1215/2012, Article 26(2).
II. Incidents relating to jurisdiction

A. Principle prohibiting interference with the jurisdiction of a court of another Member State

2.48. Incompatibility of "anti-suit injunctions" with the Union law

Regulation No 1215/2012, which relies on the principle of mutual trust that the Member States give to their legal systems and judicial institutions, does not authorize the jurisdiction of a court in one Member State to be reviewed by a court in another Member State, apart from some exceptions listed in Article 45, which are limited to the stage of recognition or enforcement of judgments. The principle of non-interference thus precludes the grant of an anti-suit injunction, which allows in particular the English courts to prohibit a party to proceedings from commencing or continuing proceedings before a court of another Member State even if that party is acting in bad faith with a view to hindering the proceedings. In effect, this prohibition results in several negative consequences: it has the effect of undermining the jurisdiction of the foreign court to determine the dispute, of limiting the application of the rules laid down in the regulation and of rendering ineffective the specific mechanisms provided for by the regulation for cases of lis pendens and of related actions. In particular, the fact of preventing the court of a Member State which usually has jurisdiction under Article 7(3) of the regulation from determining the dispute, "necessarily amounts to stripping that court of the power to rule on its own jurisdiction under that regulation". Even though the anti-suit injunction covers arbitration proceedings, a matter which does not fall within Regulation No 1215/2012, the Court of Justice precludes its implementation where the injunction proceedings which prevent a court of a Member State from exercising the jurisdiction conferred on it by the regulation undermine the attainment of the objectives of unification of the rules of conflict of jurisdiction in civil and commercial matters and the free movement of decisions pursued by the regulation. Under Regulation No 44/2001, only proceedings brought before the courts of third States could be subject to anti-suit injunctions. This is also the case under Regulation No 1215/2012, but is further limited. In effect, by providing for the proceedings to be stayed by the court of a Member State second seized of an action first introduced in the court of a third State, in the event of lis pendens (Article 33) or related actions (Article 34), the new regulation nevertheless accepts the

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321 Case C-185/07 Agorastoudis and others [2006] ECR I-7775, LawLex092305 in which the ECJ categorically condemns anti-suit injunctions within the EU and limits to the courts of third countries the possibility for Anglo-saxon courts to issue anti-suit injunctions.
possibility that a court of a Member State may stay the proceedings in favour of the court of a third State first seized of the action according to the rules of jurisdiction laid down in Articles 4, 7, 8 or 9 of the regulation, if it is satisfied that a judgment given by that court is capable of recognition and, where applicable, of enforcement and that the stay of proceedings is necessary for the proper administration of justice. There is now no need to use anti-suit injunctions, justifiable in the past due to the lack of rules governing procedural conflicts between Member States and third States. Inversely, this means that where the jurisdiction of the court of a third State does not stem from rules of jurisdiction mentioned above, the European judicature is under no obligation to stay the proceedings, which indirectly restricts the scope of application of anti-suit injunctions brought before the courts of third States.

B. Exception of *lis pendens*

2.49. Conditions of implementation

Claims having the same subject-matter, involving the same cause of action, and taking place between the same parties before distinct courts are *lis pendens* cases. Article 29 of Regulation No 1215/2012 does not expressly use the concept of *lis pendens* and rather sets forth the material conditions of its implementation. These conditions are regarded as independent concepts subject to the interpretation of the European Court where there is no common concept of *lis pendens* between the Member States. Article 29 of the regulation covers all situations of *lis pendens* before courts in Member States, irrespective of the domicile of the parties to the two proceedings. However, the European *lis pendens* rules only apply to proceedings directly before the courts of distinct Member States. They do not cover proceedings for enforcement of a same judgment given in a non-Member State.

Regulation No 1215/2012, since 10 January 2015, changes matters in that it provides for a rule of *lis pendens* which allows the courts of the Member States to take account, in certain circumstances, of proceedings pending before the courts of third States. Thus Article 33 of Regulation No 1215/2012 allows the court of a Member State to stay the proceedings if it expects that the court of a third State first seized, according to the rules of jurisdiction provided for in Articles 4, 7, 8 or 9, of an action involving the same cause of action and between the same parties will give a judgment capable of

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322 Case 144/86 Gubisch Maschinenfabrik v Palumbo [1987] ECR 4861, LawLex200900001552JB.
323 Case C-351/89 Overseas Union Insurance Ltd and others v New Hampshire Insurance Company [1991] ECR I-3317, LawLex200900004461JB: Article 27 applies regardless of whether the jurisdiction of the court seized is based on the regulation or results from the law of a Member State in the event that the defendant is domiciled in a non-Member State.
324 Case C-129/92 Owens Bank v Bracco [1994] ECR I-117, LawLex20090000492JB: this decision is also an illustration of the prohibition of double exequatur.
recognition and, where applicable, of enforcement in that Member State and if a stay is necessary for the proper administration of justice. However, the court of the Member State may continue the proceedings at any time if the proceedings in the court of the third State are themselves stayed or discontinued, if it considers that proceedings in the court of the third State are unlikely to be concluded within a reasonable time or the continuation of the proceedings is required for the proper administration of justice.

1) Same subject-matter, cause of action and parties.

_Lis pendens_ suggests that dispute submitted to distinct courts covers the same subject-matter, the same cause of action and the same parties. The requirement of the parties being the same is fulfilled where there may be such a degree of identity between the interests of an insurer and those of its insured person that a judgment delivered against one of them would have the _force of res judicata_ as against the other. However, the fact that they are partly the same does not undermine the application of Article 29 and the procedural position of the parties is, in this respect, irrelevant.

The requirement of the cause of action being the same suggests that the pending disputes are based on the same contractual relationship. This is the case where one of the plaintiffs brings an action to enforce an international sales contract whilst the other party brings an action for the rescission or discharge of the same contract. The facts and the legal rule relied upon as basis for the claim must be the same in both disputes. This is the case where a first application is seeking to have the defendant held liable for causing loss and the other application seeks a declaration that he is not. Accordingly, an action for damages based on the law governing non-contractual liability and an application for the establishment of a liability limitation fund based on the application of an international convention have not the same cause of action and cannot fall within Article 29.

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325 Case C-351/96 Drouot assurances v Consolidated metallurgical industries and others [1998] ECR I-3075, LawLex20090000448JBJ.
326 Case C-406/92 Tatry v Maciej Rataj [1994] ECR I-5439, LawLex20090000723JBJ.
327 Case 144/86 Gubisch Maschinenfabrik v Palumbo [1987] ECR 4861, LawLex20090001552JBJ. The concept of lis pendens covers the case where a party brings an action before a court of a Member State for termination of an international sales contracts whilst the other party's action is intended to enforce that contract, and both are pending before the court of a same Member State, regardless of whether the plaintiff in the enforcement proceedings is the defendant in the proceedings for termination, and vice versa, Case C-523/14 Aannemingsbedrijf Aertssen NV, Aertssen Terrassements (SA), Judgment of 22 October 2015, LawLex201500001328JBJ: a complaint lodged seeking to join a civil action to proceedings with an investigating magistrate constitutes pending proceedings even though the judicial investigation of the case at issue has not yet been closed, insofar as the conditions for a situation of lis pendens are met, and the fact that the right to obtain compensation for harm suffered as a result of conduct is subject to criminal prosecution does not affect the question of whether the parties are the same, which is assessed independantly of their position in the proceedings.
328 Case 144/86 Gubisch Maschinenfabrik v Palumbo [1987] ECR 4861, LawLex200900001552JBJ.
329 Case C-406/92 Tatry v Maciej Rataj [1994] ECR I-5439, LawLex20090000723JBJ.
330 Case C-39/02 Maersk Olie &amp; Gas [2004] ECR I-9657, LawLex20090000639JBJ. The purpose of Article 27, which organizes a system that is simple, objective and automatic to determine, at the outset of proceedings, which of the courts seized will ultimately hear and
Jurisdiction and Recognition of Judgments Update

The requirement of the subject-matter being the same is assessed in view of the applicants' respective claims without taking the defense raised into account, insofar as "lis pendens exists from the moment when two courts of different [Member] States are definitively seized of an action, that is to say, before the defendants have been able to put forward their arguments". The requirement of the subject-matter being the same is fulfilled where a party brings an action to enforce a contract, which is aimed at giving effect to it, whilst the other party brings an action for the rescission or discharge of the same, which is aimed precisely at depriving it of any effect, since the binding force of the contract lies at the heart of the two actions, or where an application is seeking to have the defendant held liable for causing a loss and the other application seeks a declaration that he is not. By contrast, the condition of a same subject-matter is not fulfilled where an action seeks to have the defendant declared liable and another application is designed to ensure, in the event that the person is declared liable, that such liability will be limited to a certain amount.

2) Definitive referral of each jurisdiction.

Lis pendens, which suggest that two distinct courts are finally seized, can be implemented only before the court second seized. To apply Article 29, an order of referrals must be determined. The court first seized is the one before which the requirements for proceedings to become definitively pending are first fulfilled. This is the case where the court first seized has not declined jurisdiction of its own motion and none of the parties has contested its jurisdiction prior to or up to the time when a position is adopted which is regarded under national procedural law as the first defense. However, a document instituting proceedings for the taking of evidence cannot be regarded, for the purposes of assessing a situation of lis pendens and of determining which court is the court first seized as also being the document instituting the substantive proceedings. Article 32 lays down a presumption of referral either at the time when the document instituting the proceedings is lodged with the court,
provided that the plaintiff has subsequently had service effected on the defendant or, if the document has to be served before being lodged, at the time when it is received by the authority responsible for service, provided that the plaintiff has subsequently had the document lodged with the court. According to the Court of Justice, the date on which a procedure for a measure of inquiry prior to any legal proceedings was commenced cannot constitute the date on which a court called upon to rule on a substantive application which was brought in the same Member State following the result of that measure is "deemed to be seized". The authority responsible for service is the first authority receiving the documents to be served.

2.50. Treatment of exception of lis pendens

The development that the procedural system of lis pendens has experienced since the adoption of the initial provisions of the Brussels Convention raises difficulties of application of transitory law. In case of lis pendens, Article 29 of Regulation No 1215/2012 now provides that (i) any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established; (ii) where the jurisdiction of the court first seized is established, any court other than the court first seized shall decline jurisdiction in favor of that court.

It cannot be derogated from the obligation on the court second seized to stay proceedings until the court first seized has declared that it has no jurisdiction, without undermining the principle of mutual

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338 Referral to national law in order to determine the moment of referral is no longer applicable under Section 9, but should remain valid in order to determine the temporal scope of application of the regulation.

339 Case C-29/16 HanseYachts AG, Judgment of 4 May 2017, LawLex201700001301JBJ.

340 Regulation No 1215/2012, Article 32(1).

341 The Brussels Convention provided before the adoption of the San Sebastian Convention that, in case of lis pendens, the court second seized was to decline jurisdiction in favor of the court first seized, since the court second seized was authorized to stay its proceedings only if the jurisdiction of the first court was challenged. Once amended, Article 21 of the Convention imposed on the court second seized to stay its proceedings until such time as the jurisdiction of the court first seized was established; then, the court second seized declined jurisdiction in favor of the first court. Regulations No 44/2001 and No 1215-2012 fully repeat those provisions.

342 Article 66(1) of the regulation provides in this respect that the regulation applies to legal proceedings instituted and to authentic documents formally drawn up or registered after the entry into force thereof, which means, a contrario, that the Brussels Convention and the subsequent accession conventions remain applicable to actions initiated before that date, following their date of entry into force and that of instituting of the proceedings. For an example of difficulties of application of transitory law, see Case C-163/95 von Horn v Cinnamond [1997] ECR I-5451, LawLex09645: where proceedings involving the same subject-matter and the same cause of action and between the same parties are pending in two different Contracting States, the first proceedings having been brought before the date of entry into force of the Brussels Convention as amended by San Sebastian Convention and the second proceedings after that date, the court second seized must stay proceedings under the provisions of the amended Brussels Convention only if the court first seized has assumed jurisdiction on the basis of a rule which accords with the Brussels Convention or an accession convention which was in force when the proceedings were instituted. On the other hand, if such is not the case, the court second seized must disapply Article [27 of the regulation] and continue with the proceedings. Lastly, where the court first seized has not yet ruled on whether it has jurisdiction, the court second seized may apply provisionally the provisions of Article [27] - thus stay its proceedings -, it being understood that the proceedings may later be resumed before the court second seized if the court first seized declines jurisdiction or the rule on which it has founded its jurisdiction does not accord with the Brussels Convention or the accession convention which was in force when the proceedings were instituted.
trust and legal certainty on which the regulation relies. The obligation to stay proceedings can be set aside neither on the ground that the duration of proceedings before the courts of the Member State in which the court first seized is established is excessively long, nor in case of abuse of procedure.

Furthermore, Article 29 sets forth that the declination of jurisdiction must be in favor of the court first seized where actions come within the exclusive jurisdiction of several courts.

Under Regulation No 44/2001, the court first seized, which had a duty to verify the existence of a clause conferring jurisdiction, had to declare that it has no jurisdiction in favor of the court second seized where the latter has exclusive jurisdiction pursuant to a prorogation by contract. Article 31 of Regulation No 1215/2012 now provides that where a court of a Member State on which an agreement confers exclusive jurisdiction is second seized, any court of another Member State must stay the proceedings until such time as the court seized on the basis of the agreement declares that it has no jurisdiction under the agreement (Art. 31(2)). Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State must decline jurisdiction in favor of that court (Art. 31(3)). Paragraphs 2 and 3 do not apply to 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 claimant and the agreement is not valid under a provision contained within those sections (Art. 31(4)).

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343 Case C-116/02 Gasser [2003] ECR I-14693, LawLex09400: setting aside the application of the rules of lis pendens in cases where the court first seized belongs to a Member State in whose courts there are, in general, excessive delays in dealing with cases would be manifestly contrary both to the letter and spirit and to the aim of the regulation, which is to ensure legal certainty by allowing individuals to foresee with sufficient certainty which court will have jurisdiction. Moreover, this undermines the mutual trust which the Member States accord to each other's legal systems and judicial institutions which has enabled a compulsory system of jurisdiction to be established and as a corollary the waiver by those States of the right to apply their internal rules on recognition and enforcement of foreign judgments in favor of a simplified mechanism provided for by the regulation.

344 Case C-116/02 Gasser [2003] ECR I-14693, LawLex09400. In this case, the Government of the United Kingdom which supported the claimant's application, suggested that the Court of Justice should recognize an exception to the application of Article 27 whereby the court second seized would be entitled to examine the jurisdiction of the court first seized, where: 1) the claimant has brought proceedings in bad faith before a court without jurisdiction for the purpose of blocking proceedings before the courts of another Member State which enjoy jurisdiction under the regulation; 2) the court first seized has not decided the question of its jurisdiction within a reasonable time. Along the same lines, Case C-159/02 Turner [2004] ECR I-3565, LawLex09627.

345 Case C-116/02 Gasser [2003] ECR I-14693, LawLex09400, issued under the Brussels Convention, amended by the San Sebastian Convention: "it is incumbent on the court first seised to verify the existence of the agreement [conferring jurisdiction] and to decline jurisdiction if it is established, in accordance with Article [23], that the parties actually agreed to designate the court second seised as having exclusive jurisdiction" insofar as "in no case is the court second seised in a better position than the court first seised to determine whether the latter has jurisdiction".
CHAPTER 3
RECOGNITION AND ENFORCEMENT

Section 1 Recognition and enforcement of decisions

II. Extent of the court’s control

3.07. Grounds for non-recognition or non-enforcement

Article 45 of Regulation No 1215/2012 lists a series of cases in which recognition is excluded, these exceptions applying to the enforcement procedure by referral in Article 46. Recognition or enforcement are impossible: (i) where they are contrary to public policy in the State in which they are sought; (ii) where the document which instituted proceedings or an equivalent document was not served on the defendant in sufficient time and in such a way as to enable him to arrange for his defense; (iii) where the judgment is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought or (iv) with an earlier judgment given in another Member State or in a third State involving the same subject-matter and cause of action and between the same parties, where the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

Article 45 must be interpreted strictly insofar as the grounds for non-recognition or non-enforcement of judgments constitute many obstacles to the achievement of the free movement of judgments which must be ensured by a simple and rapid enforcement procedure.

1) Public policy (ordre public)

The fact that the foreign judgment is contrary to the public policy of the State in which enforcement is sought enables the latter to object to its recognition or performance. According to the Court of Justice, the public policy clause "ought to operate only in exceptional cases". Recourse to the public policy

346 Fraud is not expressly mentioned in Article 46 of the regulation.
clause must thus be excluded, having regard to its exceptional character, where the issue may be resolved on the basis of Article 45(1)(b), which governs compliance with the rights of the defense of the failing defendant. However, supervision by the court in which enforcement is sought of compliance with the rights of the defense in the State of origin may fall within paragraph 1 in exceptional cases where the guarantees laid down in the legislation of the State of origin and in Regulation No 1215/2012 have been insufficient to protect the defendant from a manifest breach of his right to defend himself before the court of origin, as recognized by the ECHR.

To be excluded, recognition or enforcement of the decision delivered in another Member State must be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought. The infringement is to constitute manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognized as being fundamental within that legal order. In effect the concept of public policy within the meaning of the regulation seeks to protect legal interests which are expressed through a rule of law, and not purely economic interests. Even though the Member States are free to determine, according to their own conceptions, what public policy requires, the Court of Justice controls the limits in which the court of a Member State may resort to that concept to refuse to recognize the decision of another Member State. The public policy of the State in which enforcement is sought cannot be asserted against the recognition or enforcement a decision given in another Member State on the ground that the court of origin has not complied with the rules of Regulation No 1215/2012 on jurisdiction or that it has wrongly applied the national law or the law of the European Union. The public policy clause concerns both the rules as to substance and the procedural rules. Exceptionally, the court of the State in which enforcement is sought may legitimately consider that the refusal by the foreign judge to hear the defense of the accused who failed to enter an appearance constitutes a clear violation of a fundamental right of its procedural public policy, justifying the non-recognition of the foreign judgment. It may also take into account the fact that the court of the State of origin ruled on the plaintiff’s claims without hearing the defendant, who regularly entered an appearance before it but was

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354 Case C-38/98 Renault [2000] ECR I-2973, LawLex071591; the fact that there might be incompatibility between the principles of free movement of goods and free competition and the recognition by the court of origin of the existence of an intellectual property right on body parts for cars enabling the holder to prohibit traders in another Member State from manufacturing, selling and transporting such body parts, does not constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought.
excluded from the proceedings by order on the ground that he had not complied with certain obligations, if, following a comprehensive assessment of the proceedings and in the light of all the circumstances, it appears to it that that exclusion measure constituted a manifest and disproportionate infringement of the defendant's right to be heard. Likewise, the court of the Member State in which enforcement is sought may refuse, under the public policy clause, to enforce a judgment given in default of appearance which disposes of the substance of the dispute but which does not contain an assessment of the subject-matter or the basis of the action and which lacks any argument of its merits, only if it appears to the court, after an overall assessment of the proceedings and in the light of all the relevant circumstances, that that judgment is a manifest and disproportionate breach of the defendant's right to a fair trial referred to in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, on account of the impossibility of bringing an appropriate and effective appeal against it.

The recognition and enforcement of an order issued by a court of a Member State, without a prior hearing of a third person whose rights may be affected by that order, cannot be regarded as manifestly contrary to public policy in the Member State in which enforcement is sought or manifestly contrary to the right to a fair trial insofar as that third person is entitled to assert his rights before that court.

2) Protection of the defaulting defendant.

Recognition is excluded when "the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defense, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so" (Article 45(1)(b)). The Brussels Convention required the document which instituted the proceedings to be duly served on the defendant in default of appearance "in sufficient time to enable him to arrange his defense".

The regulation no longer requires the document to be duly served and introduces an exception to the refusal to recognize and enforce the decision, where the defendant in default of appearance has not brought any action against the decision in the State of origin while it was possible for him to do so.

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355 As to the compatibility of the compliance with the rights of the defense intended by the application of Article 34(1) of the regulation with the 'unless order', 'debarment' and 'disclosure order', Case C-394/07 Gambazzi [2009] ECR I-2563, LawLex092347.
356 Case C-619/10 Trade Agency Ltd v Seramico Investments Ltd, Judgment of 13 December 2012, LawLex122042.
357 Case C-559/14 Meroni, Judgment of 25 May 2016, LawLex16995.
358 Case C-283/05 ASML [2006] ECR I-12041, LawLex091407: Article 34(2) of the Brussels Regulation (I) does not require the document which instituted proceedings to be duly served, but does require that the rights of defense are effectively respected.
359 The concept of the concept of 'proceedings to challenge a judgment' includes applications for relief when the period for bringing an ordinary challenge has expired, see Case C-70/50 Lebek v Domino, Judgment of 7 July 2016, LawLex161277.
Before, the Court of Justice decided, in accordance with the Brussels Convention, that the recognition in a Member State of a decision given in another State without the defendant appearing, had to be refused where the document instituting proceedings had not been duly served in sufficient time on the defendant, even if he had not used the available remedies. Now, as Article 45 sets outs an express requirement for service on a defendant in default of appearance only with respect to the document which instituted the proceedings and not as regards the default judgment, the Court considers that "to justify the conclusion that it was possible for a defendant to commence proceedings to challenge a default judgment against him", he must have been aware of the contents of that judgment by being served the documents in sufficient time to enable him to arrange for his defense before the court of the State of origin. Therefore, the court in which enforcement is sought may refuse to recognize or enforce the decision of the court of origin for reasons of non-compliance with the rights of defense of the defendant in default of appearance (a) where the fact that the document which initiated the proceedings was not served on the defendant in sufficient time or was served in sufficient time but not in such way as to enable him to arrange for his defense, is at the origin of the non-appearance or (b) where the fact that the default judgment was not served, in the same conditions, has resulted in the defendant in default of appearance not being aware of the contents of the judgment in sufficient time as to enable him to arrange for his defense and not being able to 'commence proceedings'.

Thus, the application of Article 45(1)(b), which sets forth no requirement as to domicile, is subject to the existence of a document instituting proceedings, served in sufficient time.

The term 'document which instituted the proceedings or equivalent document' means the document or documents which must be served with sufficient time on the defendant in order to enable him to assert his rights before an enforcement judgment is given in the State of origin. Article 45(1)(b)

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360 Case C-78/95 Hendrikman and Feyen v Magenta Druck &amp; Verlag [1996] ECR I-4943, LawLex091176: "The proper time for a defendant to have an opportunity to defend himself is the time at which proceedings are commenced. The possibility of having recourse, at a later stage, to a legal remedy against a judgment given in default of appearance, which has already become enforceable, cannot constitute an equally effective alternative to defending proceedings before judgment is given".

361 Case C-283/05 ASML [2006] ECR I-12041, LawLex091407.

362 Case 49/84 Debaecker v Bouwman [1985] ECR 1779, LawLex092198: Article 34(2), which is aimed at ensuring appropriate protection of the rights of defense of the defendant against whom judgment is given in default of appearance abroad by taking account of the diverse service mechanisms - particularly fictitious ones - existing within the European Union, must be able to benefit both to the defaulting defendant domiciled in a Member State and to the defendant whose domicile is situated in a non-Member State.

363 Within the European Union, service is governed by Regulation No 1393/2007 of 13 November 2007 which replaced Regulation No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

364 Case C-474/93 Hengst Import v Campese [1995] ECR I-2113, LawLex09970: the "decreto ingiuntivo", together with the application instituting the proceedings, which starts time running for the defendant to oppose the order without the plaintiff being able to obtain an enforceable order before the expiry of that time, must be regarded as the document which instituted proceedings; Case 166/80 Klomps v Michel [1981] ECR 1593, LawLex091584: the words 'the document which instituted proceedings' within the meaning of Article 34(2) of the regulation cover the order for payment (Zahlungsbefehl) in German law, service of which enables the plaintiff, under the law of the State of the court of origin, to obtain, in default of appropriate action taken by the defendant, a decision capable of being recognized and enforced.
does not require evidence that the defendant has actually been aware of the document instituting proceedings but only that there has been sufficient time\textsuperscript{365}. The court in which enforcement is sought must take account only of the time available to the defendant for the purposes of preventing the issue of a judgment in default which is enforceable. The court in which enforcement is sought must therefore make sure that there are no exceptional circumstances which warrant the conclusion that service was inadequate for the purposes of enabling the defendant to take steps to arrange for his defense\textsuperscript{366} or exceptional facts or circumstances which occurred after service was effected and which may have the effect that service did not enable the interested party to arrange for his defense\textsuperscript{367}. When assessing, the court may take account of the means employed for effecting service, the relations between the plaintiff and the defendant or the nature of the steps which had to be taken to prevent judgment from being given in default\textsuperscript{368}. The fact that the foreign judgment is accompanied by the certificate (provided for by Article 53 of Regulation No 1215/2012) cannot limit the scope of the assessment to be made pursuant to the double control, by the court of the Member State in which enforcement is sought, once it examines the ground for challenge mentioned in Article 45(1)(b) of Regulation No 1215/2012\textsuperscript{369}.

The implementation of Article 45(1)(b) also implies that the court of origin has issued a default judgment. This requirement concretely means that the defendant must not have appeared or be represented in the proceedings before the court in the State of origin. The ground for refusal to recognize referred to in Article 45(1)(b) cannot be relied upon where the defendant appeared, at least if he was notified of the elements of the claim and had the opportunity to arrange for his defense\textsuperscript{370}. Thus, a defendant who does not know that proceedings are initiated against him - and a lawyer appears before the court of origin on his behalf but without his authority - is powerless to defend himself and must therefore be regarded as a defendant in default of appearance\textsuperscript{371}. According to the Court of Justice, the fact that a defendant, through his counsel, answers at trial to the charges against

\textsuperscript{365} To assess whether the defendant has had 'sufficient time' to arrange his defense, the court of the State in which enforcement is sought is not bound to comply with the periods set forth by its national law.

\textsuperscript{366} Case 166/80 Klomps v Michel [1981] ECR 1593, LawLex091584.

\textsuperscript{367} Case 49/84 Debaecker v Bouwman [1985] ECR 1779, LawLex092198: the fact that the plaintiff was apprised of the defendant's new address, after service was effected, and the fact that the defendant was responsible for the failure of the duly served document to reach him may be taken into account.

\textsuperscript{368} Case 166/80 Klomps v Michel [1981] ECR 1593, LawLex091584.

\textsuperscript{369} Case C-619/10 Trade Agency Ltd v Seramico Investments Ltd, Judgment of 13 December 2012, LawLex122042.

\textsuperscript{370} Case C-172/91 Sonntag v Waidmann [1993] ECR I-1963, LawLex09718.

\textsuperscript{371} Case C-78/95 Hendrikman and Feyen v Magenta Druck & Verlag [1996] ECR I-4943, LawLex091176.
him is to be taken as constituting, in principle, an appearance for the purposes of the proceedings taken as a whole, which precludes the non-recognition of the foreign judgment. On the other hand, the court of the State in which enforcement is sought may refuse to recognize a foreign judgment where the defendant has lodged an objection against the judgment given in default and a court of the State of origin has held the objection to be inadmissible on the ground that the time-period to bring proceedings had elapsed, since, in such a case, the dismissal of the objection as inadmissible means that the decision given in default remain 'intact'. Lastly, EU law does not preclude the issue of judgment by default against a defendant on whom, given that it is impossible to locate him, the document instituting proceedings has been served by public notice under national law, provided that the court before which the matter is brought has first satisfied itself that all investigations required by the principles of diligence and good faith have been undertaken to trace the defendant.

3) Irreconcilability.

In order to "minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States" (Regulation No 1215/2012, recital 21), Article 45 excludes recognition where the foreign judgment is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought (Article 45(1)(c)) or with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, where the earlier judgment fulfills the conditions necessary for its recognition or enforcement in the Member State addressed (Article 45(1)(d)).

The ground for refusing to recognize or enforce irreconcilable judgments is mandatory insofar as there can be no doubt that "the rule of law in a State would be disturbed if it were possible to take advantage of two conflicting judgments" and interpreting Article 45(1)(c)) in such a way as to recognize that the court of the State in which enforcement is sought has a mere possibility of refusal would be contrary to the principle of legal certainty. It must however be strictly interpreted. Thus, since a settlement transaction does not constitute a judgment within the meaning of Article 45 of the regulation, the ground derived of the irreconcilable character of a foreign judgment and a settlement having taken

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374 Case C-292/10 Cornelius de Visser, Judgment of 15 March 2012, LawLex12644.  
375 Case C-80/00 Italian Leather [2002] ECR I-4995, LawLex091179.  
Jurisdiction and Recognition of Judgments Update

place between the same parties before the court of the State in which enforcement is sought is inadmissible.

Irreconcilability lies in the effects of judgments, but does not concern the requirements governing admissibility and procedure which determine whether judgment can be given. Irreconcilability assumes that the judgments in question entail legal consequences that are mutually exclusive. Thus, the decision on interim measures of the court of origin ordering an obligor not to carry out certain acts and that of the court of the State in which enforcement is sought, issued between the same parties, refusing to grant such an order are irreconcilable.

IV. Implementation of an exequatur or recognition procedure

3.11. Remedies

Pursuant to Article 46 of Regulation No 1215/2012, enforcement of the decision in the Member State addressed may be contested by the person against whom enforcement is sought. Article 45 allows any interested party to apply for the refusal of recognition of a decision. The grounds for refusal of recognition and/or enforcement are set out in Article 45 of the regulation. The application for refusal is brought before the court which the Member State concerned has communicated to the Commission as being the competent court. Outside the binding requirements covered by Regulation No 1215/2012, the procedure for refusal of enforcement is governed by the law of the Member State addressed (Art. 47). The court must decide on the application for refusal of enforcement without delay (Art. 48). The decision on the application for refusal of enforcement may be appealed against by either party, which must be lodged with the court which the Member State concerned has communicated to

378 Case C-80/00 Italian Leather [2002] ECR I-4995, LawLex091179; it does not matter whether the judgments at issue have been given in proceedings for interim measures or in proceedings on the substance, "decisions on interim measures [being] subject to the rules laid down [...] concerning irreconcilability in the same way as the other 'judgments' covered by Article [32]", as well as "it is equally immaterial that national procedural rules as to interim measures are liable to vary from one [Member] State to another to a greater degree than rules governing proceedings on the substance", where "irreconcilability lies in the effects of judgments", and not in the conditions of admissibility and procedure, which may vary from one Member State to another.
380 Case C-80/00 Italian Leather [2002] ECR I-4995, LawLex091179. Similarly decisions given in two Member States between the same parties, the one based on the existence of a matrimonial relationship and the resulting conjugal obligation, the other pronouncing the divorce, Case 145/86 Hoffmann v Krieg [1988] ECR 645, LawLex091555, rendered under the Brussels Convention which included within its scope maintenance obligations - now governed by Regulation No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.
381 See Regulation No 1215/2012, Art. 75(b).
the Commission as being the competent court (Art. 49). The decision given on the appeal may if necessary be contested by an appeal (Art. 50).

The procedure remains quite similar to the one in place under the Brussels I Regulation. Under Article 43 of Regulation No 44/2001, an appeal could be lodged against the decision on the application for a declaration of enforceability. Phase II of the enforcement procedure, involving proceedings \textit{inter partes}, was thus initiated. The decision on the application for a declaration of enforceability could only be appealed by the party against which enforcement had been granted or to whom it had been refused (Article 43(1)). According to the Court of Justice interpreting those provisions, third parties could not appeal the judgment authorizing the enforcement of a judgment given in another Member State, or subsequently the judgment given on an appeal, even where the domestic law of the State in which enforcement was sought allowed third parties to do so. Thus, a creditor could not lodge an appeal in the name of his debtor against a decision on a request for a declaration of enforceability if he had not formally appeared as a party in the proceedings, even if his domestic law gave him the right to indirect claim. By contrast, interested third parties could lodge an appeal against execution measures as authorized by the law of the State in which execution had taken place.

In application of Article 43(5) of Regulation No 44/2001 an appeal was lodged, through opposition, before the court mentioned in Annex III, within one month of service thereof, which could be increased to two months if the party against whom enforcement is sought was domiciled in a State other than that in which the declaration of enforceability was given. On the other hand, no time period was imposed on the applicant to whom enforcement (or recognition) had been refused. The time period for appeal against the enforcement decision was mandatory. The court in which enforcement was sought must therefore of its own motion dismiss as inadmissible an appeal lodged

\footnotesize{\textsuperscript{382} According to Article 50, the decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.}
\footnotesize{\textsuperscript{383} Case 198/85 Carron v Germany [1986] ECR 2437, LawLex091642: “[Brussels Regulation I] establishes an enforcement procedure common to all Member States. At the initial ex parte stage, that procedure enables the applicant seeking enforcement of a judgment in another Member State to obtain satisfaction swiftly. At the second stage, involving proceedings \textit{inter partes}, it guarantees the rights of the party against whom enforcement is sought by setting up an appeal procedure.”}
\footnotesize{\textsuperscript{384} Before, the Brussels Convention was dissociating in two separate articles the appeal lodged by the party against whom enforcement was sought (Article 36) and the appeal lodged by the applicant to whom enforcement had been refused (Article 40).}
\footnotesize{\textsuperscript{385} Case C-172/91 Sonntag v Waidmann [1993] ECR I-1963, LawLex09718.}
\footnotesize{\textsuperscript{386} See case C-167/08 Draka NK Cables and others [2009] ECR I-3477, LawLex092351.}
\footnotesize{\textsuperscript{387} Regarding the distinction between enforcement and execution, see, inter alia, Case 145/86 Hoffmann v Krieg [1988] ECR 645, LawLex091555.}
\footnotesize{\textsuperscript{388} In France, the Court of Appeal.}
pursuant to national law against a foreign judgment for which an enforcement order had been issued, where to challenge the execution would have been tantamount to calling into question the enforcement order after the expiry of the time-limit. Furthermore, in cases of failure of, or defective, service of the judgment authorizing enforcement, the mere fact that the person against whom enforcement was sought was not aware of the decision did not suffice for the time-limit fixed to begin to run.

When the court seized of the appeal had ruled, its decision could be appealed only before the court referred to in Annex IV of Regulation No 44/2001, (Article 44). This right of appeal was conferred only against 'judgments given on the appeal', in the strict sense of the word, in order to avoid using that last remedy as delaying tactics. The words 'judgment given on the appeal', mentioned in Article 44, had to be interpreted as referring to judgments which ruled on the well-founded nature of the appeal lodged against a judgment authorizing enforcement of a court judgment given in another Member State, to the exclusion of judgments relating to a stay of decision or the provision of security under Article 46, which "constitutes a subsidiary measure designed to settle the subsequent course of the procedure". Thus, preliminary or interlocutory orders that the court seized of an appeal against the judgment which authorized enforcement could have given or a judgment pursuant to which the court of a Member State, seized of an appeal against an enforcement judgment, refused a stay or lifted a stay previously ordered, could not be appealed as provided for in Article 44. Lastly, the court in which an appeal is lodged in application of Article 49 (previously 43 of Regulation No 44/2001) or 50 (previously 44) of Regulation No 1215/2012 may refuse or revoke enforcement only on one of the grounds specified in Article 45 (substantially the same as former Articles 34 and 35), such as the enforcement of that decision in the Member State of origin by means of a financial settlement.

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3.14. Arrangements for implementation

Under Regulation No 44/2001, at the end of the recognition or enforcement procedure and, as the case may be, once the remedies were exhausted, the foreign judgment was either recognized (or not), or declared to be enforceable (or not), in the State in which enforcement was sought. If the judgment was declared enforceable, it had to be enforced in application of the domestic law of the court in which execution was sought, as is now laid down in Regulation No 1215/2012.

It remains for the court of the State in which enforcement is sought, in appeal proceedings brought against the enforcement judgment, to determine, in accordance with its domestic law, the legal effects on enforcement itself. Although recognition must have the effect, in principle, of conferring on judgments the authority and effectiveness accorded to them in the Member State in which they were delivered, there is, however, no reason for granting to a decision, when it is enforced, effects that a similar decision given directly in the Member State in which enforcement is sought would not have. Furthermore, the courts of that Member State are not required to apply any provisions of the national legislation of the Member State of origin which, in respect of the enforcement of decisions given by the courts of the Member State of origin, lay down time-limits which differ from those laid down by the law of the Member State in which enforcement is sought.

According to the Court it is also important for the court of the State in which enforcement is sought to see that the enforcement, in that State, of provisional or protective measures allegedly based on the jurisdiction laid down in Article 35 of the regulation, but going beyond that jurisdiction, does not imply to circumvent the rules of jurisdiction as to the substance set forth in Articles 4 and 7 to 26 of the regulation.

400 Case C-379/17 Società Immobiliare Al Bosco Srl, Judgment of 4 October 2018, LawLex181465.
CHAPTER 4

INSOLVENCY PROCEEDINGS

4.01. Context

Like Regulation No 1215/2012, which repeals and replaces Regulation No 44/2001 of 22 December 2001, Regulation No 2015/848 of 20 May 2015\(^\text{402}\), which replaces Regulation No 1346/2000 of 29 May 2000\(^\text{403}\), belongs to a movement to integrate international conventions into EU law - except that the latter regulation replaced a convention signed in Brussels on 23 November 1995, which never came into force. Regulation No 2015/848 on insolvency proceedings is perfectly in line with the provisions of Regulation No 1215/2012 the scope of application of which does not extend to covering "bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings". Regulation No 2015/848 pursues the same objective of settlement of conflicts of jurisdiction: it sets jurisdiction for the opening of insolvency proceedings and resulting judgments and organizes the recognition of those judgments. However, unlike Regulation No 1215/2012, it also governs conflicts of laws in international bankruptcy matters. Regulation No 2015/848 is accompanied by an implementing regulation, Regulation No 2017/1105\(^\text{404}\), which provides that four standard notice forms must be used - in force as of 27 June 2017 - i) to inform creditors, ii) for the lodgement of claims, iii) for the lodgement of objections in group coordination proceedings and, iv) for access to information via the European e-Justice Portal.

Regulation No 2015/848 is the result of the proposals for modernization put forward by the Commission on 12 December 2012\(^\text{405}\) and in the Commission Recommendation of 12 March 2014 on a new approach to business failure and insolvency\(^\text{406}\). The proposals for the 2012 revision of the insolvency regulation aimed to extend the scope of application of the regulation by amending the

\(\text{\textsuperscript{402}}\) OJ L 141 of 5 June 2015.
\(\text{\textsuperscript{403}}\) OJ L 160 of 30 June 2000.
\(\text{\textsuperscript{404}}\) Implementing Regulation No 2017/1105 of 12 June 2017, OJEU 22 June 2017.
\(\text{\textsuperscript{405}}\) COM (2012) 744 final of 12/12/2012.
\(\text{\textsuperscript{406}}\) OJ L 74 of 14 March 2014.
current definition of the term "insolvency proceedings" and by including "pre-insolvency proceedings" - procedures which provide for the restructuring of a company at a pre-insolvency stage - and "hybrid proceedings" which leave the existing management in place. The Commission also proposed that certain minimum information relating to the insolvency proceedings should be published in an electronic register available to the public free of charge via the internet and that the standard form and the lodging of claims for foreign creditors should be facilitated, particularly small creditors and SMEs. The proposal created a specific legal framework to deal with the insolvency of members of a group of companies while maintaining the "entity-by-entity" approach. The 2014 recommendation essentially encouraged the development of preventive rescue procedures and the setting up of an effective framework for the restructuring of companies within the EU.

Ultimately, the scope of the new regulation was considerably extended. Applicable not only to relations between Member States but also to any cross-border situation, the regulation, which attributes jurisdiction for the opening of insolvency proceedings to the courts of the Member State within the territory of which "the centre of the debtor’s (natural person, legal person, trader or individual) main interests" is situated, now defines that concept as "the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties" (Art. 3(1) paragraph 1). Although the regulation maintains the rebuttable presumption for companies and legal persons that the center of their main interests is their registered office, it also lays down a presumption in respect of natural persons in favor of their principal place of business or place of habitual residence. In order to prevent abusive forum shopping allowing parties to transfer assets or judicial proceedings from one Member State to another with a view to obtaining a more favorable legal position, those presumptions do not apply under the new regulation where the registered office or the principal place of business has been moved to another Member State within the 3-month period or, with regard to the place of habitual residence, within the 6-month period, prior to the request for the opening of insolvency proceedings (Art. 3(1), paragraphs 2, 3 and 4).

The law applicable to insolvency proceedings, whether main proceedings (in the Member State where the debtor has the center of its main interests - Art. 3(1)) or secondary (where the proceedings are opened in the Member State where the debtor has an establishment - Art. 34 and 3(2)), remains that of the State of the opening of proceedings or "lex fori concursus" (Art. 7 or Art. 35). However, secondary insolvency proceedings now no longer necessarily lead to liquidation of assets: by virtue of

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Article 38 (4), the court seized of a request to open secondary proceedings may open any type of insolvency proceedings as listed in Annex A (including preventive). The new text establishes the autonomy of secondary proceedings with respect to the main proceedings\footnote{See Article 50, which provides that where main insolvency proceedings are opened following the opening of secondary proceedings, Articles 41 (Cooperation and communication between insolvency practitioners), 45 (Exercise of creditors' rights), 46 (Stay of the process of realization of assets), 47 (Power of the insolvency practitioner to propose restructuring plans) and 49 (Assets remaining in the secondary insolvency proceedings) apply to the secondary proceedings opened first.} and aims to more effectively articulate these parallel proceedings\footnote{See notably Article 41 on cooperation and communication between insolvency practitioners; Article 42 on cooperation and communication between courts; Article 43 on cooperation and communication between insolvency practitioners and courts; Article 46 on the stay of the process of realization of assets; Article 51 on the conversion of secondary insolvency proceedings.}.

To ensure a better treatment of the insolvent members of groups of companies, the regulation has introduced group coordination proceedings which may be requested by any insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group (Art. 61). A coordinator is appointed to identify and outline recommendations appropriate to an integrated approach to the resolution of the group members' insolvencies (Art. 72). It also provides for a standard form for the lodging of claims (Art. 54) and creates insolvency registers in order to reinforce the rights of creditors (Art. 24).

**Section 1 Scope of application**

**4.02. Scope ratione materiae and ratione temporis**

In line with the Recommendation on a new approach to business failure and insolvency, the Commission has given Regulation No 2015/848 an extended scope of application. It is thus extended to proceedings which promote the rescue of economically viable but distressed businesses and which give a second chance to entrepreneurs, in particular to proceedings which provide for restructuring of a debtor at a stage where there is only a likelihood of insolvency, and to proceedings which leave the debtor fully or partially in control of its assets and affairs, and to proceedings providing for a debt discharge or a debt adjustment in relation to consumers and self-employed persons (recital 10). Like Regulation No 1346/2000, it applies to collective insolvency proceedings based on the debtor's insolvency which entails the partial or total divestment of a debtor and the appointment of a liquidator\footnote{A decision to open insolvency proceedings based on the debtor's insolvency following an application seeking the opening of proceedings referred to in Annex A of Regulation 2015/848 constitutes a decision to open insolvency proceedings, where that decision involves the divestment of the debtor and the appointment of a liquidator, even a provisional liquidator: Case C-341/04 Eurofood IFSC [2006] ECR I-3813, LawLex09401.} (Article 1(1)(a)), proceedings in which the assets and affairs of a debtor are subject to
control or supervision by a court known as "debtor in possession" proceedings (Art. 1(1)(b) and proceedings granting a temporary stay of individual enforcement, on condition that they provide for suitable measures to protect the general body of creditors and, where no agreement is reached, are preliminary to one of the two other proceedings (Art. 1(1)(c)). Annex A, which sets out a list of national insolvency proceedings to which the regulation applies, includes around twenty additional proceedings. Annex B which previously set out the liquidation proceedings covered by the regulation, now lists the insolvency practitioners for each Member State. By defining collective proceedings in Article 2(1) as "proceedings which include all or a significant part of a debtor's creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them," the regulation now takes into consideration partial collective proceedings.

Regulation 2015/848 contains the same exclusions as its predecessor. Article 1(2) excludes from its scope of application insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, and collective investment undertakings.

In order to settle the recognition and enforcement of decisions other than those directly relating to the opening of insolvency proceedings, Article 32 lists judgments which fall within the scope of application of Regulation No 2015/848 - i.e. judgments which concern the course and closure of insolvency proceedings given by the court which opened the proceedings, and compositions approved by that court, judgment deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court, and all judgments relating to preservation measures taken after the request for the opening of insolvency proceedings, as well as those which are excluded - i.e. judgments not referred to in paragraph 1 -, by specifying that these exclusions fall within Regulation No 1215/2012, where it is applicable.

The material scope of application of Regulation No 2015/848 is strictly interpreted and is limited to provisions governing the jurisdiction for the opening of insolvency proceedings and the giving of

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411 Regulation No 2015/848, recital 14: "The collective proceedings which are covered by this Regulation should include all or a significant part of the creditors to whom a debtor owes all or a substantial proportion of the debtor's outstanding debts provided that the claims of those creditors who are not involved in such proceedings remain unaffected. Proceedings which involve only the financial creditors of a debtor should also be covered. Proceedings which do not include all the creditors of a debtor should be proceedings aimed at rescuing the debtor. Proceedings that lead to a definitive cessation of the debtor's activities or the liquidation of the debtor's assets should include all the debtor's creditors. Moreover, the fact that some insolvency proceedings for natural persons exclude specific categories of claims, such as maintenance claims, from the possibility of a debt-discharge should not mean that such proceedings are not collective."

412 Case C-339/07 Seagon [2009] ECR I-767, LawLex092317: The action to set a transaction aside intended to increase the assets of the undertaking which is the subject of insolvency proceedings and which may be brought by the liquidator only, falls within the material scope of application of Regulation No 1346/2000.
judgments which derive directly from the insolvency proceedings and which are closely linked with them, while the material scope of application of Regulation No 1215/2012 is subject to more liberal interpretation in accordance with the will of the European legislator to retain a broad conception of the concept of 'civil and commercial matters'. An action is related to bankruptcy or winding-up if it derives directly from the bankruptcy or winding-up and is closely connected with the proceedings. This is also the case for an action brought by the liquidator in the insolvency proceedings against the managing director of the debtor for reimbursement of payments which were made after the company became insolvent or after it had been established that the company's liabilities exceeded its assets, where the right or the obligation which forms the basis of the action finds its source in the common rules of civil and commercial law or in the derogating rules specific to insolvency proceedings. This is not the case for an action brought by a seller based on a reservation of title against a purchaser who is insolvent, where the asset covered by the reservation of title is situated in the Member State of the opening of the insolvency proceedings, where it is not based on the law of insolvency proceedings and requires neither the opening of proceedings of that kind, nor the action of a liquidator, or for an action for damages for unfair competition by which the assignee of part of the business acquired in the course of insolvency proceedings is accused of misrepresenting itself as being the exclusive distributor of articles manufactured by the debtor, as, even if there is a link between the action in the main proceedings and the insolvency proceedings, that link is neither sufficiently direct nor sufficiently close so as to rule out Regulation No 1215/2012 and consequently to make Regulation No 2015/848 applicable.

Lastly, the temporal scope of application of Regulation No 2015/848 is governed by Article 84 which sets forth that the regulation applies only to proceedings opened after 26 June 2017, and acts done by a debtor before the entry into force continue to be governed by the law which was applicable to them at the time they were done. For proceedings opened prior to that date, Regulation No 1346/2000 continues to apply. According to the Court of Justice, the regulation must apply where no judgment opening insolvency proceedings was delivered prior to its entry into force, even if the request for opening judgment was filed before that date. The regulation applies to proceedings opened in

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413 Case C-295/13 H v HK, Judgment of 4 December 2014, LawLex141396.
415 Case C-641/16 Tünkers France, Judgment of 9 November 2017, LawLex171811.
Jurisdiction and Recognition of Judgments Update

respect of real property situated in the territory of a Member State before its accession to the European Union.\footnote{Case C-527/10 ERSTE Bank Hungary Nyrt, Judgment of 5 July 2012, LawLex14210.}

4.03. Center of main interests of debtor

The first paragraph of Article 3(1) of Regulation No 2015/848 provides that, "the courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings".\footnote{The concept of the center of a debtor's main interests must be interpreted in a uniform way, independently of national legislation, by reference to European Union law: Case C-396/09 Interdil Srl [2011] ECR I-9915, LawLex12132.} By virtue of that provision, the courts of the Member State within the territory of which insolvency proceedings have been opened have jurisdiction to hear actions which derive directly from those proceedings and which are closely connected to them,\footnote{Case C-339/07 Seagon v Deko Marty Belgium NV, [2009] ECR I-767, LawLex092317.} such as an action to set a transaction aside by virtue of insolvency that is brought against a person whose registered office is in another Member State\footnote{Case C-339/07 Seagon v Deko Marty Belgium NV, cited above.} or in a third country.\footnote{Case C-328/12 Ralph Schmid v Lilly Hertel, Judgment of 16 January 2014, LawLex1435.} However, the courts of the Member State in which main insolvency proceedings have been opened against a company may, on the view that the center of the debtor's main interests is situated in the territory of that Member State, under a rule of its national law, join to those proceedings a second company whose registered office is in another Member State only if it is established that the centre of that second company's main interests is situated in the first Member State.\footnote{Case C-191/10 Rastelli Davide e C. Snc [2011] ECR I-13209, LawLex12692.}

For companies and legal persons, the center of their main interests is presumed to be the place of the registered office in the absence of proof to the contrary (Article 3(1) paragraph 2). Confirming the case law of the Court of Justice, Regulation No 2015/848 provides that "the centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties".\footnote{Case C-341/04 Eurofood IFSC [2006] ECR I-3813, LawLex09401.} A rebuttal of the presumption laid down by the EU legislature is possible where, from the point of view of third parties, the company's central administration is not located in the place of its registered office.\footnote{Case C-341/04 Eurofood IFSC, cited above.} Such is the case where factors which are both objective and ascertainable by third parties, such as the places in which the debtor company pursues economic

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\footnote{Case C-339/07 Seagon v Deko Marty Belgium NV, [2009] ECR I-767, LawLex092317.}
activities and those where it possesses goods, make it possible to establish that the actual situation is different from that which the location at that registered office is deemed to reflect.\textsuperscript{426} The presence of company assets and the existence of contracts for the financial exploitation of those assets in a Member State other than that in which the registered office is situated can only be regarded as sufficient factors to rebut the presumption if a comprehensive assessment of all the relevant factors makes it possible to establish, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State. On the other hand, the mere fact that the economic choices of a company are or can be controlled by a parent company in another Member State is not enough to rebut the presumption.\textsuperscript{427}

From a temporal point of view, generally the place in which the center of the debtor's main interests is situated at the time when the debtor lodges the request to open insolvency proceedings determines the competent court. Under Regulation No 1346/2000, the Court of Justice considered that in the event of a transfer of the center of the debtor's main interests after the request to open insolvency proceedings but before the opening of the proceedings, the courts of the Member State on the territory of which the center of main interest was situated at the time when the request to open insolvency proceedings was lodged, retain jurisdiction to open those proceedings.\textsuperscript{428} Bankruptcy proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings to winding-up, judicial arrangements, compositions and analogous proceedings, in the case where the registered office is transferred before a request to open insolvency proceedings is lodged, the center of the debtor's main interests is therefore presumed to be located at the place of the new registered office. The courts of the Member State within the territory of which the new registered office is located, in principle, have jurisdiction to open the main insolvency proceedings, unless the presumption in paragraph 2 of Article 3(1) of the regulation is rebutted by evidence that the center of main interests has not followed the change of registered office.\textsuperscript{429} The new regulation also expressly provides that "This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings." (Art. 3(1), paragraph 2).

\textsuperscript{426} Case C-396/09 Interdil Srl [2011] ECR I-9915, LawLex12132.
\textsuperscript{427} Case C-341/04 Eurofood IFSC, cited above.
\textsuperscript{428} Case C-1/04 Staubitz-Schreiber [2006] ECR I-701, LawLex09269.
\textsuperscript{429} Case C-396/09 Interdil Srl, cited above.
Regulation No 2015-848 lays down a presumption in favor of natural persons which varies depending on whether the natural person exercises an independent business or a professional activity. If so, the center of main interests is presumed to be that individual's principal place of business in the absence of proof to the contrary (Art. 3(1) paragraph 3). For all other individuals the center of main interests shall be presumed to be the place of the individual's habitual residence (Art 3(1) paragraph 4). For independent businesses, the presumption only applies if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings and for any other individual, if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.

Where the debtor possesses an establishment within the territory of another Member State, proceedings may be opened in that State but the effects of those proceedings are restricted to the assets of the debtor situated in that territory (Art. 3, paragraph 2). The term "establishment" within the meaning of Article 3(2) of the regulation requires the presence of a structure consisting of a minimum level of organization and a degree of stability necessary for the purpose of pursuing an economic activity and the presence alone of goods in isolation or bank accounts does not, in principle, meet that definition\(^430\). Territorial insolvency proceedings no longer have to be winding-up proceedings as was the case under Regulation No 1346/2000\(^431\). They now constitute "secondary" proceedings\(^432\). The courts of the Member State in which secondary insolvency proceedings have been opened have jurisdiction, concurrently with the courts of the Member State in which the main proceedings have been opened, to rule on the determination of the debtor's assets falling within the scope of the effects of those secondary proceedings pursuant to the provisions of Article 2 which provides that the Member State in which assets are situated, in the case of tangible property, the Member State within the territory of which the property is situated, in the case of property and rights ownership, entitlement to which must be entered in a public register, the Member State under the authority of which the register is kept and, finally, in the case of claims, the Member State within the territory of which the third party required to meet them has the center of his main interests\(^433\). Pursuant to Article 3(4), territorial insolvency proceedings may only be opened prior to the opening of main insolvency procedures.

\(^{430}\) Case C-396/09 Interdil Srl, cited above.
\(^{431}\) Regulation No 1346/2000, Art. 3(3).
\(^{432}\) Regulation No 2015/848, Art. 3(3): "Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings".
\(^{433}\) Case C-649/13 Comité d'entreprise de Nortel Networks, Judgment of 11 June 2015, LawLex15734.
proceedings where: "a) insolvency proceedings cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the center of the debtor's main interests is situated; or b) the opening of territorial insolvency proceedings is requested by: (i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or (ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings". The conditions referred to in Article 3(4)(a), preventing the opening of main insolvency proceedings in that State only constitute substantive conditions relating to the capacity of the debtor and do not include conditions relating to the capacity of persons empowered to request the opening of such a procedure. The term "creditor" in Article 3(4)(b) which is used to designate the persons empowered to request the opening of territorial insolvency proceedings, does not include an authority of a Member State whose task under the national law of that State is to act in the public interest, but which does not intervene as a creditor, or in the name or on behalf of those creditors. On the other hand, the issue of who is empowered to request the opening of secondary proceedings after (and not prior to) the opening of main proceedings must be assessed on the basis of the national law of the Member State within the territory of which the opening of such proceedings is sought; however the right to seek the opening of secondary proceedings cannot be restricted to creditors who have their domicile or registered office within the Member State in whose territory the relevant establishment is situated, or to creditors whose claims arise from the operation of that establishment.

4.04. Effects of recognition

Like Regulation No 1215/2012, Regulation No 2015/848 lays down the mechanism for judgments opening insolvency proceedings in one Member State to be automatically recognized by all the other Member States of the EU. In effect, the judgment opening the main proceedings produces the same effects in any other Member State as under the law of the opening State, without other formality and in particular, without the need for notice or publicity being given to creditors.

Article 19(1) of Regulation No 2015/848 establishes the principle of universality of proceedings pursuant to which the decision to open insolvency proceedings handed down by a court of a Member State opening the main proceedings need not be notified and need not be published only if the judgment is recognized within another Member State. 

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435 Case C-112-10, cited above.
436 Case C-327/13 Burgo Group, Judgment of 4 September 2014, LawLex14926.
State is recognized in all the other Member State from the time that it becomes effective in the State of the opening of proceedings. No court other than the court which has jurisdiction under Article 3 can open the main proceedings against the same debtor, but the application of that principle does not preclude the opening of secondary proceedings in other Member States under certain conditions (Article 19(2); Articles 34 to 52). Article 19(1) further sets out a priority rule based on a chronological criterion to the benefit of the opening judgment which was handed down first. This priority principle, inter alia, prevents the European authorities from pursuing their claims against undertakings in proceedings brought before the European courts since they would enjoy an unjustifiable advantage over the other creditors who are not authorized to initiate proceedings before the national courts.

The priority rule is based on the principle of mutual trust under which the Member States have agreed to the establishment of a compulsory system of jurisdiction and accordingly have waived their internal rules of recognition. The principle of mutual trust that the Member States grant to their legal systems implies that the court of a Member State seized of an application for opening of main insolvency proceedings checks its jurisdiction in view of Article 3(1) of the regulation, i.e. assesses whether the center of the debtor's main interests is situated within his national territory. In return, the main insolvency proceedings opened by that court are recognized by the courts of the other Member States, without the latter being able to review the jurisdiction of the court of the opening State or to order enforcement measures relating to the assets of the debtor declared insolvent that are situated in their territory when the legislation of the State of the opening of proceedings does not so permit. The principle of mutual trust further assumes that any party who wishes to challenge the jurisdiction assumed by the court of the opening State on the ground that the center of the debtor's main interests is situated in another Member State, uses the remedies prescribed by the national law of the opening State.

4.05. Grounds for non-recognition

Pursuant to Article 33 of Regulation No 2015/848, any "Member State may refuse to recognize insolvency proceedings opened in another Member State or to enforce a judgment handed down in the

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438 Case C-444/07 MG Probud Gdynia [2010] ECR I-417, LawLex11341: only the opening of secondary insolvency proceedings is capable of restricting the universal effect of the main insolvency proceedings.
context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual”.

According to the Court of Justice, case law relating to the application of Article 45(1) of Regulation No 1215/2012 on the public policy clause may be transposed as part of the interpretation of Article 33 of Regulation No 2015/848: the public policy clause can only be used in exceptional cases, i.e. where recognition is at variance to an unacceptable degree with the legal order of the State in which recognition is sought and constitutes a breach of a fundamental principle, such as the right to be heard, which a person concerned by such proceedings enjoys. Now, all restrictions to the right of creditors to participate in proceedings in accordance with the equality of arms principle, insofar as they are liable to entail a refusal of recognition, must be duly justified and surrounded by procedural guarantees ensuring that persons concerned by such proceedings actually have the opportunity to challenge the measures adopted in urgency.

Regulation No 1346/2000 provided that Member States were not obliged to recognize or enforce a judgment which concerns the course and closure of insolvency proceedings which might result in a limitation of the personal freedom or postal secrecy. This second ground of refusal has not been maintained under Regulation No 2015/848.

Section 4 Applicable law

4.06. Principle of application of the law of the State opening insolvency proceedings

The concept of ‘center of the debtor’s main interests’ determines not only the court which has jurisdiction to open proceedings but, as an extension, the law governing the proceedings. In effect, according to Article 7 of Regulation No 2015/848, the law applicable to insolvency proceedings and their effects is that of the Member State within the territory of which such proceedings are opened. Article 7(2) includes a non-exhaustive list of the various factors which fall within the law of the opening State: "a) the debtors against which insolvency proceedings may be brought on account of

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443 As part of the application of Regulation No 44/2001, see Case C-78/95 Hendrikman and Feyen v Magenta Druck &amp; Verlag [1996] ECR I-4943, LawLex091176.

444 Case C-341/04 Eurofood IFSC [2006] ECR I-3813, LawLex09401. By contrast, the non-hearing of staff representatives before the decision opening the insolvency proceedings is taken cannot justify a refusal to recognize that judgment under the public policy clause where it does not constitute a manifest breach of the fundamental right to be heard which any person concerned by these proceedings enjoys.

Jurisdiction and Recognition of Judgments Update

their capacity; b) the assets which form part of the insolvency estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings; c) the respective powers of the debtor and the insolvency practitioner; d) the conditions under which set-offs may be invoked; e) the effects of insolvency proceedings on current contracts to which the debtor is party; f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuits; g) the claims which are to be lodged against the debtor's estate and the treatment of claims arising after the opening of insolvency proceedings; h) the conditions for and the effects of closure of insolvency proceedings; i) the rules governing the lodging, verification and admission of claims; j) the rules governing the distribution of proceeds from the realization of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off; k) the conditions for and the effects of closure of insolvency proceedings; l) creditors' rights after the closure of the insolvency proceedings; m) who is to bear the costs and expenses incurred in the insolvency proceedings; n) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.  

Articles 8 to 18 lay down exceptions to the principle of application of the law of the opening Member State which are strictly interpreted. The rules of conflict of law set forth in Articles 8 to 10 concern creditors or third parties to the proceedings who hold rights on the debtor's assets located in a State other than the opening State, and give them the possibility to assert their rights on those assets according to the law of the State concerned. These are, inter alia, the rights of creditors based on rights in rem (Article 8) or a reservation of title (Article 10). According to the Court of Justice, the scope of application of Article 8 which allows the law of the Member State on whose territory the asset concerned is situated to be applied to the right in rem of a creditor or a third party in respect of assets belonging to the debtor, does not depend on the origin of the right in rem concerned or the

446 Case C-116/11 Bank Handlowy w Warszawie S.A, Judgment of 22 November 2012, LawLex14206, ruling that it is for the national law of the Member State in which insolvency proceedings have been opened to determine at which moment the closure of those proceedings occurs, insofar as questions related to the conditions for and effects of the closure cannot be given an autonomous interpretation, but must be decided under the lex concursus designated as applicable.

447 Case C-594/14 Simona Kornhaas, Judgment of 10 December 2015, LawLex151699: holding that national provisions which have the effect of penalizing a failure to fulfil the obligation to apply for the opening of insolvency proceedings fall within the scope of Article 7(2)(m).

448 Case C-557/13 Hermann Lutz, Judgment of 10 December 2015, LawLex151699: holding that national provisions which have the effect of penalizing a failure to fulfil the obligation to apply for the opening of insolvency proceedings fall within the scope of Article 7(2)(m).

449 Case C-557/13 Hermann Lutz, cited above: the right resulting from the attachment of the bank accounts is in fact capable of constituting a 'right in rem' within the meaning of Article 8(1) of Regulation No 2015/848, provided that, under the national law concerned, that right was exclusive in relation to the other creditors of the debtor company. For the question as to whether such a right automatically became legally invalid as a result of the opening of insolvency proceedings against the debtor company, reference should be made to the competent lex fori concursus for determining, in application of Article 4(2)(m) of that regulation the rules relative to voidness, voidability or unenforceability, even if the provisions of Article 8(4) refer only to the "actions" (not the "rules") for voidness, voidability or unenforceability.
nature, whether governed by public or private law, of the debt guaranteed by that right in rem. The other derogatory rules of conflict govern the effects of the insolvency proceedings on, inter alia: - contracts relating to immovable property (Article 11); - payment systems and financial markets (Article 12); - contracts of employment (Article 13); - rights subject to registration (Article 14); - European patents and trade marks (Article 15); - lawsuits pending concerning not only a specific right or asset, but, more broadly, an asset or right that is part of the insolvency estate (Article 18).

With regard to the derogations to the general "lex fori concursus" conflict rule, Article 16, on detrimental acts lays down that Article 7(2)(m)), which makes subject to the law of the State of the opening of proceedings the determination of the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors, does not apply: "where the person who benefited from an act detrimental to all the creditors provides proof that: a) the act is subject to the law of a Member State other than that of the State of the opening of proceedings; and b) the law of that Member State does not allow any means of challenging that act. According to the Court of Justice, Article 16 does not in principle apply to acts which took place after the opening of insolvency proceedings as its application would go beyond what is necessary to protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened. Article 16 of Regulation No 2015/848 may be validly relied upon where the parties to a contract, who have their head offices in a single Member State on whose territory all the other elements relevant to the situation in question are located, have designated the law of another Member State as the law applicable to that contract, provided that those parties did not choose that law for abusive or fraudulent ends, that being a matter for the referring court to determine.

However, those considerations cannot be applied to the situation in which a creditor exercises a right in rem falling within Article 8(1) of the regulation - and as such not subject to the Lex Conclusus, which

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450 Case C-195-15 SCI Senior Home, Judgment of 26 October 2016, LawLex161739.
451 Case C-250/17 Tarrago da Siveira, Judgment of 6 June 2018, LawLex18871, specifying that although Article 18 of Regulation No 2015/848 which, as an exception, provides that the effects of insolvency proceedings on a lawsuit pending concerning an asset or a right of which the debtor has been divested are governed solely by the law of the Member State in which that lawsuit is pending, does not apply to enforcement proceedings, finding that actions for a declaration of monetary obligations which merely determine the rights and obligations of the debtor, without involving their realization, and therefore, unlike individual enforcement proceedings, do not risk undermining the principle of equal treatment of creditors.
452 Case C-310/14 Nike European Operations Netherlands BV, Judgment of 15 October 2015, LawLex151274.
453 Case C-557/13 Hermann Lutz, cited above.
454 Case C-54/16 Vinyls Italia SpA, Judgment of 8 June 2017, LawLex171002. the form and the time-limit in which a person benefiting from an act that is detrimental to all the creditors must raise an objection under Article 16 of Regulation No 2015/848, in order to challenge an action to have that act set aside in accordance with the Lex Fori Conclusus, and the question whether that article may also be applied by the competent court of its own motion, if necessary, after the time-limit allowed to the party concerned has expired, fall within the procedural law of the Member State on whose territory the dispute is pending, provided that the principle of equivalence and the principle of effectiveness are respected.
Jurisdiction and Recognition of Judgments Update

aims to allow the creditor to effectively assert a right in rem accrued before the opening of the insolvency proceedings even after they are opened\textsuperscript{455}. The system of exceptions under Article 16 also applies to limitation periods or other time-bars relating to actions to set aside transactions under the \textit{lex causae}. Procedural requirements for the exercise of an action to set a transaction aside are also determined according to the \textit{lex causae}\textsuperscript{456}.

\textsuperscript{455} Case C-557/13 Hermann Lutz, cited above.

\textsuperscript{456} Case C-557/13 Hermann Lutz, cited above.
APPENDIX II

REGULATION No 2015/848 of 20 May 2015

on insolvency proceedings (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (457),

Acting in accordance with the ordinary legislative procedure (458),

Whereas:

(1) On 12 December 2012, the Commission adopted a report on the application of Council Regulation (EC) No 1346/2000 (459). The report concluded that the Regulation is functioning well in general but that it would be desirable to improve the application of certain of its provisions in order to enhance the effective administration of cross-border insolvency proceedings. Since that Regulation has been amended several times and further amendments are to be made, it should be recast in the interest of clarity.

(2) The Union has set the objective of establishing an area of freedom, security and justice.

(3) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively. This Regulation needs to be adopted in order to achieve that objective, which falls within the scope of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty.

(4) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Union law. The insolvency of such undertakings also affects

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the proper functioning of the internal market, and there is a need for a Union act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.

(5) It is necessary for the proper functioning of the internal market to avoid incentives for parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors (forum shopping).

(6) This Regulation should include provisions governing jurisdiction for opening insolvency proceedings and actions which are directly derived from insolvency proceedings and are closely linked with them. This Regulation should also contain provisions regarding the recognition and enforcement of judgments issued in such proceedings, and provisions regarding the law applicable to insolvency proceedings. In addition, this Regulation should lay down rules on the coordination of insolvency proceedings which relate to the same debtor or to several members of the same group of companies.

(7) Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings and actions related to such proceedings are excluded from the scope of Regulation (EU) No 1215/2012 of the European Parliament and of the Council. Those proceedings should be covered by this Regulation. The interpretation of this Regulation should as much as possible avoid regulatory loopholes between the two instruments. However, the mere fact that a national procedure is not listed in Annex A to this Regulation should not imply that it is covered by Regulation (EU) No 1215/2012.

(8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Union measure which is binding and directly applicable in Member States.

(9) This Regulation should apply to insolvency proceedings which meet the conditions set out in it, irrespective of whether the debtor is a natural person or a legal person, a trader or an individual. Those insolvency proceedings are listed exhaustively in Annex A. In respect of the national procedures contained in Annex A, this Regulation should apply without any further examination by the courts of another Member State as to whether the conditions set out in this Regulation are met. National insolvency procedures not listed in Annex A should not be covered by this Regulation.

(10) The scope of this Regulation should extend to proceedings which promote the rescue of economically viable but distressed businesses and which give a second chance to entrepreneurs. It should, in particular, extend to proceedings which provide for restructuring.

of a debtor at a stage where there is only a likelihood of insolvency, and to proceedings which leave the debtor fully or partially in control of its assets and affairs. It should also extend to proceedings providing for a debt discharge or a debt adjustment in relation to consumers and self-employed persons, for example by reducing the amount to be paid by the debtor or by extending the payment period granted to the debtor. Since such proceedings do not necessarily entail the appointment of an insolvency practitioner, they should be covered by this Regulation if they take place under the control or supervision of a court. In this context, the term ‘control’ should include situations where the court only intervenes on appeal by a creditor or other interested parties.

(11) This Regulation should also apply to procedures which grant a temporary stay on enforcement actions brought by individual creditors where such actions could adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. Such procedures should not be detrimental to the general body of creditors and, if no agreement on a restructuring plan can be reached, should be preliminary to other procedures covered by this Regulation.

(12) This Regulation should apply to proceedings the opening of which is subject to publicity in order to allow creditors to become aware of the proceedings and to lodge their claims, thereby ensuring the collective nature of the proceedings, and in order to give creditors the opportunity to challenge the jurisdiction of the court which has opened the proceedings.

(13) Accordingly, insolvency proceedings which are confidential should be excluded from the scope of this Regulation. While such proceedings may play an important role in some Member States, their confidential nature makes it impossible for a creditor or a court located in another Member State to know that such proceedings have been opened, thereby making it difficult to provide for the recognition of their effects throughout the Union.

(14) The collective proceedings which are covered by this Regulation should include all or a significant part of the creditors to whom a debtor owes all or a substantial proportion of the debtor's outstanding debts provided that the claims of those creditors who are not involved in such proceedings remain unaffected. Proceedings which involve only the financial creditors of a debtor should also be covered. Proceedings which do not include all the creditors of a debtor should be proceedings aimed at rescuing the debtor. Proceedings that lead to a definitive cessation of the debtor's activities or the liquidation of the debtor's assets should include all the debtor's creditors. Moreover, the fact that some insolvency proceedings for natural persons exclude specific categories of claims, such as maintenance claims, from the possibility of a debt-discharge should not mean that such proceedings are not collective.

(15) This Regulation should also apply to proceedings that, under the law of some Member States, are opened and conducted for a certain period of time on an interim or provisional basis before a court issues an order confirming the continuation of the proceedings on a non-
interim basis. Although labelled as ‘interim’, such proceedings should meet all other requirements of this Regulation.

(16) This Regulation should apply to proceedings which are based on laws relating to insolvency. However, proceedings that are based on general company law not designed exclusively for insolvency situations should not be considered to be based on laws relating to insolvency. Similarly, the purpose of adjustment of debt should not include specific proceedings in which debts of a natural person of very low income and very low asset value are written off, provided that this type of proceedings never makes provision for payment to creditors.

(17) This Regulation's scope should extend to proceedings which are triggered by situations in which the debtor faces non-financial difficulties, provided that such difficulties give rise to a real and serious threat to the debtor's actual or future ability to pay its debts as they fall due. The time frame relevant for the determination of such threat may extend to a period of several months or even longer in order to account for cases in which the debtor is faced with non-financial difficulties threatening the status of its business as a going concern and, in the medium term, its liquidity. This may be the case, for example, where the debtor has lost a contract which is of key importance to it.

(18) This Regulation should be without prejudice to the rules on the recovery of State aid from insolvent companies as interpreted by the case-law of the Court of Justice of the European Union.

(19) Insolvency proceedings concerning insurance undertakings, credit institutions, investment firms and other firms, institutions or undertakings covered by Directive 2001/24/EC of the European Parliament and of the Council and collective investment undertakings should be excluded from the scope of this Regulation, as they are all subject to special arrangements and the national supervisory authorities have wide-ranging powers of intervention.

(20) Insolvency proceedings do not necessarily involve the intervention of a judicial authority. Therefore, the term ‘court’ in this Regulation should, in certain provisions, be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened.

(21) Insolvency practitioners are defined in this Regulation and listed in Annex B. Insolvency practitioners who are appointed without the involvement of a judicial body should, under

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Jurisdiction and Recognition of Judgments Update

national law, be appropriately regulated and authorised to act in insolvency proceedings. The national regulatory framework should provide for proper arrangements to deal with potential conflicts of interest.

(22) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope throughout the Union. The application without exception of the law of the State of the opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing national laws on security interests to be found in the Member States. Furthermore, the preferential rights enjoyed by some creditors in insolvency proceedings are, in some cases, completely different. At the next review of this Regulation, it will be necessary to identify further measures in order to improve the preferential rights of employees at European level. This Regulation should take account of such differing national laws in two different ways. On the one hand, provision should be made for special rules on the applicable law in the case of particularly significant rights and legal relationships (e.g. rights in rem and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of the opening of proceedings should also be allowed alongside main insolvency proceedings with universal scope.

(23) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of its main interests. Those proceedings have universal scope and are aimed at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary insolvency proceedings to be opened to run in parallel with the main insolvency proceedings. Secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary insolvency proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main insolvency proceedings satisfy the need for unity in the Union.

(24) Where main insolvency proceedings concerning a legal person or company have been opened in a Member State other than that of its registered office, it should be possible to open secondary insolvency proceedings in the Member State of the registered office, provided that the debtor is carrying out an economic activity with human means and assets in that State, in accordance with the case-law of the Court of Justice of the European Union.

(25) This Regulation applies only to proceedings in respect of a debtor whose centre of main interests is located in the Union.

(26) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State should be established by the national law of the Member State concerned.
(27) Before opening insolvency proceedings, the competent court should examine of its own motion whether the centre of the debtor's main interests or the debtor's establishment is actually located within its jurisdiction.

(28) When determining whether the centre of the debtor's main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests. This may require, in the event of a shift of centre of main interests, informing creditors of the new location from which the debtor is carrying out its activities in due course, for example by drawing attention to the change of address in commercial correspondence, or by making the new location public through other appropriate means.

(29) This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.

(30) Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interests should be rebuttable, and the relevant court of a Member State should carefully assess whether the centre of the debtor's main interests is genuinely located in that Member State. In the case of a company, it should be possible to rebut this presumption where the company's central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State. In the case of an individual not exercising an independent business or professional activity, it should be possible to rebut this presumption, for example where the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence, or where it can be established that the principal reason for moving was to file for insolvency proceedings in the new jurisdiction where such filing would materially impair the interests of creditors whose dealings with the debtor took place prior to the relocation.

(31) With the same objective of preventing fraudulent or abusive forum shopping, the presumption that the centre of main interests is at the place of the registered office, at the individual's principal place of business or at the individual's habitual residence should not apply where, respectively, in the case of a company, legal person or individual exercising an independent business or professional activity, the debtor has relocated its registered office or principal place of business to another Member State within the 3-month period prior to the request for opening insolvency proceedings, or, in the case of an individual not exercising an independent business or professional activity, the debtor has relocated his habitual residence to another Member State within the 6-month period prior to the request for opening insolvency proceedings.
(32) In all cases, where the circumstances of the matter give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support its assertions and, where the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction.

(33) In the event that the court seised of the request to open insolvency proceedings finds that the centre of main interests is not located on its territory, it should not open main insolvency proceedings.

(34) In addition, any creditor of the debtor should have an effective remedy against the decision to open insolvency proceedings. The consequences of any challenge to the decision to open insolvency proceedings should be governed by national law.

(35) The courts of the Member State within the territory of which insolvency proceedings have been opened should also have jurisdiction for actions which derive directly from the insolvency proceedings and are closely linked with them. Such actions should include avoidance actions against defendants in other Member States and actions concerning obligations that arise in the course of the insolvency proceedings, such as advance payment for costs of the proceedings. In contrast, actions for the performance of the obligations under a contract concluded by the debtor prior to the opening of proceedings do not derive directly from the proceedings. Where such an action is related to another action based on general civil and commercial law, the insolvency practitioner should be able to bring both actions in the courts of the defendant's domicile if he considers it more efficient to bring the action in that forum. This could, for example, be the case where the insolvency practitioner wishes to combine an action for director's liability on the basis of insolvency law with an action based on company law or general tort law.

(36) The court having jurisdiction to open the main insolvency proceedings should be able to order provisional and protective measures as from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are important to guarantee the effectiveness of the insolvency proceedings. In that connection, this Regulation should provide for various possibilities. On the one hand, the court competent for the main insolvency proceedings should also be able to order provisional and protective measures covering assets situated in the territory of other Member States. On the other hand, an insolvency practitioner temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those Member States.

(37) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and public authorities, or to cases in which main insolvency proceedings cannot be opened under the law of the Member State where the debtor has the
centre of its main interests. The reason for this restriction is that cases in which territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary.

(38) Following the opening of the main insolvency proceedings, this Regulation does not restrict the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment. The insolvency practitioner in the main insolvency proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.

(39) This Regulation should provide for rules to determine the location of the debtor's assets, which should apply when determining which assets belong to the main or secondary insolvency proceedings, or to situations involving third parties' rights in rem. In particular, this Regulation should provide that European patents with unitary effect, a Community trade mark or any other similar rights, such as Community plant variety rights or Community designs, should only be included in the main insolvency proceedings.

(40) Secondary insolvency proceedings can serve different purposes, besides the protection of local interests. Cases may arise in which the insolvency estate of the debtor is too complex to administer as a unit, or the differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening of proceedings to the other Member States where the assets are located. For that reason, the insolvency practitioner in the main insolvency proceedings may request the opening of secondary insolvency proceedings where the efficient administration of the insolvency estate so requires.

(41) Secondary insolvency proceedings may also hamper the efficient administration of the insolvency estate. Therefore, this Regulation sets out two specific situations in which the court seised of a request to open secondary insolvency proceedings should be able, at the request of the insolvency practitioner in the main insolvency proceedings, to postpone or refuse the opening of such proceedings.

(42) First, this Regulation confers on the insolvency practitioner in main insolvency proceedings the possibility of giving an undertaking to local creditors that they will be treated as if secondary insolvency proceedings had been opened. That undertaking has to meet a number of conditions set out in this Regulation, in particular that it be approved by a qualified majority of local creditors. Where such an undertaking has been given, the court seised of a request to open secondary insolvency proceedings should be able to refuse that request if it is satisfied that the undertaking adequately protects the general interests of local creditors. When assessing those interests, the court should take into account the fact that the undertaking has been approved by a qualified majority of local creditors.
(43) For the purposes of giving an undertaking to local creditors, the assets and rights located in the Member State where the debtor has an establishment should form a sub-category of the insolvency estate, and, when distributing them or the proceeds resulting from their realisation, the insolvency practitioner in the main insolvency proceedings should respect the priority rights that creditors would have had if secondary insolvency proceedings had been opened in that Member State.

(44) National law should be applicable, as appropriate, in relation to the approval of an undertaking. In particular, where under national law the voting rules for adopting a restructuring plan require the prior approval of creditors' claims, those claims should be deemed to be approved for the purpose of voting on the undertaking. Where there are different procedures for the adoption of restructuring plans under national law, Member States should designate the specific procedure which should be relevant in this context.

(45) Second, this Regulation should provide for the possibility that the court temporarily stays the opening of secondary insolvency proceedings, when a temporary stay of individual enforcement proceedings has been granted in the main insolvency proceedings, in order to preserve the efficiency of the stay granted in the main insolvency proceedings. The court should be able to grant the temporary stay if it is satisfied that suitable measures are in place to protect the general interest of local creditors. In such a case, all creditors that could be affected by the outcome of the negotiations on a restructuring plan should be informed of the negotiations and be allowed to participate in them.

(46) In order to ensure effective protection of local interests, the insolvency practitioner in the main insolvency proceedings should not be able to realise or re-locate, in an abusive manner, assets situated in the Member State where an establishment is located, in particular, with the purpose of frustrating the possibility that such interests can be effectively satisfied if secondary insolvency proceedings are opened subsequently.

(47) This Regulation should not prevent the courts of a Member State in which secondary insolvency proceedings have been opened from sanctioning a debtor's directors for violation of their duties, provided that those courts have jurisdiction to address such disputes under their national law.

(48) Main insolvency proceedings and secondary insolvency proceedings can contribute to the efficient administration of the debtor's insolvency estate or to the effective realisation of the total assets if there is proper cooperation between the actors involved in all the concurrent proceedings. Proper cooperation implies the various insolvency practitioners and the courts involved cooperating closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the insolvency practitioner in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. In particular, the insolvency practitioner should be able to propose a restructuring plan or composition or apply
for a suspension of the realisation of the assets in the secondary insolvency proceedings. When cooperating, insolvency practitioners and courts should take into account best practices for cooperation in cross-border insolvency cases, as set out in principles and guidelines on communication and cooperation adopted by European and international organisations active in the area of insolvency law, and in particular the relevant guidelines prepared by the United Nations Commission on International Trade Law (Uncitral).

(49) In light of such cooperation, insolvency practitioners and courts should be able to enter into agreements and protocols for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies, where this is compatible with the rules applicable to each of the proceedings. Such agreements and protocols may vary in form, in that they may be written or oral, and in scope, in that they may range from generic to specific, and may be entered into by different parties. Simple generic agreements may emphasise the need for close cooperation between the parties, without addressing specific issues, while more detailed, specific agreements may establish a framework of principles to govern multiple insolvency proceedings and may be approved by the courts involved, where the national law so requires. They may reflect an agreement between the parties to take, or to refrain from taking, certain steps or actions.

(50) Similarly, the courts of different Member States may cooperate by coordinating the appointment of insolvency practitioners. In that context, they may appoint a single insolvency practitioner for several insolvency proceedings concerning the same debtor or for different members of a group of companies, provided that this is compatible with the rules applicable to each of the proceedings, in particular with any requirements concerning the qualification and licensing of the insolvency practitioner.

(51) This Regulation should ensure the efficient administration of insolvency proceedings relating to different companies forming part of a group of companies.

(52) Where insolvency proceedings have been opened for several companies of the same group, there should be proper cooperation between the actors involved in those proceedings. The various insolvency practitioners and the courts involved should therefore be under a similar obligation to cooperate and communicate with each other as those involved in main and secondary insolvency proceedings relating to the same debtor. Cooperation between the insolvency practitioners should not run counter to the interests of the creditors in each of the proceedings, and such cooperation should be aimed at finding a solution that would leverage synergies across the group.

(53) The introduction of rules on the insolvency proceedings of groups of companies should not limit the possibility for a court to open insolvency proceedings for several companies belonging to the same group in a single jurisdiction if the court finds that the centre of main interests of those companies is located in a single Member State. In such cases, the court
should also be able to appoint, if appropriate, the same insolvency practitioner in all proceedings concerned, provided that this is not incompatible with the rules applicable to them.

(54) With a view to further improving the coordination of the insolvency proceedings of members of a group of companies, and to allow for a coordinated restructuring of the group, this Regulation should introduce procedural rules on the coordination of the insolvency proceedings of members of a group of companies. Such coordination should strive to ensure the efficiency of the coordination, whilst at the same time respecting each group member's separate legal personality.

(55) An insolvency practitioner appointed in insolvency proceedings opened in relation to a member of a group of companies should be able to request the opening of group coordination proceedings. However, where the law applicable to the insolvency so requires, that insolvency practitioner should obtain the necessary authorisation before making such a request. The request should specify the essential elements of the coordination, in particular an outline of the coordination plan, a proposal as to whom should be appointed as coordinator and an outline of the estimated costs of the coordination.

(56) In order to ensure the voluntary nature of group coordination proceedings, the insolvency practitioners involved should be able to object to their participation in the proceedings within a specified time period. In order to allow the insolvency practitioners involved to take an informed decision on participation in the group coordination proceedings, they should be informed at an early stage of the essential elements of the coordination. However, any insolvency practitioner who initially objects to inclusion in the group coordination proceedings should be able to subsequently request to participate in them. In such a case, the coordinator should take a decision on the admissibility of the request. All insolvency practitioners, including the requesting insolvency practitioner, should be informed of the coordinator's decision and should have the opportunity of challenging that decision before the court which has opened the group coordination proceedings.

(57) Group coordination proceedings should always strive to facilitate the effective administration of the insolvency proceedings of the group members, and to have a generally positive impact for the creditors. This Regulation should therefore ensure that the court with which a request for group coordination proceedings has been filed makes an assessment of those criteria prior to opening group coordination proceedings.

(58) The advantages of group coordination proceedings should not be outweighed by the costs of those proceedings. Therefore, it is necessary to ensure that the costs of the coordination, and the share of those costs that each group member will bear, are adequate, proportionate and reasonable, and are determined in accordance with the national law of the Member State in which group coordination proceedings have been opened. The insolvency practitioners involved should also have the possibility of controlling those costs from an early stage of the
proceedings. Where the national law so requires, controlling costs from an early stage of proceedings could involve the insolvency practitioner seeking the approval of a court or creditors' committee.

(59) Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in costs compared to the initially estimated costs and, in any case, where the costs exceed 10% of the estimated costs, the coordinator should be authorised by the court which has opened the group coordination proceedings to exceed such costs. Before taking its decision, the court which has opened the group coordination proceedings should give the possibility to the participating insolvency practitioners to be heard before it in order to allow them to communicate their observations on the appropriateness of the coordinator's request.

(60) For members of a group of companies which are not participating in group coordination proceedings, this Regulation should also provide for an alternative mechanism to achieve a coordinated restructuring of the group. An insolvency practitioner appointed in proceedings relating to a member of a group of companies should have standing to request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to other members of the group which are not subject to group coordination proceedings. It should only be possible to request such a stay if a restructuring plan is presented for the members of the group concerned, if the plan is to the benefit of the creditors in the proceedings in respect of which the stay is requested, and if the stay is necessary to ensure that the plan can be properly implemented.

(61) This Regulation should not prevent Member States from establishing national rules which would supplement the rules on cooperation, communication and coordination with regard to the insolvency of members of groups of companies set out in this Regulation, provided that the scope of application of those national rules is limited to the national jurisdiction and that their application would not impair the efficiency of the rules laid down by this Regulation.

(62) The rules on cooperation, communication and coordination in the framework of the insolvency of members of a group of companies provided for in this Regulation should only apply to the extent that proceedings relating to different members of the same group of companies have been opened in more than one Member State.

(63) Any creditor which has its habitual residence, domicile or registered office in the Union should have the right to lodge its claims in each of the insolvency proceedings pending in the Union relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. This Regulation should not prevent the insolvency practitioner from lodging claims on behalf of certain groups of creditors, for example employees, where the national law so provides. However, in order to ensure the equal treatment of creditors, the distribution of proceeds should be coordinated. Every creditor should be able to keep what it
has received in the course of insolvency proceedings, but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.

(64) It is essential that creditors which have their habitual residence, domicile or registered office in the Union be informed about the opening of insolvency proceedings relating to their debtor's assets. In order to ensure a swift transmission of information to creditors, Regulation (EC) No 1393/2007 of the European Parliament and of the Council (462) should not apply where this Regulation refers to the obligation to inform creditors. The use of standard forms available in all official languages of the institutions of the Union should facilitate the task of creditors when lodging claims in proceedings opened in another Member State. The consequences of the incomplete filing of the standard forms should be a matter for national law.

(65) This Regulation should provide for the immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which fall within its scope, and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the Member State in which the proceedings were opened extend to all other Member States. The recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise that court's decision.

(66) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of proceedings should be applicable (lex concursus). This rule on conflict of laws should be valid both for the main insolvency proceedings and for local proceedings. The lex concursus determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.

(67) Automatic recognition of insolvency proceedings to which the law of the State of the opening of proceedings normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the

certainty of transactions in Member States other than that in which proceedings are opened, provision should be made for a number of exceptions to the general rule.

(68) There is a particular need for a special reference diverging from the law of the opening State in the case of rights in rem, since such rights are of considerable importance for the granting of credit. The basis, validity and extent of rights in rem should therefore normally be determined according to the lex situs and not be affected by the opening of insolvency proceedings. The proprietor of a right in rem should therefore be able to continue to assert its right to segregation or separate settlement of the collateral security. Where assets are subject to rights in rem under the lex situs in one Member State but the main insolvency proceedings are being carried out in another Member State, the insolvency practitioner in the main insolvency proceedings should be able to request the opening of secondary insolvency proceedings in the jurisdiction where the rights in rem arise if the debtor has an establishment there. If secondary insolvency proceedings are not opened, any surplus on the sale of an asset covered by rights in rem should be paid to the insolvency practitioner in the main insolvency proceedings.

(69) This Regulation lays down several provisions for a court to order a stay of opening proceedings or a stay of enforcement proceedings. Any such stay should not affect the rights in rem of creditors or third parties.

(70) If a set-off of claims is not permitted under the law of the State of the opening of proceedings, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off would acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.

(71) There is also a need for special protection in the case of payment systems and financial markets, for example in relation to the position-closing agreements and netting agreements to be found in such systems, as well as the sale of securities and the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council (463). For such transactions, the only law which is relevant should be that applicable to the system or market concerned. That law is intended to prevent the possibility of mechanisms for the payment and settlement of transactions, and provided for in payment and set-off systems or on the regulated financial markets of the Member States, being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules laid down in this Regulation.

(72) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment should be determined by the law applicable to the relevant employment

agreement, in accordance with the general rules on conflict of laws. Moreover, in cases where the termination of employment contracts requires approval by a court or administrative authority, the Member State in which an establishment of the debtor is located should retain jurisdiction to grant such approval even if no insolvency proceedings have been opened in that Member State. Any other questions relating to the law of insolvency, such as whether the employees' claims are protected by preferential rights and the status such preferential rights may have, should be determined by the law of the Member State in which the insolvency proceedings (main or secondary) have been opened, except in cases where an undertaking to avoid secondary insolvency proceedings has been given in accordance with this Regulation.

(73) The law applicable to the effects of insolvency proceedings on any pending lawsuit or pending arbitral proceedings concerning an asset or right which forms part of the debtor's insolvency estate should be the law of the Member State where the lawsuit is pending or where the arbitration has its seat. However, this rule should not affect national rules on recognition and enforcement of arbitral awards.

(74) In order to take account of the specific procedural rules of court systems in certain Member States flexibility should be provided with regard to certain rules of this Regulation. Accordingly, references in this Regulation to notice being given by a judicial body of a Member State should include, where a Member State's procedural rules so require, an order by that judicial body directing that notice be given.

(75) For business considerations, the main content of the decision opening the proceedings should be published, at the request of the insolvency practitioner, in a Member State other than that of the court which delivered that decision. If there is an establishment in the Member State concerned, such publication should be mandatory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.

(76) In order to improve the provision of information to relevant creditors and courts and to prevent the opening of parallel insolvency proceedings, Member States should be required to publish relevant information in cross-border insolvency cases in a publicly accessible electronic register. In order to facilitate access to that information for creditors and courts domiciled or located in other Member States, this Regulation should provide for the interconnection of such insolvency registers via the European e-Justice Portal. Member States should be free to publish relevant information in several registers and it should be possible to interconnect more than one register per Member State.

(77) This Regulation should determine the minimum amount of information to be published in the insolvency registers. Member States should not be precluded from including additional information. Where the debtor is an individual, the insolvency registers should only have to indicate a registration number if the debtor is exercising an independent business or professional activity. That registration number should be understood to be the unique
registration number of the debtor's independent business or professional activity published in the trade register, if any.

(78) Information on certain aspects of insolvency proceedings is essential for creditors, such as time limits for lodging claims or for challenging decisions. This Regulation should, however, not require Member States to calculate those time-limits on a case-by-case basis. Member States should be able to fulfil their obligations by adding hyperlinks to the European e-Justice Portal, where self-explanatory information on the criteria for calculating those time-limits is to be provided.

(79) In order to grant sufficient protection to information relating to individuals not exercising an independent business or professional activity, Member States should be able to make access to that information subject to supplementary search criteria such as the debtor's personal identification number, address, date of birth or the district of the competent court, or to make access conditional upon a request to a competent authority or upon the verification of a legitimate interest.

(80) Member States should also be able not to include in their insolvency registers information on individuals not exercising an independent business or professional activity. In such cases, Member States should ensure that the relevant information is given to the creditors by individual notice, and that claims of creditors who have not received the information are not affected by the proceedings.

(81) It may be the case that some of the persons concerned are not aware that insolvency proceedings have been opened, and act in good faith in a way that conflicts with the new circumstances. In order to protect such persons who, unaware that foreign proceedings have been opened, make a payment to the debtor instead of to the foreign insolvency practitioner, provision should be made for such a payment to have a debt-discharging effect.

(82) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council (464).

(83) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 8, 17 and 47 concerning, respectively, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial.

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(85) This Regulation is without prejudice to Regulation (EEC, Euratom) No 1182/71 of the Council.

(86) Since the objective of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the creation of a legal framework for the proper administration of cross-border insolvency proceedings, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(87) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.

(88) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(89) The European Data Protection Supervisor was consulted and delivered an opinion on 27 March 2013,

HAVE ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1 Scope


1. This Regulation shall apply to public collective proceedings, including interim proceedings, which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation:

(a) a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed;

(b) the assets and affairs of a debtor are subject to control or supervision by a court; or

(c) a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b).

Where the proceedings referred to in this paragraph may be commenced in situations where there is only a likelihood of insolvency, their purpose shall be to avoid the debtor's insolvency or the cessation of the debtor's business activities.

The proceedings referred to in this paragraph are listed in Annex A.

2. This Regulation shall not apply to proceedings referred to in paragraph 1 that concern:

(a) insurance undertakings;

(b) credit institutions;

(c) investment firms and other firms, institutions and undertakings to the extent that they are covered by Directive 2001/24/EC; or

(d) collective investment undertakings.

**Article 2 Definitions**

For the purposes of this Regulation:

(1) ‘collective proceedings’ means proceedings which include all or a significant part of a debtor's creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them;

(2) ‘collective investment undertakings’ means undertakings for collective investment in transferable securities (UCITS) as defined in Directive 2009/65/EC of the European
Parliament and of the Council (469) and alternative investment funds (AIFs) as defined in Directive 2011/61/EU of the European Parliament and of the Council (470);

(3) ‘debtor in possession’ means a debtor in respect of which insolvency proceedings have been opened which do not necessarily involve the appointment of an insolvency practitioner or the complete transfer of the rights and duties to administer the debtor's assets to an insolvency practitioner and where, therefore, the debtor remains totally or at least partially in control of its assets and affairs;

(4) ‘insolvency proceedings’ means the proceedings listed in Annex A;

(5) ‘insolvency practitioner’ means any person or body whose function, including on an interim basis, is to:

(i) verify and admit claims submitted in insolvency proceedings;

(ii) represent the collective interest of the creditors;

(iii) administer, either in full or in part, assets of which the debtor has been divested;

(iv) liquidate the assets referred to in point (iii); or

(v) supervise the administration of the debtor's affairs.

The persons and bodies referred to in the first subparagraph are listed in Annex B;

(6) ‘court’ means:

(i) in points (b) and (c) of Article 1(1), Article 4(2), Articles 5 and 6, Article 21(3), point (j) of Article 24(2), Articles 36 and 39, and Articles 61 to 77, the judicial body of a Member State;

(ii) in all other articles, the judicial body or any other competent body of a Member State empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings;

(7) ‘judgment opening insolvency proceedings’ includes:

(i) the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings; and


(ii) the decision of a court to appoint an insolvency practitioner;

(8) ‘the time of the opening of proceedings’ means the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not;

(9) ‘the Member State in which assets are situated’ means, in the case of:

(i) registered shares in companies other than those referred to in point (ii), the Member State within the territory of which the company having issued the shares has its registered office;

(ii) financial instruments, the title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary (‘book entry securities’), the Member State in which the register or account in which the entries are made is maintained;

(iii) cash held in accounts with a credit institution, the Member State indicated in the account's IBAN, or, for cash held in accounts with a credit institution which does not have an IBAN, the Member State in which the credit institution holding the account has its central administration or, where the account is held with a branch, agency or other establishment, the Member State in which the branch, agency or other establishment is located;

(iv) property and rights, ownership of or entitlement to which is entered in a public register other than those referred to in point (i), the Member State under the authority of which the register is kept;

(v) European patents, the Member State for which the European patent is granted;

(vi) copyright and related rights, the Member State within the territory of which the owner of such rights has its habitual residence or registered office;

(vii) tangible property, other than that referred to in points (i) to (iv), the Member State within the territory of which the property is situated;

(viii) claims against third parties, other than those relating to assets referred to in point (iii), the Member State within the territory of which the third party required to meet the claims has the centre of its main interests, as determined in accordance with Article 3(1);

(10) ‘establishment’ means any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets;

(11) ‘local creditor’ means a creditor whose claims against a debtor arose from or in connection with the operation of an establishment situated in a Member State other than the Member State in which the centre of the debtor's main interests is located;
(12) ‘foreign creditor’ means a creditor which has its habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States;

(13) ‘group of companies’ means a parent undertaking and all its subsidiary undertakings;

(14) ‘parent undertaking’ means an undertaking which controls, either directly or indirectly, one or more subsidiary undertakings. An undertaking which prepares consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council (471) shall be deemed to be a parent undertaking.

Article 3 International jurisdiction

1. The courts of the Member State within the territory of which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings (‘main insolvency proceedings’). The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.

2. Where the centre of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of

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that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3. Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings.

4. The territorial insolvency proceedings referred to in paragraph 2 may only be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 where

(a) insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or

(b) the opening of territorial insolvency proceedings is requested by:

(i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or

(ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings.

When main insolvency proceedings are opened, the territorial insolvency proceedings shall become secondary insolvency proceedings.

**Article 4 Examination as to jurisdiction**

1. A court seised of a request to open insolvency proceedings shall of its own motion examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2).

2. Notwithstanding paragraph 1, where insolvency proceedings are opened in accordance with national law without a decision by a court, Member States may entrust the insolvency practitioner appointed in such proceedings to examine whether the Member State in which a request for the opening of proceedings is pending has jurisdiction pursuant to Article 3. Where this is the case, the insolvency practitioner shall specify in the decision opening the proceedings the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

**Article 5 Judicial review of the decision to open main insolvency proceedings**
1. The debtor or any creditor may challenge before a court the decision opening main insolvency proceedings on grounds of international jurisdiction.

2. The decision opening main insolvency proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than a lack of international jurisdiction where national law so provides.
Article 6 Jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them

1. The courts of the Member State within the territory of which insolvency proceedings have been opened in accordance with Article 3 shall have jurisdiction for any action which derives directly from the insolvency proceedings and is closely linked with them, such as avoidance actions.

2. Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the insolvency practitioner may bring both actions before the courts of the Member State within the territory of which the defendant is domiciled, or, where the action is brought against several defendants, before the courts of the Member State within the territory of which any of them is domiciled, provided that those courts have jurisdiction pursuant to Regulation (EU) n° 1215/2012.

The first subparagraph shall apply to the debtor in possession, provided that national law allows the debtor in possession to bring actions on behalf of the insolvency estate.

3. For the purpose of paragraph 2, actions are deemed to be related where they 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.

Article 7 Applicable law

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened (the ‘State of the opening of proceedings’).

2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. In particular, it shall determine the following:

(a) the debtors against which insolvency proceedings may be brought on account of their capacity;

(b) the assets which form part of the insolvency estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;

(c) the respective powers of the debtor and the insolvency practitioner;

(d) the conditions under which set-offs may be invoked;

(e) the effects of insolvency proceedings on current contracts to which the debtor is party;
(f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuits;

(g) the claims which are to be lodged against the debtor's insolvency estate and the treatment of claims arising after the opening of insolvency proceedings;

(h) the rules governing the lodging, verification and admission of claims;

(i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;

(j) the conditions for, and the effects of closure of, insolvency proceedings, in particular by composition;

(k) creditors' rights after the closure of insolvency proceedings;

(l) who is to bear the costs and expenses incurred in the insolvency proceedings;

(m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors.

Article 8 Third parties' rights in rem

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immovable assets, both specific assets and collections of indefinite assets as a whole which change from time to time, belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

2. The rights referred to in paragraph 1 shall, in particular, mean:

(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) a right in rem to the beneficial use of assets.
3. The right, recorded in a public register and enforceable against third parties, based on which a right in rem within the meaning of paragraph 1 may be obtained shall be considered to be a right in rem.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

**Article 9 Set-off**

1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of a debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

**Article 10 Reservation of title**

1. The opening of insolvency proceedings against the purchaser of an asset shall not affect sellers' rights that are based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of the opening of proceedings.

2. The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.

3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

**Article 11 Contracts relating to immoveable property**

1. The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immoveable property shall be governed solely by the law of the Member State within the territory of which the immoveable property is situated.

2. The court which opened main insolvency proceedings shall have jurisdiction to approve the termination or modification of the contracts referred to in this Article where:
(a) the law of the Member State applicable to those contracts requires that such a contract may only be terminated or modified with the approval of the court opening insolvency proceedings; and

(b) no insolvency proceedings have been opened in that Member State.

**Article 12 Payment systems and financial markets**

1. Without prejudice to Article 8, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.

2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

**Article 13 Contracts of employment**

1. The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.

2. The courts of the Member State in which secondary insolvency proceedings may be opened shall retain jurisdiction to approve the termination or modification of the contracts referred to in this Article even if no insolvency proceedings have been opened in that Member State.

The first subparagraph shall also apply to an authority competent under national law to approve the termination or modification of the contracts referred to in this Article.

**Article 14 Effects on rights subject to registration**

The effects of insolvency proceedings on the rights of a debtor in immovable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.

**Article 15 European patents with unitary effect and Community trade marks**

For the purposes of this Regulation, a European patent with unitary effect, a Community trade mark or any other similar right established by Union law may be included only in the proceedings referred to in Article 3(1).

**Article 16 Detrimental acts**
Point (m) of Article 7(2) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

(a) the act is subject to the law of a Member State other than that of the State of the opening of proceedings; and

(b) the law of that Member State does not allow any means of challenging that act in the relevant case.

**Article 17 Protection of third-party purchasers**

Where, by an act concluded after the opening of insolvency proceedings, a debtor disposes, for consideration, of:

(a) an immovable asset;

(b) a ship or an aircraft subject to registration in a public register; or

(c) securities the existence of which requires registration in a register laid down by law;

the validity of that act shall be governed by the law of the State within the territory of which the immovable asset is situated or under the authority of which the register is kept.

**Article 18 Effects of insolvency proceedings on pending lawsuits or arbitral proceedings**

The effects of insolvency proceedings on a pending lawsuit or pending arbitral proceedings concerning an asset or a right which forms part of a debtor's insolvency estate shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral tribunal has its seat.

**CHAPTER II RECOGNITION OF INSOLVENCY PROCEEDINGS**

**Article 19 Principle**

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings.

The rule laid down in the first subparagraph shall also apply where, on account of a debtor's capacity, insolvency proceedings cannot be brought against that debtor in other Member States.
Jurisdiction and Recognition of Judgments Update

2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

**Article 20 Effects of recognition**

1. The judgment opening insolvency proceedings as referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under the law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.

2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

**Article 21 Powers of the insolvency practitioner**

1. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on it, by the law of the State of the opening of proceedings, in another Member State, as long as no other insolvency proceedings have been opened there and no preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in that State. Subject to Articles 8 and 10, the insolvency practitioner may, in particular, remove the debtor's assets from the territory of the Member State in which they are situated.

2. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. The insolvency practitioner may also bring any action to set aside which is in the interests of the creditors.

3. In exercising its powers, the insolvency practitioner shall comply with the law of the Member State within the territory of which it intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures, unless ordered by a court of that Member State, or the right to rule on legal proceedings or disputes.

**Article 22 Proof of the insolvency practitioner's appointment**
The insolvency practitioner's appointment shall be evidenced by a certified copy of the original decision appointing it or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which it intends to act may be required. no legalisation or other similar formality shall be required.

**Article 23 Return and imputation**

1. A creditor which, after the opening of the proceedings referred to in Article 3(1), obtains by any means, in particular through enforcement, total or partial satisfaction of its claim on the assets belonging to a debtor situated within the territory of another Member State, shall return what it has obtained to the insolvency practitioner, subject to Articles 8 and 10.

2. In order to ensure the equal treatment of creditors, a creditor which has, in the course of insolvency proceedings, obtained a dividend on its claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

**Article 24 Establishment of insolvency registers**

1. Member States shall establish and maintain in their territory one or several registers in which information concerning insolvency proceedings is published (‘insolvency registers’). That information shall be published as soon as possible after the opening of such proceedings.

2. The information referred to in paragraph 1 shall be made publicly available, subject to the conditions laid down in Article 27, and shall include the following (‘mandatory information’):

   (a) the date of the opening of insolvency proceedings;

   (b) the court opening insolvency proceedings and the case reference number, if any;

   (c) the type of insolvency proceedings referred to in Annex A that were opened and, where applicable, any relevant subtype of such proceedings opened in accordance with national law;

   (d) whether jurisdiction for opening proceedings is based on Article 3(1), 3(2) or 3(4);

   (e) if the debtor is a company or a legal person, the debtor's name, registration number, registered office or, if different, postal address;
Jurisdiction and Recognition of Judgments Update

(f) if the debtor is an individual whether or not exercising an independent business or professional activity, the debtor's name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth;

(g) the name, postal address or e-mail address of the insolvency practitioner, if any, appointed in the proceedings;

(h) the time limit for lodging claims, if any, or a reference to the criteria for calculating that time limit;

(i) the date of closing main insolvency proceedings, if any;

(j) the court before which and, where applicable, the time limit within which a challenge of the decision opening insolvency proceedings is to be lodged in accordance with Article 5, or a reference to the criteria for calculating that time limit.

3. Paragraph 2 shall not preclude Member States from including documents or additional information in their national insolvency registers, such as directors' disqualifications related to insolvency.

4. Member States shall not be obliged to include in the insolvency registers the information referred to in paragraph 1 of this Article in relation to individuals not exercising an independent business or professional activity, or to make such information publicly available through the system of interconnection of those registers, provided that known foreign creditors are informed, pursuant to Article 54, of the elements referred to under point (j) of paragraph 2 of this Article.

Where a Member State makes use of the possibility referred to in the first subparagraph, the insolvency proceedings shall not affect the claims of foreign creditors who have not received the information referred to in the first subparagraph.

5. The publication of information in the registers under this Regulation shall not have any legal effects other than those set out in national law and in Article 55(6).

**Article 25 Interconnection of insolvency registers**

1. The Commission shall establish a decentralised system for the interconnection of insolvency registers by means of implementing acts. That system shall be composed of the insolvency registers and the European e-Justice Portal, which shall serve as a central public electronic access point to information in the system. The system shall provide a search service in all the official languages of the institutions of the Union in order to make available the mandatory information and any other documents or information included in the insolvency
registers which the Member States choose to make available through the European e-Justice Portal.

2. By means of implementing acts in accordance with the procedure referred to in Article 87, the Commission shall adopt the following by 26 June 2019:

(a) the technical specification defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection of insolvency registers;

(b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;

(c) minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 24;

(d) minimum criteria for the presentation of the results of such searches based on the information set out in Article 24;

(e) the means and the technical conditions of availability of services provided by the system of interconnection; and

(f) a glossary containing a basic explanation of the national insolvency proceedings listed in Annex A.

**Article 26 Costs of establishing and interconnecting insolvency registers**

1. The establishment, maintenance and future development of the system of interconnection of insolvency registers shall be financed from the general budget of the Union.

2. Each Member State shall bear the costs of establishing and adjusting its national insolvency registers to make them interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining those registers. This shall be without prejudice to the possibility to apply for grants to support such activities under the Union's financial programmes.

**Article 27 Conditions of access to information via the system of interconnection**

1. Member States shall ensure that the mandatory information referred to in points (a) to (j) of Article 24(2) is available free of charge via the system of interconnection of insolvency registers.
2. This Regulation shall not preclude Member States from charging a reasonable fee for access to the documents or additional information referred to in Article 24(3) via the system of interconnection of insolvency registers.

3. Member States may make access to mandatory information concerning individuals who are not exercising an independent business or professional activity, and concerning individuals exercising an independent business or professional activity when the insolvency proceedings are not related to that activity, subject to supplementary search criteria relating to the debtor in addition to the minimum criteria referred to in point (c) of Article 25(2).

4. Member States may require that access to the information referred to in paragraph 3 be made conditional upon a request to the competent authority. Member States may make access conditional upon the verification of the existence of a legitimate interest for accessing such information. The requesting person shall be able to submit the request for information electronically by means of a standard form via the European e-Justice Portal. Where a legitimate interest is required, it shall be permissible for the requesting person to justify his request by electronic copies of relevant documents. The requesting person shall be provided with an answer by the competent authority within 3 working days.

The requesting person shall not be obliged to provide translations of the documents justifying his request, or to bear any costs of translation which the competent authority may incur.

**Article 28 Publication in another Member State**

1. The insolvency practitioner or the debtor in possession shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing the insolvency practitioner be published in any other Member State where an establishment of the debtor is located in accordance with the publication procedures provided for in that Member State. Such publication shall specify, where appropriate, the insolvency practitioner appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or (2).

2. The insolvency practitioner or the debtor in possession may request that the information referred to in paragraph 1 be published in any other Member State where the insolvency practitioner or the debtor in possession deems it necessary in accordance with the publication procedures provided for in that Member State.

**Article 29 Registration in public registers of another Member State**

1. Where the law of a Member State in which an establishment of the debtor is located and this establishment has been entered into a public register of that Member State, or the law of a Member State in which immovable property belonging to the debtor is located, requires information on the opening of insolvency proceedings referred to in Article 28 to be published
in the land register, company register or any other public register, the insolvency practitioner or the debtor in possession shall take all the necessary measures to ensure such a registration.

2. The insolvency practitioner or the debtor in possession may request such registration in any other Member State, provided that the law of the Member State where the register is kept allows such registration.

**Article 30 Costs**

The costs of the publication and registration provided for in Articles 28 and 29 shall be regarded as costs and expenses incurred in the proceedings.

**Article 31 Honouring of an obligation to a debtor**

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the insolvency practitioner in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of the proceedings.

2. Where such an obligation is honoured before the publication provided for in Article 28 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings. Where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

**Article 32 Recognition and enforceability of other judgments**

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Article 19 and which concern the course and closure of insolvency proceedings, and compositions approved by that court, shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 39 to 44 and 47 to 57 of Regulation (EU) n° 1215/2012.

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.

The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings or in connection with it.
2. The recognition and enforcement of judgments other than those referred to in paragraph 1 of this Article shall be governed by Regulation (EU) n° 1215/2012 provided that that Regulation is applicable.

Article 33 Public policy

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

CHAPTER III SECONDARY INSOLVENCY PROCEEDINGS

Article 34 Opening of proceedings

Where main insolvency proceedings have been opened by a court of a Member State and recognised in another Member State, a court of that other Member State which has jurisdiction pursuant to Article 3(2) may open secondary insolvency proceedings in accordance with the provisions set out in this Chapter. Where the main insolvency proceedings required that the debtor be insolvent, the debtor's insolvency shall not be re-examined in the Member State in which secondary insolvency proceedings may be opened. The effects of secondary insolvency proceedings shall be restricted to the assets of the debtor situated within the territory of the Member State in which those proceedings have been opened.

Article 35 Applicable law

Save as otherwise provided for in this Regulation, the law applicable to secondary insolvency proceedings shall be that of the Member State within the territory of which the secondary insolvency proceedings are opened.

Article 36 Right to give an undertaking in order to avoid secondary insolvency proceedings

1. In order to avoid the opening of secondary insolvency proceedings, the insolvency practitioner in the main insolvency proceedings may give a unilateral undertaking (the ‘undertaking’) in respect of the assets located in the Member State in which secondary insolvency proceedings could be opened, that when distributing those assets or the proceeds received as a result of their realisation, it will comply with the distribution and priority rights under national law that creditors would have if secondary insolvency proceedings were opened in that Member State. The undertaking shall specify the factual assumptions on which
it is based, in particular in respect of the value of the assets located in the Member State concerned and the options available to realise such assets.

2. Where an undertaking has been given in accordance with this Article, the law applicable to the distribution of proceeds from the realisation of assets referred to in paragraph 1, to the ranking of creditors' claims, and to the rights of creditors in relation to the assets referred to in paragraph 1 shall be the law of the Member State in which secondary insolvency proceedings could have been opened. The relevant point in time for determining the assets referred to in paragraph 1 shall be the moment at which the undertaking is given.

3. The undertaking shall be made in the official language or one of the official languages of the Member State where secondary insolvency proceedings could have been opened, or, where there are several official languages in that Member State, the official language or one of the official languages of the place in which secondary insolvency proceedings could have been opened.

4. The undertaking shall be made in writing. It shall be subject to any other requirements relating to form and approval requirements as to distributions, if any, of the State of the opening of the main insolvency proceedings.

5. The undertaking shall be approved by the known local creditors. The rules on qualified majority and voting that apply to the adoption of restructuring plans under the law of the Member State where secondary insolvency proceedings could have been opened shall also apply to the approval of the undertaking. Creditors shall be able to participate in the vote by distance means of communication, where national law so permits. The insolvency practitioner shall inform the known local creditors of the undertaking, of the rules and procedures for its approval, and of the approval or rejection of the undertaking.

6. An undertaking given and approved in accordance with this Article shall be binding on the estate. If secondary insolvency proceedings are opened in accordance with Articles 37 and 38, the insolvency practitioner in the main insolvency proceedings shall transfer any assets which it removed from the territory of that Member State after the undertaking was given or, where those assets have already been realised, their proceeds, to the insolvency practitioner in the secondary insolvency proceedings.

7. Where the insolvency practitioner has given an undertaking, it shall inform local creditors about the intended distributions prior to distributing the assets and proceeds referred to in paragraph 1. If that information does not comply with the terms of the undertaking or the applicable law, any local creditor may challenge such distribution before the courts of the Member State in which main insolvency proceedings have been opened in order to obtain a distribution in accordance with the terms of the undertaking and the applicable law. In such cases, no distribution shall take place until the court has taken a decision on the challenge.
8. Local creditors may apply to the courts of the Member State in which main insolvency proceedings have been opened, in order to require the insolvency practitioner in the main insolvency proceedings to take any suitable measures necessary to ensure compliance with the terms of the undertaking available under the law of the State of the opening of main insolvency proceedings.

9. Local creditors may also apply to the courts of the Member State in which secondary insolvency proceedings could have been opened in order to require the court to take provisional or protective measures to ensure compliance by the insolvency practitioner with the terms of the undertaking.

10. The insolvency practitioner shall be liable for any damage caused to local creditors as a result of its non-compliance with the obligations and requirements set out in this Article.

11. For the purpose of this Article, an authority which is established in the Member State where secondary insolvency proceedings could have been opened and which is obliged under Directive 2008/94/EC of the European Parliament and of the Council (472) to guarantee the payment of employees’ outstanding claims resulting from contracts of employment or employment relationships shall be considered to be a local creditor, where the national law so provides.

Article 37 Right to request the opening of secondary insolvency proceedings

1. The opening of secondary insolvency proceedings may be requested by:

(a) the insolvency practitioner in the main insolvency proceedings;

(b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary insolvency proceedings is requested.

2. Where an undertaking has become binding in accordance with Article 36, the request for opening secondary insolvency proceedings shall be lodged within 30 days of having received notice of the approval of the undertaking.

Article 38 Decision to open secondary insolvency proceedings

1. A court seised of a request to open secondary insolvency proceedings shall immediately give notice to the insolvency practitioner or the debtor in possession in the main insolvency proceedings and give it an opportunity to be heard on the request.

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2. Where the insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court referred to in paragraph 1 of this Article shall, at the request of the insolvency practitioner, not open secondary insolvency proceedings if it is satisfied that the undertaking adequately protects the general interests of local creditors.

3. Where a temporary stay of individual enforcement proceedings has been granted in order to allow for negotiations between the debtor and its creditors, the court, at the request of the insolvency practitioner or the debtor in possession, may stay the opening of secondary insolvency proceedings for a period not exceeding 3 months, provided that suitable measures are in place to protect the interests of local creditors.

The court referred to in paragraph 1 may order protective measures to protect the interests of local creditors by requiring the insolvency practitioner or the debtor in possession not to remove or dispose of any assets which are located in the Member State where its establishment is located unless this is done in the ordinary course of business. The court may also order other measures to protect the interest of local creditors during a stay, unless this is incompatible with the national rules on civil procedure.

The stay of the opening of secondary insolvency proceedings shall be lifted by the court of its own motion or at the request of any creditor if, during the stay, an agreement in the negotiations referred to in the first subparagraph has been concluded.

The stay may be lifted by the court of its own motion or at the request of any creditor if the continuation of the stay is detrimental to the creditor's rights, in particular if the negotiations have been disrupted or it has become evident that they are unlikely to be concluded, or if the insolvency practitioner or the debtor in possession has infringed the prohibition on disposal of its assets or on removal of them from the territory of the Member State where the establishment is located.

4. At the request of the insolvency practitioner in the main insolvency proceedings, the court referred to in paragraph 1 may open a type of insolvency proceedings as listed in Annex A other than the type initially requested, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings. The second sentence of Article 34 shall apply.

Article 39 Judicial review of the decision to open secondary insolvency proceedings

The insolvency practitioner in the main insolvency proceedings may challenge the decision to open secondary insolvency proceedings before the courts of the Member State in which secondary insolvency proceedings have been opened on the ground that the court did not comply with the conditions and requirements of Article 38.
Article 40 Advance payment of costs and expenses

Where the law of the Member State in which the opening of secondary insolvency proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

Article 41 Cooperation and communication between insolvency practitioners

1. The insolvency practitioner in the main insolvency proceedings and the insolvency practitioner or practitioners in secondary insolvency proceedings concerning the same debtor shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to the respective proceedings. Such cooperation may take any form, including the conclusion of agreements or protocols.

2. In implementing the cooperation set out in paragraph 1, the insolvency practitioners shall:

(a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, in particular any progress made in lodging and verifying claims and all measures aimed at rescuing or restructuring the debtor, or at terminating the proceedings, provided appropriate arrangements are made to protect confidential information;

(b) explore the possibility of restructuring the debtor and, where such a possibility exists, coordinate the elaboration and implementation of a restructuring plan;

(c) coordinate the administration of the realisation or use of the debtor's assets and affairs; the insolvency practitioner in the secondary insolvency proceedings shall give the insolvency practitioner in the main insolvency proceedings an early opportunity to submit proposals on the realisation or use of the assets in the secondary insolvency proceedings.

3. Paragraphs 1 and 2 shall apply mutatis mutandis to situations where, in the main or in the secondary insolvency proceedings or in any territorial insolvency proceedings concerning the same debtor and open at the same time, the debtor remains in possession of its assets.

Article 42 Cooperation and communication between courts

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings concerning the same debtor, a court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, shall cooperate with any other court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, to the extent that such cooperation is not incompatible with the rules applicable to each of the proceedings. For that purpose, the courts may, where appropriate,
appoint an independent person or body acting on its instructions, provided that it is not incompatible with the rules applicable to them.

2. In implementing the cooperation set out in paragraph 1, the courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with, or request information or assistance directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.

3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:

(a) coordination in the appointment of the insolvency practitioners;
(b) communication of information by any means considered appropriate by the court;
(c) coordination of the administration and supervision of the debtor's assets and affairs;
(d) coordination of the conduct of hearings;
(e) coordination in the approval of protocols, where necessary.

Article 43 Cooperation and communication between insolvency practitioners and courts

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings opened in respect of the same debtor:

(a) an insolvency practitioner in main insolvency proceedings shall cooperate and communicate with any court before which a request to open secondary insolvency proceedings is pending or which has opened such proceedings;

(b) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open main insolvency proceedings is pending or which has opened such proceedings; and

(c) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open other territorial or secondary insolvency proceedings is pending or which has opened such proceedings;

to the extent that such cooperation and communication are not incompatible with the rules applicable to each of the proceedings and do not entail any conflict of interest.
2. The cooperation referred to in paragraph 1 may be implemented by any appropriate means, such as those set out in Article 42(3).

**Article 44 Costs of cooperation and communication**

The requirements laid down in Articles 42 and 43 shall not result in courts charging costs to each other for cooperation and communication.

**Article 45 Exercise of creditors' rights**

1. Any creditor may lodge its claim in the main insolvency proceedings and in any secondary insolvency proceedings.

2. The insolvency practitioners in the main and any secondary insolvency proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served by doing so, subject to the right of creditors to oppose such lodgement or to withdraw the lodgement of their claims where the law applicable so provides.

3. The insolvency practitioner in the main or secondary insolvency proceedings shall be entitled to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

**Article 46 Stay of the process of realisation of assets**

1. The court which opened the secondary insolvency proceedings shall stay the process of realisation of assets in whole or in part on receipt of a request from the insolvency practitioner in the main insolvency proceedings. In such a case, it may require the insolvency practitioner in the main insolvency proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary insolvency proceedings and of individual classes of creditors. Such a request from the insolvency practitioner may be rejected only if it is manifestly of no interest to the creditors in the main insolvency proceedings. Such a stay of the process of realisation of assets may be ordered for up to 3 months. It may be continued or renewed for similar periods.

2. The court referred to in paragraph 1 shall terminate the stay of the process of realisation of assets:

(a) at the request of the insolvency practitioner in the main insolvency proceedings;

(b) of its own motion, at the request of a creditor or at the request of the insolvency practitioner in the secondary insolvency proceedings if that measure no longer appears
justified, in particular, by the interests of creditors in the main insolvency proceedings or in the secondary insolvency proceedings.

**Article 47 Power of the insolvency practitioner to propose restructuring plans**

1. Where the law of the Member State where secondary insolvency proceedings have been opened allows for such proceedings to be closed without liquidation by a restructuring plan, a composition or a comparable measure, the insolvency practitioner in the main insolvency proceedings shall be empowered to propose such a measure in accordance with the procedure of that Member State.

2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary insolvency proceedings, such as a stay of payment or discharge of debt, shall have no effect in respect of assets of a debtor that are not covered by those proceedings, without the consent of all the creditors having an interest.

**Article 48 Impact of closure of insolvency proceedings**

1. Without prejudice to Article 49, the closure of insolvency proceedings shall not prevent the continuation of other insolvency proceedings concerning the same debtor which are still open at that point in time.

2. Where insolvency proceedings concerning a legal person or a company in the Member State of that person's or company's registered office would entail the dissolution of the legal person or of the company, that legal person or company shall not cease to exist until any other insolvency proceedings concerning the same debtor have been closed, or the insolvency practitioner or practitioners in such proceedings have given consent to the dissolution.

**Article 49 Assets remaining in the secondary insolvency proceedings**

If, by the liquidation of assets in the secondary insolvency proceedings, it is possible to meet all claims allowed under those proceedings, the insolvency practitioner appointed in those proceedings shall immediately transfer any assets remaining to the insolvency practitioner in the main insolvency proceedings.

**Article 50 Subsequent opening of the main insolvency proceedings**

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles 41, 45, 46, 47 and 49 shall apply to those opened first, in so far as the progress of those proceedings so permits.

**Article 51 Conversion of secondary insolvency proceedings**
1. At the request of the insolvency practitioner in the main insolvency proceedings, the court of the Member State in which secondary insolvency proceedings have been opened may order the conversion of the secondary insolvency proceedings into another type of insolvency proceedings listed in Annex A, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.

2. When considering the request referred to in paragraph 1, the court may seek information from the insolvency practitioners involved in both proceedings.

**Article 52 Preservation measures**

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of a debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that Member State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

**CHAPTER IV PROVISION OF INFORMATION FOR CREDITORS AND LODGEMENT OF THEIR CLAIMS**

**Article 53 Right to lodge claims**

Any foreign creditor may lodge claims in insolvency proceedings by any means of communication, which are accepted by the law of the State of the opening of proceedings. Representation by a lawyer or another legal professional shall not be mandatory for the sole purpose of lodging of claims.

**Article 54 Duty to inform creditors**

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the insolvency practitioner appointed by that court shall immediately inform the known foreign creditors.

2. The information referred to in paragraph 1, provided by an individual notice, shall in particular include time limits, the penalties laid down with regard to those time limits, the body or authority empowered to accept the lodgement of claims and any other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims. The notice shall also include a copy of the standard form for lodging of claims referred to in Article 55 or information on where that form is available.
3. The information referred to in paragraphs 1 and 2 of this Article shall be provided using the standard notice form to be established in accordance with Article 88. The form shall be published in the European e-Justice Portal and shall bear the heading ‘Notice of insolvency proceedings’ in all the official languages of the institutions of the Union. It shall be transmitted in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that State has indicated it can accept, in accordance with Article 55(5), if it can be assumed that that language is easier to understand for the foreign creditors.

4. In insolvency proceedings relating to an individual not exercising a business or professional activity, the use of the standard form referred to in this Article shall not be obligatory if creditors are not required to lodge their claims in order to have their claims taken into account in the proceedings.

Article 55 Procedure for lodging claims

1. Any foreign creditor may lodge its claim using the standard claims form to be established in accordance with Article 88. The form shall bear the heading ‘Lodgement of claims’ in all the official languages of the institutions of the Union.

2. The standard claims form referred to in paragraph 1 shall include the following information:

(a) the name, postal address, e-mail address, if any, personal identification number, if any, and bank details of the foreign creditor referred to in paragraph 1;

(b) the amount of the claim, specifying the principal and, where applicable, interest and the date on which it arose and the date on which it became due, if different;

(c) if interest is claimed, the interest rate, whether the interest is of a legal or contractual nature, the period of time for which the interest is claimed and the capitalised amount of interest;

(d) if costs incurred in asserting the claim prior to the opening of proceedings are claimed, the amount and the details of those costs;

(e) the nature of the claim;

(f) whether any preferential creditor status is claimed and the basis of such a claim;
(g) whether security in rem or a reservation of title is alleged in respect of the claim and if so, what assets are covered by the security interest being invoked, the date on which the security was granted and, where the security has been registered, the registration number; and

(h) whether any set-off is claimed and, if so, the amounts of the mutual claims existing on the date when insolvency proceedings were opened, the date on which they arose and the amount net of set-off claimed.

The standard claims form shall be accompanied by copies of any supporting documents.

3. The standard claims form shall indicate that the provision of information concerning the bank details and the personal identification number of the creditor referred to in point (a) of paragraph 2 is not compulsory.

4. When a creditor lodges its claim by means other than the standard form referred to in paragraph 1, the claim shall contain the information referred to in paragraph 2.

5. Claims may be lodged in any official language of the institutions of the Union. The court, the insolvency practitioner or the debtor in possession may require the creditor to provide a translation in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that Member State has indicated it can accept. Each Member State shall indicate whether it accepts any official language of the institutions of the Union other than its own for the purpose of the lodging of claims.

6. Claims shall be lodged within the period stipulated by the law of the State of the opening of proceedings. In the case of a foreign creditor, that period shall not be less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the State of the opening of proceedings. Where a Member State relies on Article 24(4), that period shall not be less than 30 days following a creditor having been informed pursuant to Article 54.

7. Where the court, the insolvency practitioner or the debtor in possession has doubts in relation to a claim lodged in accordance with this Article, it shall give the creditor the opportunity to provide additional evidence on the existence and the amount of the claim.
CHAPTER V INSOLVENCY PROCEEDINGS OF MEMBERS OF A GROUP OF COMPANIES

SECTION 1 Cooperation and communication

Article 56 Cooperation and communication between insolvency practitioners

1. Where insolvency proceedings relate to two or more members of a group of companies, an insolvency practitioner appointed in proceedings concerning a member of the group shall cooperate with any insolvency practitioner appointed in proceedings concerning another member of the same group to the extent that such cooperation is appropriate to facilitate the effective administration of those proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conflict of interest. That cooperation may take any form, including the conclusion of agreements or protocols.

2. In implementing the cooperation set out in paragraph 1, insolvency practitioners shall:

(a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, provided appropriate arrangements are made to protect confidential information;

(b) consider whether possibilities exist for coordinating the administration and supervision of the affairs of the group members which are subject to insolvency proceedings, and if so, coordinate such administration and supervision;

(c) consider whether possibilities exist for restructuring group members which are subject to insolvency proceedings and, if so, coordinate with regard to the proposal and negotiation of a coordinated restructuring plan.

For the purposes of points (b) and (c), all or some of the insolvency practitioners referred to in paragraph 1 may agree to grant additional powers to an insolvency practitioner appointed in one of the proceedings where such an agreement is permitted by the rules applicable to each of the proceedings. They may also agree on the allocation of certain tasks amongst them, where such allocation of tasks is permitted by the rules applicable to each of the proceedings.

Article 57 Cooperation and communication between courts

1. Where insolvency proceedings relate to two or more members of a group of companies, a court which has opened such proceedings shall cooperate with any other court before which a request to open proceedings concerning another member of the same group is pending or which has opened such proceedings to the extent that such cooperation is appropriate to facilitate the effective administration of the proceedings, is not incompatible with the rules applicable to them and does not entail any conflict of interest. For that purpose, the courts
may, where appropriate, appoint an independent person or body to act on its instructions, provided that this is not incompatible with the rules applicable to them.

2. In implementing the cooperation set out in paragraph 1, courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with each other, or request information or assistance directly from each other, provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.

3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:

(a) coordination in the appointment of insolvency practitioners;

(b) communication of information by any means considered appropriate by the court;

(c) coordination of the administration and supervision of the assets and affairs of the members of the group;

(d) coordination of the conduct of hearings;

(e) coordination in the approval of protocols where necessary.

**Article 58 Cooperation and communication between insolvency practitioners and courts**

An insolvency practitioner appointed in insolvency proceedings concerning a member of a group of companies:

(a) shall cooperate and communicate with any court before which a request for the opening of proceedings in respect of another member of the same group of companies is pending or which has opened such proceedings; and

(b) may request information from that court concerning the proceedings regarding the other member of the group or request assistance concerning the proceedings in which he has been appointed;

to the extent that such cooperation and communication are appropriate to facilitate the effective administration of the proceedings, do not entail any conflict of interest and are not incompatible with the rules applicable to them.

**Article 59 Costs of cooperation and communication in proceedings concerning members of a group of companies**
The costs of the cooperation and communication provided for in Articles 56 to 60 incurred by an insolvency practitioner or a court shall be regarded as costs and expenses incurred in the respective proceedings.

**Article 60 Powers of the insolvency practitioner in proceedings concerning members of a group of companies**

1. An insolvency practitioner appointed in insolvency proceedings opened in respect of a member of a group of companies may, to the extent appropriate to facilitate the effective administration of the proceedings:

(a) be heard in any of the proceedings opened in respect of any other member of the same group;

(b) request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to any other member of the same group, provided that:

(i) a restructuring plan for all or some members of the group for which insolvency proceedings have been opened has been proposed under point (c) of Article 56(2) and presents a reasonable chance of success;

(ii) such a stay is necessary in order to ensure the proper implementation of the restructuring plan;

(iii) the restructuring plan would be to the benefit of the creditors in the proceedings for which the stay is requested; and

(iv) neither the insolvency proceedings in which the insolvency practitioner referred to in paragraph 1 of this Article has been appointed nor the proceedings in respect of which the stay is requested are subject to coordination under Section 2 of this Chapter;

(c) apply for the opening of group coordination proceedings in accordance with Article 61.

2. The court having opened proceedings referred to in point (b) of paragraph 1 shall stay any measure related to the realisation of the assets in the proceedings in whole or in part if it is satisfied that the conditions referred to in point (b) of paragraph 1 are fulfilled.

Before ordering the stay, the court shall hear the insolvency practitioner appointed in the proceedings for which the stay is requested. Such a stay may be ordered for any period, not exceeding 3 months, which the court considers appropriate and which is compatible with the rules applicable to the proceedings.
The court ordering the stay may require the insolvency practitioner referred to in paragraph 1 to take any suitable measure available under national law to guarantee the interests of the creditors in the proceedings.

The court may extend the duration of the stay by such further period or periods as it considers appropriate and which are compatible with the rules applicable to the proceedings, provided that the conditions referred to in points (b)(ii) to (iv) of paragraph 1 continue to be fulfilled and that the total duration of the stay (the initial period together with any such extensions) does not exceed 6 months.

SECTION 2 Coordination

Subsection 1 Procedure

Article 61 Request to open group coordination proceedings

1. Group coordination proceedings may be requested before any court having jurisdiction over the insolvency proceedings of a member of the group, by an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group.

2. The request referred to in paragraph 1 shall be made in accordance with the conditions provided for by the law applicable to the proceedings in which the insolvency practitioner has been appointed.

3. The request referred to in paragraph 1 shall be accompanied by:

   (a) a proposal as to the person to be nominated as the group coordinator (‘the coordinator’), details of his or her eligibility pursuant to Article 71, details of his or her qualifications and his or her written agreement to act as coordinator;

   (b) an outline of the proposed group coordination, and in particular the reasons why the conditions set out in Article 63(1) are fulfilled;

   (c) a list of the insolvency practitioners appointed in relation to the members of the group and, where relevant, the courts and competent authorities involved in the insolvency proceedings of the members of the group;

   (d) an outline of the estimated costs of the proposed group coordination and the estimation of the share of those costs to be paid by each member of the group.

Article 62 Priority rule
Without prejudice to Article 66, where the opening of group coordination proceedings is requested before courts of different Member States, any court other than the court first seised shall decline jurisdiction in favour of that court.

**Article 63 Notice by the court seised**

1. The court seised of a request to open group coordination proceedings shall give notice as soon as possible of the request for the opening of group coordination proceedings and of the proposed coordinator to the insolvency practitioners appointed in relation to the members of the group as indicated in the request referred to in point (c) of Article 61(3), if it is satisfied that:

   (a) the opening of such proceedings is appropriate to facilitate the effective administration of the insolvency proceedings relating to the different group members;

   (b) no creditor of any group member expected to participate in the proceedings is likely to be financially disadvantaged by the inclusion of that member in such proceedings; and

   (c) the proposed coordinator fulfils the requirements laid down in Article 71.

2. The notice referred to in paragraph 1 of this Article shall list the elements referred to in points (a) to (d) of Article 61(3).

3. The notice referred to in paragraph 1 shall be sent by registered letter, attested by an acknowledgment of receipt.

4. The court seised shall give the insolvency practitioners involved the opportunity to be heard.

**Article 64 Objections by insolvency practitioners**

1. An insolvency practitioner appointed in respect of any group member may object to:

   (a) the inclusion within group coordination proceedings of the insolvency proceedings in respect of which it has been appointed; or

   (b) the person proposed as a coordinator.

2. Objections pursuant to paragraph 1 of this Article shall be lodged with the court referred to in Article 63 within 30 days of receipt of notice of the request for the opening of group coordination proceedings by the insolvency practitioner referred to in paragraph 1 of this Article.
The objection may be made by means of the standard form established in accordance with Article 88.

3. Prior to taking the decision to participate or not to participate in the coordination in accordance with point (a) of paragraph 1, an insolvency practitioner shall obtain any approval which may be required under the law of the State of the opening of proceedings for which it has been appointed.

**Article 65 Consequences of objection to the inclusion in group coordination**

1. Where an insolvency practitioner has objected to the inclusion of the proceedings in respect of which it has been appointed in group coordination proceedings, those proceedings shall not be included in the group coordination proceedings.

2. The powers of the court referred to in Article 68 or of the coordinator arising from those proceedings shall have no effect as regards that member, and shall entail no costs for that member.

**Article 66 Choice of court for group coordination proceedings**

1. Where at least two-thirds of all insolvency practitioners appointed in insolvency proceedings of the members of the group have agreed that a court of another Member State having jurisdiction is the most appropriate court for the opening of group coordination proceedings, that court shall have exclusive jurisdiction.

2. The choice of court shall be made by joint agreement in writing or evidenced in writing. It may be made until such time as group coordination proceedings have been opened in accordance with Article 68.

3. Any court other than the court seised under paragraph 1 shall decline jurisdiction in favour of that court.

4. The request for the opening of group coordination proceedings shall be submitted to the court agreed in accordance with Article 61.
Article 67 Consequences of objections to the proposed coordinator

Where objections to the person proposed as coordinator have been received from an insolvency practitioner which does not also object to the inclusion in the group coordination proceedings of the member in respect of which it has been appointed, the court may refrain from appointing that person and invite the objecting insolvency practitioner to submit a new request in accordance with Article 61(3).

Article 68 Decision to open group coordination proceedings

1. After the period referred to in Article 64(2) has elapsed, the court may open group coordination proceedings where it is satisfied that the conditions of Article 63(1) are met. In such a case, the court shall:

(a) appoint a coordinator;

(b) decide on the outline of the coordination; and

(c) decide on the estimation of costs and the share to be paid by the group members.

2. The decision opening group coordination proceedings shall be brought to the notice of the participating insolvency practitioners and of the coordinator.

Article 69 Subsequent opt-in by insolvency practitioners

1. In accordance with its national law, any insolvency practitioner may request, after the court decision referred to in Article 68, the inclusion of the proceedings in respect of which it has been appointed, where:

(a) there has been an objection to the inclusion of the insolvency proceedings within the group coordination proceedings; or

(b) insolvency proceedings with respect to a member of the group have been opened after the court has opened group coordination proceedings.

2. Without prejudice to paragraph 4, the coordinator may accede to such a request, after consulting the insolvency practitioners involved, where

(a) he or she is satisfied that, taking into account the stage that the group coordination proceedings has reached at the time of the request, the criteria set out in points (a) and (b) of Article 63(1) are met; or

(b) all insolvency practitioners involved agree, subject to the conditions in their national law.
Jurisdiction and Recognition of Judgments Update

3. The coordinator shall inform the court and the participating insolvency practitioners of his or her decision pursuant to paragraph 2 and of the reasons on which it is based.

4. Any participating insolvency practitioner or any insolvency practitioner whose request for inclusion in the group coordination proceedings has been rejected may challenge the decision referred to in paragraph 2 in accordance with the procedure set out under the law of the Member State in which the group coordination proceedings have been opened.

Article 70 Recommendations and group coordination plan

1. When conducting their insolvency proceedings, insolvency practitioners shall consider the recommendations of the coordinator and the content of the group coordination plan referred to in Article 72(1).

2. An insolvency practitioner shall not be obliged to follow in whole or in part the coordinator's recommendations or the group coordination plan. If it does not follow the coordinator's recommendations or the group coordination plan, it shall give reasons for not doing so to the persons or bodies that it is to report to under its national law, and to the coordinator.

Subsection 2 General provisions

Article 71 The coordinator

1. The coordinator shall be a person eligible under the law of a Member State to act as an insolvency practitioner.

2. The coordinator shall not be one of the insolvency practitioners appointed to act in respect of any of the group members, and shall have no conflict of interest in respect of the group members, their creditors and the insolvency practitioners appointed in respect of any of the group members.

Article 72 Tasks and rights of the coordinator

1. The coordinator shall:

   (a) identify and outline recommendations for the coordinated conduct of the insolvency proceedings;

   (b) propose a group coordination plan that identifies, describes and recommends a comprehensive set of measures appropriate to an integrated approach to the resolution of the group members' insolvencies. In particular, the plan may contain proposals for:
(i) the measures to be taken in order to re-establish the economic performance and the financial soundness of the group or any part of it;

(ii) the settlement of intra-group disputes as regards intra-group transactions and avoidance actions;

(iii) agreements between the insolvency practitioners of the insolvent group members.

2. The coordinator may also:

(a) be heard and participate, in particular by attending creditors' meetings, in any of the proceedings opened in respect of any member of the group;

(b) mediate any dispute arising between two or more insolvency practitioners of group members;

(c) present and explain his or her group coordination plan to the persons or bodies that he or she is to report to under his or her national law;

(d) request information from any insolvency practitioner in respect of any member of the group where that information is or might be of use when identifying and outlining strategies and measures in order to coordinate the proceedings; and

(e) request a stay for a period of up to 6 months of the proceedings opened in respect of any member of the group, provided that such a stay is necessary in order to ensure the proper implementation of the plan and would be to the benefit of the creditors in the proceedings for which the stay is requested; or request the lifting of any existing stay. Such a request shall be made to the court that opened the proceedings for which a stay is requested.

3. The plan referred to in point (b) of paragraph 1 shall not include recommendations as to any consolidation of proceedings or insolvency estates.

4. The coordinator's tasks and rights as defined under this Article shall not extend to any member of the group not participating in group coordination proceedings.

5. The coordinator shall perform his or her duties impartially and with due care.

6. Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in the costs compared to the cost estimate referred to in point (d) of Article 61(3), and in any case, where the costs exceed 10% of the estimated costs, the coordinator shall:

(a) inform without delay the participating insolvency practitioners; and
(b) seek the prior approval of the court opening group coordination proceedings.

**Article 73 Languages**

1. The coordinator shall communicate with the insolvency practitioner of a participating group member in the language agreed with the insolvency practitioner or, in the absence of an agreement, in the official language or one of the official languages of the institutions of the Union, and of the court which opened the proceedings in respect of that group member.

2. The coordinator shall communicate with a court in the official language applicable to that court.

**Article 74 Cooperation between insolvency practitioners and the coordinator**

1. Insolvency practitioners appointed in relation to members of a group and the coordinator shall cooperate with each other to the extent that such cooperation is not incompatible with the rules applicable to the respective proceedings.

2. In particular, insolvency practitioners shall communicate any information that is relevant for the coordinator to perform his or her tasks.

**Article 75 Revocation of the appointment of the coordinator**

The court shall revoke the appointment of the coordinator of its own motion or at the request of the insolvency practitioner of a participating group member where:

(a) the coordinator acts to the detriment of the creditors of a participating group member; or

(b) the coordinator fails to comply with his or her obligations under this Chapter.

**Article 76 Debtor in possession**

The provisions applicable, under this Chapter, to the insolvency practitioner shall also apply, where appropriate, to the debtor in possession.

**Article 77 Costs and distribution**

1. The remuneration for the coordinator shall be adequate, proportionate to the tasks fulfilled and reflect reasonable expenses.

2. On having completed his or her tasks, the coordinator shall establish the final statement of costs and the share to be paid by each member, and submit this statement to each participating insolvency practitioner and to the court opening coordination proceedings.
3. In the absence of objections by the insolvency practitioners within 30 days of receipt of the statement referred to in paragraph 2, the costs and the share to be paid by each member shall be deemed to be agreed. The statement shall be submitted to the court opening coordination proceedings for confirmation.

4. In the event of an objection, the court that opened the group coordination proceedings shall, upon the application of the coordinator or any participating insolvency practitioner, decide on the costs and the share to be paid by each member in accordance with the criteria set out in paragraph 1 of this Article, and taking into account the estimation of costs referred to in Article 68(1) and, where applicable, Article 72(6).

5. Any participating insolvency practitioner may challenge the decision referred to in paragraph 4 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.

CHAPTER VI DATA PROTECTION

Article 78 Data protection

1. National rules implementing Directive 95/46/EC shall apply to the processing of personal data carried out in the Member States pursuant to this Regulation, provided that processing operations referred to in Article 3(2) of Directive 95/46/EC are not concerned.

2. Regulation (EC) n° 45/2001 shall apply to the processing of personal data carried out by the Commission pursuant to this Regulation.

Article 79 Responsibilities of Member States regarding the processing of personal data in national insolvency registers

1. Each Member State shall communicate to the Commission the name of the natural or legal person, public authority, agency or any other body designated by national law to exercise the functions of controller in accordance with point (d) of Article 2 of Directive 95/46/EC, with a view to its publication on the European e-Justice Portal.

2. Member States shall ensure that the technical measures for ensuring the security of personal data processed in their national insolvency registers referred to in Article 24 are implemented.

3. Member States shall be responsible for verifying that the controller, designated by national law in accordance with point (d) of Article 2 of Directive 95/46/EC, ensures compliance with the principles of data quality, in particular the accuracy and the updating of data stored in national insolvency registers.
4. Member States shall be responsible, in accordance with Directive 95/46/EC, for the collection and storage of data in national databases and for decisions taken to make such data available in the interconnected register that can be consulted via the European e-Justice Portal.

5. As part of the information that should be provided to data subjects to enable them to exercise their rights, and in particular the right to the erasure of data, Member States shall inform data subjects of the accessibility period set for personal data stored in insolvency registers.

**Article 80 Responsibilities of the Commission in connection with the processing of personal data**

1. The Commission shall exercise the responsibilities of controller pursuant to Article 2(d) of Regulation (EC) n° 45/2001 in accordance with its respective responsibilities defined in this Article.

2. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.

3. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity of any transmission to and from the European e-Justice Portal.

4. The obligations of the Commission shall not affect the responsibilities of the Member States and other bodies for the content and operation of the interconnected national databases run by them.
Article 81 Information obligations

Without prejudice to the information to be given to data subjects in accordance with Articles 11 and 12 of Regulation (EC) n° 45/2001, the Commission shall inform data subjects, by means of publication through the European e-Justice Portal, about its role in the processing of data and the purposes for which those data will be processed.

Article 82 Storage of personal data

As regards information from interconnected national databases, no personal data relating to data subjects shall be stored in the European e-Justice Portal. All such data shall be stored in the national databases operated by the Member States or other bodies.

Article 83 Access to personal data via the European e-Justice Portal

Personal data stored in the national insolvency registers referred to in Article 24 shall be accessible via the European e-Justice Portal for as long as they remain accessible under national law.

CHAPTER VII TRANSITIONAL AND FINAL PROVISIONS

Article 84 Applicability in time

1. The provisions of this Regulation shall apply only to insolvency proceedings opened from 26 June 2017. Acts committed by a debtor before that date shall continue to be governed by the law which was applicable to them at the time they were committed.

2. Notwithstanding Article 91 of this Regulation, Regulation (EC) n° 1346/2000 shall continue to apply to insolvency proceedings which fall within the scope of that Regulation and which have been opened before 26 June 2017.

Article 85 Relationship to Conventions

1. This Regulation replaces, in respect of the matters referred to therein, and as regards relations between Member States, the Conventions concluded between two or more Member States, in particular:

(a) the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;
(b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;

(c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;

(d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;

(e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;

(f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;

(g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;

(h) the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962;

(i) the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;

(j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1933;

(k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990;

(l) the Convention between the Federative People's Republic of Yugoslavia and the Kingdom of Greece on the Mutual Recognition and Enforcement of Judgments, signed at Athens on 18 June 1959;

(m) the Agreement between the Federative People's Republic of Yugoslavia and the Republic of Austria on the Mutual Recognition and Enforcement of Arbitral Awards and Arbitral Settlements in Commercial Matters, signed at Belgrade on 18 March 1960;
Jurisdiction and Recognition of Judgments Update

(n) the Convention between the Federative People's Republic of Yugoslavia and the Italian Republic on Mutual Judicial Cooperation in Civil and Administrative Matters, signed at Rome on 3 December 1960;

(o) the Agreement between the Socialist Federative Republic of Yugoslavia and the Kingdom of Belgium on Judicial Cooperation in Civil and Commercial Matters, signed at Belgrade on 24 September 1971;

(p) the Convention between the Governments of Yugoslavia and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Paris on 18 May 1971;

(q) the Agreement between the Czechoslovak Socialist Republic and the Hellenic Republic on Legal Aid in Civil and Criminal Matters, signed at Athens on 22 October 1980, still in force between the Czech Republic and Greece;

(r) the Agreement between the Czechoslovak Socialist Republic and the Republic of Cyprus on Legal Aid in Civil and Criminal Matters, signed at Nicosia on 23 April 1982, still in force between the Czech Republic and Cyprus;

(s) the Treaty between the Government of the Czechoslovak Socialist Republic and the Government of the Republic of France on Legal Aid and the Recognition and Enforcement of Judgments in Civil, Family and Commercial Matters, signed at Paris on 10 May 1984, still in force between the Czech Republic and France;

(t) the Treaty between the Czechoslovak Socialist Republic and the Italian Republic on Legal Aid in Civil and Criminal Matters, signed at Prague on 6 December 1985, still in force between the Czech Republic and Italy;

(u) the Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships, signed at Tallinn on 11 November 1992;

(v) the Agreement between Estonia and Poland on Granting Legal Aid and Legal Relations on Civil, Labour and Criminal Matters, signed at Tallinn on 27 November 1998;

(w) the Agreement between the Republic of Lithuania and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters, signed at Warsaw on 26 January 1993;

(x) the Convention between the Socialist Republic of Romania and the Hellenic Republic on legal assistance in civil and criminal matters and its Protocol, signed at Bucharest on 19 October 1972;
(y) the Convention between the Socialist Republic of Romania and the French Republic on legal assistance in civil and commercial matters, signed at Paris on 5 November 1974;

(z) the Agreement between the People's Republic of Bulgaria and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters, signed at Athens on 10 April 1976;

(aa) the Agreement between the People's Republic of Bulgaria and the Republic of Cyprus on Legal Assistance in Civil and Criminal Matters, signed at Nicosia on 29 April 1983;

(ab) the Agreement between the Government of the People's Republic of Bulgaria and the Government of the French Republic on Mutual Legal Assistance in Civil Matters, signed at Sofia on 18 January 1989;

(ac) the Treaty between Romania and the Czech Republic on judicial assistance in civil matters, signed at Bucharest on 11 July 1994;

(ad) the Treaty between Romania and the Republic of Poland on legal assistance and legal relations in civil cases, signed at Bucharest on 15 May 1999.

2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of Regulation (EC) n° 1346/2000.

3. This Regulation shall not apply:

(a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that Member State with one or more third countries before the entry into force of Regulation (EC) n° 1346/2000;

(b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time Regulation (EC) n° 1346/2000 entered into force.

**Article 86 Information on national and Union insolvency law**

1. The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC (**473**), and with a view to making the information available to the public, a short description of their national legislation and procedures relating to insolvency, in particular relating to the matters listed in Article 7(2).

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2. The Member States shall update the information referred to in paragraph 1 regularly.

3. The Commission shall make information concerning this Regulation available to the public.

**Article 87 Establishment of the interconnection of registers**

The Commission shall adopt implementing acts establishing the interconnection of insolvency registers as referred to in Article 25. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 89(3).

**Article 88 Establishment and subsequent amendment of standard forms**

The Commission shall adopt implementing acts establishing and, where necessary, amending the forms referred to in Article 27(4), Articles 54 and 55 and Article 64(2). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2).

**Article 89 Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) n° 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) n° 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) n° 182/2011 shall apply.

**Article 90 Review clause**

1. no later than 27 June 2027, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.

2. no later than 27 June 2022, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the group coordination proceedings. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.
3. no later than 1 January 2016, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the cross-border issues in the area of directors' liability and disqualifications.

4. no later than 27 June 2020, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the issue of abusive forum shopping.

**Article 91 Repeal**

Regulation (EC) n° 1346/2000 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex D to this Regulation.

**Article 92 Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 26 June 2017, with the exception of:

(a) Article 86, which shall apply from 26 June 2016;

(b) Article 24(1), which shall apply from 26 June 2018; and

(c) Article 25, which shall apply from 26 June 2019.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.
ANNEX A

Insolvency proceedings referred to in point (4) of Article 2

BELGIQUE/BELGIË

— Het faillissement/La faillite,

— De gerechtelijke reorganisatie door een collectief akkoord/La réorganisation judiciaire par accord collectif,

— De gerechtelijke reorganisatie door een minnelijk akkoord/La réorganisation judiciaire par accord amiable,

— De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice,

— De collectieve schuldenregeling/ Le règlement collectif de dettes,

— De vrijwillige vereffening/La liquidation volontaire,

— De gerechtelijke vereffening/La liquidation judiciaire,

— De voorlopige ontneming van het beheer, als bedoeld in artikel XX.32 van het Wetboek van economisch recht/Le dessaisissement provisoire de la gestion, visé à l'article XX.32 du Code de droit économique,

БЪЛГАРИЯ

— Производство по несъстоятелност,

— Производство по стабилизация на търговец,

ČESKÁ REPUBLIKA

— Konkurs,

— Reorganizace,

— Oddlužení,

DEUTSCHLAND
— Das Konkursverfahren,
— Das gerichtliche Vergleichsverfahren,
— Das Gesamtvollstreckungsverfahren,
— Das Insolvenzverfahren,

EESTI
— Pankrotimenetlus,
— Võlgade ümberkujundamise menetlus,

ÉIRE/IRELAND
— Compulsory winding-up by the court,
— Bankruptcy,
— The administration in bankruptcy of the estate of persons dying insolvent,
— Winding-up in bankruptcy of partnerships,
— Creditors’ voluntary winding-up (with confirmation of a court),
— Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution,
— Examinership,
— Debt Relief Notice,
— Debt Settlement Arrangement,
— Personal Insolvency Arrangement,

ΕΛΛΑΔΑ
— Η πτώχευση,
— Η ειδική εκκαθάριση εν λειτουργία,
Jurisdiction and Recognition of Judgments Update

— Σχέδιο αναδιοργάνωσης,
— Απλοποιημένη διαδικασία επί πτωχεύσεων μικρού αντικειμένου,
— Διαδικασία εξυγίανσης,

ESPAÑA
— Concurso,
— Procedimiento de homologación de acuerdos de refinanciación,
— Procedimiento de acuerdos extrajudiciales de pago,
— Procedimiento de negociación pública para la consecución de acuerdos de refinanciación colectivos, acuerdos de refinanciación homologados y propuestas anticipadas de convenio,

FRANCE
— Sauvegarde,
— Sauvegarde accélérée,
— Sauvegarde financière accélérée,
— Redressement judiciaire,
— Liquidation judiciaire,

HRVATSKA
— Stečajni postupak,
— Predstečajni postupak,
— Postupak stečaja potrošača,
— Postupak izvanredne uprave u trgovačkim društvima od sistemsckog značaja za Republiku Hrvatsku,

ITALIA
— Fallimento,
— Concordato preventivo,
— Liquidazione coatta amministrativa,
— Amministrazione straordinaria,
— Accordi di ristrutturazione,
— Procedure di composizione della crisi da sovraindebitamento del consumatore (accordo o piano),
— Liquidazione dei beni,

ΚΥΠΡΟΣ
— Υποχρεωτική εκκαθάριση από το Δικαστήριο,
— Εκούσια εκκαθάριση από μέλη,
— Εκούσια εκκαθάριση από πιστωτές
— Εκκαθάριση με την εποπτεία του Δικαστηρίου,
— Διάταγμα παραλαβής και πτώχευσης κατόπιν Δικαστικού Διατάγματος,
— Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα,

LATVIJA
— Tiesiskās aizsardzības process,
— Juridiskās personas maksātnespējas process,
— Fiziskās personas maksātnespējas process,

LIETUVA
— Įmonės restruktūrizavimo byla,
— Įmonės bankroto byla,
— Įmonės bankroto procesas ne teismo tvarka,
Jurisdiction and Recognition of Judgments Update

— Fizinio asmens bankroto procesas,

LUXEMBOURG
— Faillite,
— Gestion contrôlée,
— Concordat préventif de faillite (par abandon d'actif),
— Régime spécial de liquidation du notariat,
— Procédure de règlement collectif des dettes dans le cadre du surendettement,

MAGYARORSZÁG
— Csődeljárás,
— Felszámolási eljárás,

MALTA
— Xoljiment,
— Amministrazzjoni,
— Stralċ voluntarju mill-membri jew mill-kredituri,
— Stralċ mill-Qorti,
— Falliment f'każ ta' kummerèjant,
— Proċedura biex kumpanija tirkupra,

NEDERLAND
— Het faillissement,
— De surséance van betaling,
— De schuldsaneringsregeling natuurlijke personen,

ÖSTERREICH
— Das Konkursverfahren (Insolvenzverfahren),
— Das Sanierungsverfahren ohne Eigenverwaltung (Insolvenzverfahren),
— Das Sanierungsverfahren mit Eigenverwaltung (Insolvenzverfahren),
— Das Schuldenregulierungsverfahren,
— Das Abschöpfungsverfahren,
— Das Ausgleichsverfahren,

POLSKA
— Upadłość,
— Postępowanie o zatwierdzenie układu,
— Przyspieszone postępowanie układowe,
— Postępowanie układowe,
— Postępowanie sanacyjne,

PORTUGAL
— Processo de insolvência,
— Processo especial de revitalização,
— Processo especial para acordo de pagamento,

ROMÂNIA
— Procedura insolvenței,
— Reorganizarea judiciară,
— Procedura falimentului,
— Concordatul preventiv,

SLOVENIJA
— Postopek preventivnega prestrukturiranja,
— Postopek prisilne poravnavje,
— Postopek poenostavljene prisilne poravnavje,
— Stečajni postopek: stečajni postopek nad pravno osebo, postopek osebnega stečaja in postopek stečaja zapuščine,

SLOVENSKO
— Konkurzné konanie,
— Reštrukturalizačné konanie,
— Oddlženie,

SUOMI/FINLAND
— Konkurssi/konkurs,
— Yrityssaneeraus/företagssanering,
— Yksityishenkilön velkajärjestely/skuldsanering för privatpersoner,

SVERIGE
— Konkurs,
— Företagsrekonstruktion,
— Skuldsanering,

UNITED KINGDOM
— Winding-up by or subject to the supervision of the court,
— Creditors' voluntary winding-up (with confirmation by the court),
— Administration, including appointments made by filing prescribed documents with the court,
— Voluntary arrangements under insolvency legislation,
Jurisdiction and Recognition of Judgments Update

— Bankruptcy or sequestration.
ANNEX B

Insolvency practitioners referred to in point (5) of Article 2

BELGIQUE/BELGIË
— De curator/Le curateur,
— De gerechtsmandataris/Le mandataire de justice,
— De schuldbemiddelaar/Le médiateur de dettes,
— De vereffenaar/Le liquidateur,
— De voorlopige bewindvoerder/L'administrateur provisoire,

БЪЛГАРИЯ
— Назначен предварително временен синдик,
— Временен синдик,
— (Постоянен) синдик,
— Служебен синдик,
— Доверено лице,

ČESKÁ REPUBLIKA
— Insolvenční správce,
— Předběžný insolvenční správce,
— Oddělený insolvenční správce,
— Zvláštní insolvenční správce,
— Zástupce insolvenčního správce,

DEUTSCHLAND
— Konkursverwalter,
— Vergleichsverwalter,

— Sachwalter (nach der Vergleichsordnung),

— Verwalter,

— Insolvenzverwalter,

— Sachwalter (nach der Insolvenzordnung),

— Treuhänder,

— Vorläufiger Insolvenzverwalter,

— Vorläufiger Sachwalter,

EESTI

— Pankrotihaldur,

— Ajutine pankrotihaldur,

— Usaldusisik,

ÉIRE/IRELAND

— Liquidator,

— Official Assignee,

— Trustee in bankruptcy,

— Provisional Liquidator,

— Examiner,

— Personal Insolvency Practitioner,

— Insolvency Service,

ΕΛΛΑΔΑ

— Ο σύνοδος,
Jurisdiction and Recognition of Judgments Update

— O εισηγητής,
— Η επιτροπή των πιστωτών,
— Ο ειδικός εκκαθαριστής,

ESPAÑA
— Administrador concursal,
— Mediador concursal,

FRANCE
— Mandataire judiciaire,
— Liquidateur,
— Administrateur judiciaire,
— Commissaire à l'exécution du plan,

HRVATSKA
— Stečajni upravitelj,
— Privremeni stečajni upravitelj,
— Stečajni povjerenik,
— Povjerenik,
— Izvanredni povjerenik,

ITALIA
— Curatore,
— Commissario giudiziale,
— Commissario straordinario,
— Commissario liquidatore,
— Liquidatore giudiziale,
— Professionista nominato dal Tribunale,
— Organismo di composizione della crisi nella procedura di composizione della crisi da sovraindebitamento del consumatore,
— Liquidatore,

ΚΥΠΡΟΣ
— Εκκαθαριστής και Προσωρινός Εκκαθαριστής,
— Επίσημος Παραλήπτης,
— Διαχειριστής της Πτώχευσης,

LATVIJA
— Maksātnespējas procesa administrators,
— Tiesiskās aizsardzības procesa uzraudzības persona,

LIETUVA
— Bankroto administratorius,
— Restruktūrizavimo administratorius,

LUXEMBOURG
— Le curateur,
— Le commissaire,
— Le liquidateur,
— Le conseil de gérance de la section d'assainissement du notariat,
— Le liquidateur dans le cadre du surendettement,

MAGYARORSZÁG
Jurisdiction and Recognition of Judgments Update

— Vagyonfelügyelő,
— Felszámoló,

MALTA
— Amministratur Provìżorju,
— Riċevitur Uffıċjali,
— Stralċjarju,
— Manager Speċjali,
— Kuraturi f'każ ta' proċeduri ta' falliment,
— Kontrolur Speċjali,

NEDERLAND
— De curator in het faillissement,
— De bewindvoerder in de surséance van betaling,
— De bewindvoerder in de schuldsaneringsregeling natuurlijke personen,

ÖSTERREICH
— Masseverwalter,
— Sanierungsverwalter,
— Ausgleichsverwalter,
— Besonderer Verwalter,
— Einstweiliger Verwalter,
— Sachwalter,
— Treuhänder,
— Insolvenzgericht,
Jurisdiction and Recognition of Judgments Update

— Konkursgericht,

POLSKA
— Syndyk,
— Nadzorca sądowy,
— Zarządca,
— Nadzorca układu,
— Tymczasowy nadzorca sądowy,
— Tymczasowy zarządca,
— Zarządca przymusowy,

PORTUGAL
— Administrador da insolvência,
— Administrador judicial provisório,

ROMÁNIA
— Practician în insolvență,
— Administrator concordatar,
— Administrator judiciar,
— Lichidator judiciar,

SLOVENIJA
— Upravitelj,

SLOVENSKO
— Predbežný správca,
— Správca,
Jurisdiction and Recognition of Judgments Update

SUOMI/FINLAND
— Pesänhoitaja/boförvaltare,
— Selvittäjä/utredare,

SVENIGE
— Förvaltare,
— Rekonstruktör,

UNITED KINGDOM
— Liquidator,
— Supervisor of a voluntary arrangement,
— Administrator,
— Official Receiver,
— Trustee,
— Provisional Liquidator,
— Interim Receiver,
— Judicial factor.
ANNEX C

Repealed Regulation with list of the successive amendments thereto

Council Regulation (EC) n° 1346/2000

Council Regulation (EC) n° 603/2005
(OJ L 100, 20.4.2005, p. 1)

Council Regulation (EC) n° 694/2006
(OJ L 121, 6.5.2006, p. 1)

Council Regulation (EC) n° 1791/2006

(OJ L 159, 20.6.2007, p. 1)

Council Regulation (EC) n° 788/2008

Implementing Regulation of the Council (EU) n° 210/2010
(OJ L 65, 13.3.2010, p. 1)

Council Implementing Regulation (EU) n° 583/2011
(OJ L 160, 18.6.2011, p. 52)

Council Regulation (EU) n° 517/2013
(OJ L 158, 10.6.2013, p. 1)

Council Implementing Regulation (EU) n° 663/2014
(OJ L 179, 19.6.2014, p. 4)
Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded

(OJ L 236, 23.9.2003, p. 33)
## ANNEX D

### Correlation table

<table>
<thead>
<tr>
<th>Regulation (EC) No 1346/2000</th>
<th>This Regulation</th>
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<tbody>
<tr>
<td>Article 1</td>
<td>Article 1</td>
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<tr>
<td>Article 2, introductory words</td>
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<tr>
<td>Article 2, point (a)</td>
<td>Article 2, point (4)</td>
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<td>Article 2, point (b)</td>
<td>Article 2, point (5)</td>
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<td>Article 2, point (c)</td>
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<td>Article 2, point (d)</td>
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<tr>
<td>Article 2, point (e)</td>
<td>Article 2, point (7)</td>
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<td>Article 2, point (f)</td>
<td>Article 2, point (8)</td>
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<tr>
<td>Article 2, point (g), introductory words</td>
<td>Article 2, point (9), introductory words</td>
</tr>
<tr>
<td>Article 2, point (g), first indent</td>
<td>Article 2, point (9)(vii)</td>
</tr>
<tr>
<td>Article 2, point (g), second indent</td>
<td>Article 2, point (9)(iv)</td>
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<td>Article 2, point (g), third indent</td>
<td>Article 2, point (9)(viii)</td>
</tr>
<tr>
<td>Article 2, point (h)</td>
<td>Article 2, point 10</td>
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<td>Article 2, points (1) to (3) and (11) to (13)</td>
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<td>Article 2, point (9)(i) to (iii), (v), (vi)</td>
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<td>Article 7</td>
<td>Article 10</td>
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<td>Article 8</td>
<td>Article 11(1)</td>
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<td>Article 11(2)</td>
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<td>Article 9</td>
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<td>Article 10</td>
<td>Article 13(1)</td>
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<td>Article 11</td>
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<td>Article 43</td>
<td>Article 84(1)</td>
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<td>Article 44</td>
<td>Article 85</td>
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<td>Article 86</td>
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<td>Article 46</td>
<td>Article 90(1)</td>
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<tr>
<td>Article 47</td>
<td>Article 92</td>
</tr>
<tr>
<td>Annex A</td>
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