Regulation EU 1215/2012 (Brussels Ibis):
Origin, Scope of Application and General Features

Prof. dr. V. Lazić

Molengraaff Institute, Utrecht University
T.M.C. Asser Institute, The Hague

5 March 2020

V.Lazic@uu.nl/V.Lazic@asser.nl
Dutch company De Tulip BV, having its place of business in Leiden (the Netherlands), as a seller, concludes a number of contracts for the sales of tulip bulbs in the period of 2013 to 2016 with a Turkish company having its seat in Istanbul. According to the third in line of contracts it sells 40 boxes of tulip bulbs to the Turkish buyer. A dispute arises in connection with the payment of the purchase price under the third in the line of contracts and the Dutch company files a suit with the Court in Amsterdam on 15 March 2017.
Private International Law

• Jurisdiction of a court in a particular country to decide on the claim (in torts cases, e.g., claim for damages for personal injury – actual losses and costs of after-care and medical attention; in disputes arising out of a contract – specific performance or damages for a failure to perform).

• Which law governs the claim?

• Whether a judgment be recognised/enforced outside the country where it is rendered?
Legal basis

TITLE V - AREA OF FREEDOM, SECURITY AND JUSTICE

Article 67

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States. (…)

4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.
CHAPTER 3 JUDICIAL COOPERATION IN CIVIL MATTERS

Article 81

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

2. For the purposes of paragraph 1, the European Parliament and the Council, ... shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:
Legal basis

(a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases; (b) the cross-border service of judicial and extrajudicial documents;
(c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
(d) cooperation in the taking of evidence;
(e) effective access to justice;
(f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
(g) the development of alternative methods of dispute settlement; (h) support for the training of the judiciary and judicial staff.
Area of freedom, security and justice

‘The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, inter alia, by facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters, in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.’

(Regulation Brussels I bis, Recital 3)
Area of freedom, security and justice

- The European Council Meeting at Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments … as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt the programme of measures to implement the principle of mutual recognition.
Area of freedom, security and justice

- COUNCIL REGULATION (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings – RECAST in 2015, see infra
- COUNCIL REGULATION (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
- COUNCIL REGULATION (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters
Area of freedom, security and justice

- COUNCIL REGULATION (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (*Protocol does not apply in UK*)
Area of freedom, security and justice

- COUNCIL REGULATION (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation
Area of freedom, security and justice

- Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil measures (applicable as of 15 January 2015)
Area of freedom, security and justice


- Council Regulation 2016/1104 of 24 June 2016 implementing enhanced cooperation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.
Brussels I regulatory scheme

- COUNCIL REGULATION (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
Brussels I regulatory scheme


• Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection, OJ L 361/1;

• Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation requirements, OJ L 361/89.
Area of freedom, security and justice:

Recent developments:

- Insolvency Regulation Recast: Regulation 2015/848 of 20 May 2015 on Insolvency Proceedings (recast)
- Council Regulation 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
- Council Regulation 2016/1104 of 24 June 2016 implementing enhanced cooperation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.

(Non-legislative acts) REGULATIONS

- Regulation Brussels IIbis Recast (1111/2019)
EU Instruments: Civil Procedure

- Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters

- Provisions to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from EU Member States
Jurisdiction

- International instruments (Brussels I bis (Recast), Brussels I Regulation, Lugano Convention, relevant bilateral conventions)

- National rules on jurisdiction
Brussels I bis Jurisdiction Regulation

• **History of the Regulation**

• Original Art. 220 of the EEC Treaty of 1957: MS should enter into negotiations to simplify formalities for reciprocal recognition and enforcement of judgments (‘free movement of court decisions’ on matters related to the functioning of the common market)


• 1971 Luxembourg Protocol (authorising the ECJ to interpret the Convention)

• Explanatory reports

• **Brussels Convention was replaced on 1 March 2002 by the Regulation 44/2001 (Brussels I Regulation).**

• Lugano Convention 1988/2007

• **Brussels I bis (Recast) 1215/2012 as amended by Reg 542/2014**
Brussels I bis Regulation

• Scope of application:

  • ‘substantive’ scope of application (ratione materiae)?

  • ‘formal’/territorial scope of application (ratione personae)?

  • entering into force and application ratione temporis
Brussels I bis Regulation

- ‘Substantive’ scope of application:
  - ‘civil and commercial matters’ - Art. 1 par. 1, first sentence - concept of ‘civil and commercial matters’ is autonomous and independent of corresponding national legal concepts
  - matters that are excluded:
    - Art. 1 par. 1, second sentence (revenue, customs and administrative matters) – they do not limit or modify the concept of ‘civil and commercial’, they are added to clarify, by means of examples, the types of matters that fall outside the scope of ‘civil and commercial’
    - Art. 1 par. 2 (status or legal capacity of natural persons, property rights arising out of matrimonial relationship, bankruptcy, social security, arbitration, - only if an arbitration matter is a main issue in the proceedings, maintenance obligations and wills and succession) — maintenance was included, but is now regulated in the ‘Maintenance Regulation’ applicable as of June 2011, wills and succession
  - international elements
* All legal concepts and rules – in principle autonomous interpretation (case law ECJ), except of domicile of natural persons in Art. 62 (ex Art. 59)
Brussels I bis Regulation

• ‘Substantive’ scope of application:

- ‘civil and commercial matters’ - Art. 1 par. 1, first sentence - concept of ‘civil and commercial matters’ is autonomous and independent of corresponding national legal concepts

- Thus, it is intended to apply to matters of private law, with a general exclusion of the matters of public law. The meaning and the reach of the ‘civil and commercial matters’ has been the subject of interpretation by the ECJ within the context of disputes between a private party and a public authority (see e.g., C-266/01, [2003] ECR I-4867, TIARD v. The Netherlands; C-29/76, [1976] ECR 1541, LTU v. Eurocontrol; C-172/91, [1993] ECR I-1963 Sonntag v. Waidmann; C-271/00, [2002] ECR I-10489, Gemeente Steenbergen v. Baten).
Keywords:
Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Article 7(1)(a) — Special jurisdiction in matters relating to a contract — Concept of ‘matters relating to a contract’ — Claim for payment of annual fees payable by a lawyer to a bar association
C-421/18 - Ordre des avocats du barreau de Dinant v JN - Ruling of the CJEU

- Article 1(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a dispute concerning a lawyer’s obligation to pay annual professional fees for which he or she is liable to the bar association to which he or she belongs comes within the scope of that regulation only if, in calling on that lawyer to perform that obligation, the bar association is not acting, under the national law applicable, in the exercise of public powers, which it is for the referring court to ascertain.

- Article 7(1)(a) of Regulation No 1215/2012 must be interpreted as meaning that an action by which a bar association seeks an order that one of its members pay the annual professional fees for which he or she is liable and which are essentially intended to finance services, such as insurance services, must be regarded as constituting an action in ‘matters relating to a contract’, within the meaning of that provision, provided that those fees constitute consideration for services provided by that bar association to its members and those services are freely consented to by the member concerned, which it is for the referring court to ascertain.

Keywords:
Reference for a preliminary ruling — Regulation (EU) No 1215/2012 — Jurisdiction in civil and commercial matters — Scope — Article 1(2)(b) — Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings — Not included — Action for a declaration that a claim exists for the purposes of its registration in insolvency proceedings — Application of Regulation (EC) No 1346/2000 — Article 41 — Content of the lodgement of a claim — Main and secondary insolvency proceedings — Lis pendens and related actions — Application by analogy of Article 29(1) of Regulation No 1215/2012 — Inadmissibility
C-47/18 - Skarb Pánstwa Rzeczpospolitej Polskiej — Generalny Dyrektor Dróg Krajowych i Autostrad v Stephan Riela - Ruling of the CJEU

• Article 1(2)(b) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for a declaration of the existence of claims for the purposes of their registration in the context of insolvency proceedings, such as that at issue in the main proceedings, is excluded from the scope of that regulation.

• Article 29(1) of Regulation No 1215/2012 must be interpreted as not applying, even by analogy, to an action such as that in the main proceedings which is excluded from the scope of that regulation but falls within the scope of Regulation No 1346/2000.

• Article 41 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on the law applicable to contractual obligations must be interpreted as meaning that a creditor may, in the context of insolvency proceedings, lodge a claim without formally indicating the date on which it arose, where the law of the Member State within the territory of which those proceedings were opened does not impose an obligation to state that date and where that date may, without particular difficulty, be inferred from the supporting documents referred to in Article 41 of that regulation, which it is for the competent authority responsible for the verification of claims to determine.
Keywords:
Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 66 — Temporal scope — Regulation (EC) No 44/2001 — Material scope — Civil and commercial matters — Article 1(1) and (2)(a) — Matters excluded — Rights in property arising out of a matrimonial relationship — Article 54 — Application for the certificate certifying that the judgment given by the court of origin is enforceable — Judgment given concerning a debt stemming from the settlement of rights in property arising out of an unregistered non-marital partnership)
C-361/18 - Ágnes Weil v Géza Gulácsi - Ruling of the CJEU

• “Article 54 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a Member State’s court hearing an application for a certificate certifying that a judgment given by the court of origin is enforceable must, in a situation such as that at issue in the main proceedings, where the court which gave the judgment to be enforced did not adjudicate, when giving that judgment, on whether that regulation was applicable, ascertain whether the dispute falls within the scope of that regulation.”

• “Article 1(1) and (2)(a) of Regulation No 44/2001 must be interpreted as meaning that an action, such as that at issue in the main proceedings, concerning an application for dissolution of the property relationships arising out a de facto (unregistered) partnership, comes within the concept of ‘civil and commercial matters’ within the meaning of Article 1(1) of that regulation and falls, therefore, within the material scope of that regulation.”
Keywords:
Reference for a preliminary ruling — Regulation (EU) No 1215/2012 — Jurisdiction in civil and commercial matters — Scope — Article 1(1) — Concept of ‘civil and commercial matters’ — Bonds issued by a Member State — Involvement of the private sector in the restructuring of public debt of that State — Unilateral and retroactive adjustment of the borrowing terms — Collective action clauses — Action brought against the State by private creditors who hold those bonds as natural persons — Liability of the State for acts and omissions in the exercise of State authority
C-308/17 - Kuhn - Ruling of the CJEU

“Article 1(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is to be interpreted as meaning that a dispute, such as that at issue in the main proceedings, relating to an action brought by a natural person having acquired bonds issued by a Member State, against that State and seeking to contest the exchange of those bonds with bonds of a lower value, imposed on that natural person by the effect of a law adopted in exceptional circumstances by the national legislator, according to which those terms were unilaterally and retroactively amended by the introduction of a CAC allowing a majority of holders of the relevant bonds to impose that exchange on the minority, does not fall within ‘civil and commercial matters’ within the meaning of that article.”
Keywords:
Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Temporal and material scope — Civil and commercial matters — Enforcement proceedings relating to the recovery of an unpaid public parking debt — Included — Concept of ‘court’ — Notary who has issued a writ of execution based on an ‘authentic document’
C-551/15 - Pula Parking – Ruling of the CJEU

“1. Article 1(1) of [Brussels I bis Regulation] must be interpreted as meaning that 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, the operation of which has been delegated to that company by that authority, which are not in any way punitive but merely constitute consideration for a service provided, fall within the scope of that regulation.

2. Regulation [Brussels Ibis] must be interpreted as meaning that, in Croatia, notaries, acting within the framework of the powers conferred on them by national law in enforcement proceedings based on an ‘authentic document’, do not fall within the concept of ‘court’ within the meaning of that regulation.”
C-102/15 - Siemens Aktiengesellschaft Österreich - 28 July 2016
ECLI:EU:C:2016:607

Keywords:
C-102/15 - Siemens Aktiengesellschaft Österreich – Ruling of the CJEU

‘An action for recovery of sums not due on the ground of unjust enrichment, such as that at issue in the main proceedings, which has its origin in the repayment of a fine imposed in competition law proceedings does not fall within ‘civil and commercial matters’ within the meaning of Article 1 of [Brussels I Regulation].’
Keywords:
Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Article 1(1) — Scope — Civil and commercial matters — Article 1(2) — Matters excluded — Social security — Article 53 — Application for the issue of the certificate certifying that the judgment delivered by the court of origin is enforceable — Judgment relating to a claim for wage supplements regarding annual leave pay that a social security body has against an employer with respect to the posting of workers — Exercise of a judicial function by the court ruling in the case
C-579/17 - Gradbeništvo Korana – Ruling of the CJEU

“Article 1 of [the Regulation]… must be interpreted as meaning that an action for payment of wage supplements in respect of annual leave pay brought by a body governed by public law against an employer, in connection with the posting of workers to a Member State where they do not have their habitual place of work, or in the context of the provision of labour in that Member State, or against an employer established outside of the territory of that Member State in connection with the employment of workers who have their habitual place of work in that Member State, falls within the scope of application of that regulation, in so far as the modalities for bringing such an action do not infringe the rules of general law and, in particular, do not exclude the possibility for the court ruling on the case to verify the merits of the information on which the establishment of that claim is based, which is a matter to be determined by the referring court.”
C-102/15 - Siemens Aktiengesellschaft
Österreich - 28 July 2016
ECLI:EU:C:2016:607

Keywords:
“An action for recovery of sums not due on the ground of unjust enrichment, such as that at issue in the main proceedings, which has its origin in the repayment of a fine imposed in competition law proceedings does not fall within ‘civil and commercial matters’ within the meaning of Article 1 of [Brussels I Regulation]”
Keywords:
Reference for a preliminary ruling — Regulation (EC) No 44/2001 — Article 31 — Request for recognition and enforcement of a judgment ordering provisional or protective measures — Article 1(1) — Scope — Civil and commercial matters — Concept — Claim for compensation in respect of damage resulting from alleged infringements of EU competition law — Reductions in airport charges — Article 22(2) — Exclusive jurisdiction — Concept — Dispute in proceedings concerning companies or other legal persons or associations of natural or legal persons — Decision granting reductions — Article 34(1) — Grounds for refusal of recognition — Public policy in the State in which recognition is sought
“1. Article 1(1) of [Regulation Brussels I] must be interpreted as meaning that an action such as that in the main proceedings, seeking legal redress for damage resulting from alleged infringements of European Union competition law, comes within the notion of ‘civil and commercial matters’ within the meaning of that provision and, therefore, falls within the scope of that regulation.”
Keywords:
“Article 1(2)(a) of Regulation [Brussels I]... must be interpreted as meaning that a dispute such as that in the main proceedings, relating to the liquidation of property — acquired during marriage by spouses who are nationals of a Member State but domiciled in another Member State — after a divorce has taken place, does not come within the scope of that regulation but comes rather within the scope of matrimonial property regimes and, consequently, within the scope of the exclusions listed in Article 1(2)(a) of that regulation.”
Brussels I bis Regulation

• ‘Substantive’ scope of application:

- The issues of ‘bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings’ are excluded from the Regulation’s scope of application under Article 1(2)(b). They are dealt with in the Insolvency Regulation. Not only the matters of insolvency proceedings in the narrow sense are excluded, but also other proceedings which directly derive or are closely linked to proceedings for realising the assets or judicial supervision connected with the bankruptcy case (e.g., an action against a manager of a company in insolvency proceedings to bear part of the company’s debt, C-133/78, Gourdain v. Nadler [1979] ECR 733; see also, avoidance of fraudulent transactions, C-339/07 Christofer Seagon v. Deco Marty Belgium NV [2009] ECR I-767). Different legal systems may apply distinct criteria in that respect, i.e., which matters are and which are not pertaining to insolvency proceedings.
C-535/17 - NK - 6 February 2019
ECLI:EU:C:2019:96

Keywords:
“Article 1(1) and (2)(b) of [Regulation Brussels I] … must be interpreted as meaning that an action, such as that at issue in the main proceedings, concerning a claim for damages arising from liability for a wrongful act, brought by the liquidator in insolvency proceedings and the proceeds of which, if the claim succeeds, accrue to the general body of creditors, is covered by the concept of ‘civil and commercial matters’ within the meaning of Article 1(1), and therefore falls within the material scope of that regulation.”
Brussels I bis Regulation

• Thus, there may be uncertainties on the substantive scope of application of these two instruments. The ECJ ruling in German Graphics is illustrative (C-292/08, [2009] ECR I-8421, German Graphics v. van der Schee). By referring to its earlier ruling in Gourdain, the ECJ has held that the closeness of the link between a court action in the main proceedings (in casu, claim of a seller based on a reservation of title against an insolvent purchaser) and insolvency proceedings is decisive for the purposes of deciding whether the exclusion in Article 1(2)(b) is applicable (para 29).
C-649/16 - Valach and Others - 20
December 2017
ECLI:EU:C:2017:986

Keywords:
Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Scope — Action for liability in tort against the members of a committee of creditors which rejected a restructuring plan in insolvency proceedings
C-649/16 - Valach and Others – Ruling of the CJEU

“Article 1(2)(b) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it applies to an action for liability in tort brought against the members of a committee of creditors because of their conduct in voting on a restructuring plan in insolvency proceedings, and that such an action is therefore excluded from the scope ratione materiae of that regulation.”
Brussels I bis Regulation

• Arbitration exception

• Remained unchanged in the Recast
Scope of Application *Ratione personae*

Dutch company De Tulip BV, having its place of business in Leiden (the Netherlands), as a seller, concludes a number of contracts for the sales of tulip bulbs in the period of 2013 to 2016 with a Turkish company having its seat in Istanbul. According to the third in line of contracts it sells 40 boxes of tulip bulbs to the Turkish buyer.
Dutch company De Tulip BV, having its place of business in Leiden (the Netherlands), as a seller, concludes a number of contracts for the sales of tulip bulbs in the period of 2013 to 2016 with a Turkish company having its seat in Istanbul. According to the third in line of contracts it sells 40 boxes of tulip bulbs to the Turkish buyer.

Upon receiving the bulbs, the buyer complains about their quality and condition and requests De Tulip BV to deliver another 40 boxes of tulips. As the seller maintains that the bulbs were of agreed quality and believes that it has fulfilled its obligation under the contract it refuses to comply with the buyer’s request. The buyer files a suit with the Court in Utrecht on 15 March 2017.

On which rules does the court seised establish its jurisdiction: Regulation Brussels Ibis or its national law?
Brussels I bis Regulation

• ‘Formal’/territorial scope of application (scope *ratione personae*):
  - jurisdiction: Arts. 4, 5 and 6 par. 1

Art: 4 – general rule
Art. 5 par 1: Persons domiciled in a Member State may be sued in the court of another Member State only by virtue of the rules set out in Sections 2 – 7 of this Chapter. Thus, *defendant’s domicile* is decisive for the applicability of the Regulation. **EXCEPTIONS**
Art. 5 para 2: the national rules on jurisdiction shall NOT apply against defendant domiciled in EU
Art. 6 para 1: defendants not domiciled in EU Member States – jurisdiction is to be decided on the national rules on jurisdiction (thus, Regulation does not apply) **EXCEPT** Arts. 18(1), 21(2), 24 and 25
In Arts. 18(1), 21(2), 24 and 25: Regulation applies **REGARDLESS** of the domicile of the defendant

- recognition/enforcement: ex Arts. 32-34; **RECAST:** Art. 2(a)
Brussels I bis Regulation

• ‘Formal’/territorial scope of application:
  - jurisdiction: Arts. 4, 5 and 6 par. 1
Conclusion:
  - Regulation applies if the defendant is domiciled in a Member State, with a number of exceptions
  - Exceptions are:
    - Art. 18(1) (relating to consumer disputes)
    - Art. 21(2) (employment disputes)
    - Art. 24 (exclusive jurisdiction)
    - Art. 25 (prorogation of jurisdiction)
  If the conditions provided in those provisions are met: Regulation applies regardless of the domicile of the defendant.

RECAST: in addition to Arts. 24 and 25 (ex 22 and 23), Arts. 18(1) and 21(2) relating to consumer and employment disputes when defendant is a ‘stronger party’
Brussels I bis Regulation

- ‘Formal’/territorial scope of application:
  Persons domiciled in a MS may be sued in another MS only according to the rules of jurisdiction contained in this Regulation (Art. 5 par. 1).

  No national rules of jurisdiction will apply against them (Art. 5 par. 2) – protection against ‘exorbitant grounds of jurisdiction’ that may be applicable under national law (e.g., nationality of the plaintiff, mere presence of some assets/belongings of the defendant on the territory of a particular jurisdiction; mere fact that the defendant is served with the claim on the territory of a particular state)

  - CRITICISM: discrimination against third-state defendants

  - Domicile of the defendant is IRRELEVANT for the application of the rules on the RECOGNITION and ENFORCEMENT! RECAST: Art. 2(a) – only criterion is that a judgment is rendered by a court of a EU Member State
Mr. De Vries domiciled in Gouda, Netherlands, books 7 nights in hotel ‘Ibis’ in Hurgada (Egypt). Upon the arrival at the hotel he is told that the hotel is fully booked and was to stay in the hotel ‘Egypt’ instead. The latter did not meet the standards of the hotel he booked and consequently Mr. de Vries files the claim to recover a part of the amount paid with the District Court of Amsterdam where he is domiciled.

On which rules does the court seised establish its jurisdiction: Regulation Brussels Ibis or its national law?
Exceptions: Consumer contracts

- Article 18

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

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.
Exception: Individual contracts of employment

Article 21 (Ex 19)

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

2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.
Mr. X, a Russian national with the domicile in Russia (Moscow), is the owner of a villa in Porec (Croatia). It rented the villa to Ms. And Mr. Y nationals of Russia domiciled in Russia (Moscow) from 15 July 2018 to 15 October 2018. A dispute arises in connection with the damage on the wooden floor allegedly incurred during the rental. Mr. X files the suit with the Municipal Court of Pula (Croatia) on 2 February 2019.

On which rules does the court seised establish its jurisdiction: Regulation Brussels Ibis or its national law?
Exception: Exclusive jurisdiction

Art. 24 (Ex 22)
Rights in rem in immovable property (where the property is situated, with the exception of tenancies of immovable property concluded for temporary private use for a maximum period of 6 months – *forum rei* if the tenant and the landlord have their domicile in the same MS)

Validity of constitution or dissolution of companies (seat of a company)

Validity of entries in public registers – where the register is kept

Registration or validity of patens, trademarks, designs and similar rights – where deposit or registration has been applied for.

5. in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.
In their franchising agreement a US Company and a Russian company insert the following clause in the contract: ‘All disputes arising in, under or in connection with this contract shall be finally settled by the competent court in Berlin, Germany.’ When a dispute arises in connection with the contract, a US company files the suit with the court in Berlin on 5 May 2018.

On which rules does the court seised establish its jurisdiction: Regulation Brussels Ibis or its national law?
Article 25 (Ex 23)
1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:
   • (a) in writing or evidenced in writing; 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.
Brussels I bis Regulation

- ‘Formal’/territorial scope of application (scope *ratione personae*):
  - jurisdiction: Arts. 4, 5 and 6 par. 1 (Ex 2, 3 and 4):
  - CJEU Judgment of 15 March 2012, C-292/10, *G v Cornelius de Visser*

In circumstances such as those in the main proceedings, Article 4(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 (*Recast*) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it does not preclude the application of Article 5(3) of that regulation to an action for liability arising from the operation of an Internet site against a defendant who is probably a European Union citizen but whose whereabouts are unknown if the court seised of the case does not hold firm evidence to support the conclusion that the defendant is in fact domiciled outside the European Union.
Brussels I bis Regulation

• Entering into force and applicability *ratione temporis*:  
  - Art. 66(1): proceedings instituted, authentic documents formally drawn up or registered and to court settlements approved or concluded *on or after* 10 January 2015
  - Art. 66(2): Brussels I Regulation applies to judgments given in legal proceedings instituted …. before 10 January 2015

- Brussels I Regulation
- Art. 66(1): legal proceedings instituted after the entry into force
- Art. 66(2): exceptionally, if proceedings were instituted before entry into force, judgments given after entry into force (under conditions in par. 2 – proceedings instituted after entry into force of the 1968 Brussels or Lugano Convention or jurisdiction on the rules accorded to the Chapter II of the Regulation or a convention between the MS)
Brussels I bis Regulation

Entering into force and applicability *ratione temporis*:

- Brussels I Regulation

Art. 66(2) : exceptionally, if proceedings were instituted before entry into force, judgments given after entry into force (under conditions in par. 2 – proceedings instituted after entry into force of the 1968 Brussels or Lugano Convention or jurisdiction on the rules accorded to the Chapter II of the Regulation or a convention between the MS)

* Interpretation of Art. 66(2) by ECJ C-514/10 of 21 June 2012 (Wolf Naturprodukte GmbH v SEWAR spol. s r. o.)

Article 66(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, for that regulation to be applicable for the purpose of the recognition and enforcement of a judgment, it is necessary that at the time of delivery of that judgment the regulation was in force both in the Member State of origin and in the Member State addressed.
Brussels I bis Regulation

- **Substantive scope** - maintenance obligations arising from a family relationship, parentage, marriage… - expressly excluded; otherwise no substantial changes, except minor alterations in the wording;
- Arbitration exception clarified in the Recital (12) and Art. 73(2)
- **Territorial/formal scope** (Arts. 4, 5 and 6): expanded with respect to consumer disputes and disputes arising from individual contracts of employment:

Art. 6 par. (1) (Ex Art. 4): 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), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State. (see Art. 24).
Brussels I bis Regulation

- *Ratione temporis:*

Article 66
1. This Regulation shall apply only to *legal proceedings* instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.
2. Notwithstanding Article 80, Regulation (EC) No 44/2001 shall continue to apply to *judgments* given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.
Jurisdictional grounds

- **forum rei** - general rule – Art. 4 (Ex 2)
- **forum electus** (court chosen by the agreement of the parties) – Art. 25 (Ex 23)
- **forum actoris** – exorbitant, accepted exceptionally to protect a weaker party (Art. 11(1)(b)) (Ex 9) domicile of the policyholder, insured or beneficiary; Art. 18(2) (Ex 16) domicile of the consumer
- **forum delicti** – Art. 7(2) (Ex 5) place where harmful event occurred or may occur
- **forum solutionis** – Art. 7(1) place of performance of the obligation in question
- **forum rei sitae** – Art. 24(1) (Ex 22) place where immovable property is situated
- **forum incorporationis** – Art. 24(2) place where a company, legal person or association has its seat
- **forum registrationis** – Art. 24(4) place where the deposit or registration has been applied for; Art. 24(3) where the register is kept
- **forum connexitatis** – Art. 8(1) (Ex 6) plurality of defendants: domicile of one of the defendants provided that the claims are closely connected
Jurisdictional rules

- General rule – domicile of defendant
- Exclusive jurisdiction
- Choice-of-court agreements
- Special rules on jurisdiction (alternative jurisdictional grounds in Art. 7 and 8) (Ex 5 and 6)
- Rules on jurisdiction in disputes involving a ‘weaker’ party