BRUSSELS I BIS REGULATION:
GENERAL JURISDICTION RULES

Prof. Dr. Sc. Jasnica Garašić
Faculty of Law of the University of Zagreb
CHAPTER II OF BRUSSELS IBIS REGULATION
Section 1 – General provisions

Article 4

The general rule of jurisdiction – the defendant’s domicile in a Member State.

Article 5

Exceptions to the general rule.

Article 6

The defendant is not domiciled in a Member State.

Provisions related to these Articles
ARTICLE 4
THE GENERAL RULE OF JURISDICTION
1. Content of the Article 4(1):

„Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.”

*basic ground of jurisdiction

ACTOR SEQUITUR FORUM REI.

= national legal systems

The defendant’s domicile is relevant.
The plaintiff’s (claimant’s) domicile is not relevant.

Purpose: to protect the rights of the defendant

ECJ: A-S Autoteile Service GmbH v. Malhé
Case C-220/84, 1985, ECR 2267, para 15.
*under the Brussels Convention

Group Josi Reinsurance Company SA v. Universal General Insurance (UGIC)
Case C-412/98, ECR I-5925, I-5952 para 35.
*under the Brussels Convention
2. Notion „domicile”

It is provided for in **Article 62 for natural persons**.

**Article 62(1):**

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

*There is no an autonomous definition of domicile.*

*It differs from country to country.*

Possible positive or negative jurisdiction conflicts.

*Art. 29 – lis pendens*

**The moment of having domicile in a Member State?**

The moment of instituting the proceedings is decisive. The **principle of perpetuatio fori** is applicable.

**Art. 62(2):**

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

**Article 6 shall apply,**

*if the court decides that the party is not domiciled in another Member State.*
The notion „domicile” is provided for in Article 63 for legal persons or associations.

**Article 63(1):**
For the purpose of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

a) statutory seat,

b) central administration; or

c) principal place of business.

There is an autonomous definition of the notion „domicile” for legal persons or associations.

It suffices, if one of the mentioned criteria is located in one of the Member States.

The use of three criteria: to avoid negative conflicts of jurisdiction (*)

Usually, all mentioned criteria (places) will be located in the same Member State.

If the mentioned criteria are located in different Member States (*), positive conflicts of jurisdiction have to be solved by application of Articles 29-32.

All mentioned criteria are equal and exhaustive.
a) Notion „statutory seat”

If a company or other legal person is incorporated according to the law of a Member State, the legal person has its statutory seat in that Member State.

For the purpose of the Brussels I Regulation: it has its domicile in that Member State.

The statutory seat cannot be changed easily; public registers.

This notion is known in many Member States, but not in: Cyprus, Ireland and the United Kingdom.

Article 63(2):
For the purposes of Ireland, Cyprus and the United Kingdom, „statutory seat” means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.
b) Notion „central administration”

It means the management and control centre; the „real seat”.

It also has to be understood in an autonomous way.

Factual circumstances are important.
c) Notion „principal place of business”

It means the place where the main business activities are located.

Factual circumstances.

≠

Notion „branch, agency or other establishment” used in Article 7(5)

„It implies a place of business which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that latter, although knowing that there will, if necessary, be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.”

Applicability of Article 63 to organizations not having legal personality

Article 63 is applicable not only to company and other legal person, but also to association of natural or legal persons.

Organizations not having legal personality, for example:
* partnerships according to English law
* Italian società semplice
* the German „offene Handelsgesellschaft”

Entities:
* the European Economic Interest Grouping (EEIG)
* the European Company (Societas Europaea; SE)
* the European Cooperative Society
Domicile of a trust

Article 63(3):
In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

*United Kingdom:*

A trust is domiciled in a part of the United Kingdom if and only if the system of law of that part is the system of law with which the trust has its closest and most real connection.

Problem with the application of Article 63(3) in civil law countries that often do not have rules of private international law regarding trusts.

**Convention on the Law Applicable to Trusts and on their Recognition, The Hague, 1 July 1985, Article 7:**
Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

Reference to:

- a) the place of administration of the trust designated by the settlor,
- b) the situs of the assets,
- c) the place of residence or business of the trustee,
- d) the objects of the trust and the places where they are to be fulfilled.
The moment of having domicile in a Member State?

The decisive moment is the moment of instituting the proceedings.

No domicile in a Member State?

If the company or other legal person or association of natural or legal persons is not domiciled in a Member State, Article 6 shall be applied (national rules of the forum state).
3. Nationality of the defendant

Article 4(1):
„Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.”

If the defendant is domiciled in a Member State,
his/her/its nationality is of no importance.

*A Chinese citizen who is domiciled in Croatia, shall be sued in the Croatian courts.

*An American corporation having its registered seat in New York (U.S.A.), but its principal place of business in Paris (France), is domiciled in France for the purposes of the Brussels Ibis Regulation.

If the defendant is domiciled outside the Member States,
Article 6 will be applied = rules of national jurisdiction, including the rules of exorbitant jurisdiction mentioned in Article 5(2).

No discrimination based on nationality against defendants domiciled in a Member State. (Article 18 of the Treaty on the Functioning of the European Union (TFEU)).
4. Forum non conveniens

The doctrine of „forum non conveniens”, known in common law system:

„A court can decline its jurisdiction if it is of the opinion that a court of another jurisdiction would be a more appropriate forum for the trial of the action."

It is not allowed under the Brussels Ibis Regulation.


*under the Brussels Convention
5. Existence of an international element

Although nothing in the wording of Article 4 suggests that its application is subject to the condition that there should be a legal relationship involving a number of Member States, the existence of an international element is required for the application of the jurisdiction rules of the Brussels Ibis Regulation.

Recital 3:
„….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.”

Recital 13:
There must be a connection between proceedings to which this Regulation applies and the territory of the Member States.
ECJ: the existence of an international element is necessary for the application of the jurisdiction rules of the Brussels Convention, and Brussels I Regulation

*under the Brussels Convention

*under the Brussels I Regulation

Corman-Collins SA v. La Maison du Whisky SA
Case C-9/12, ECLI:EU:C:2013-860, para 18.
*under the Brussels I Regulation

If the case is purely national, Article 4 is not applicable.
6. Territorial (place) jurisdiction

Article 4 does not touch upon the national rules of venue.

A defendant who is domiciled in a Member State may be sued in any court of that Member State, which has jurisdiction under the national law of that State.

*Usually, the court of the place where the defendant is domiciled, has jurisdiction under these national rules.*
7. Content of Article 4(2)

Article 4(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.

*Assimilation between persons not having the nationality of the Member States with those who have.*
ARTICLE 5
POSSIBLE EXCEPTIONS TO THE GENERAL RULE OF JURISDICTION

Article 5(1):
Persons **domiciled in a Member State** may be sued in the **courts of another Member State** **only** by virtue of the rules set out in Section 2-7 of this Chapter.

*exhaustive

*Rules of national jurisdiction shall not be applied against a defendant who is domiciled in a Member State.

Section 2 – Special jurisdiction (Articles 7-9)

Section 3 – Jurisdiction in matters relating to insurance (Articles 10-16)

Section 4 – Jurisdiction over consumer contracts (Articles 17-19)

Section 5 – Jurisdiction over individual contracts of employment (Articles 20-23)

Section 6 – Exclusive jurisdiction (Article 24)

Section 7 – Prorogation of jurisdiction (Article 25)

*Article 4 can be put aside by tacit prorogation if the defendant enters an appearance without contesting the court’s jurisdiction (Article 26).*
For example, Article 7:
- matters relating to a contract: courts for the place of performance of the obligations in questions;
- matters relating to tort, delict or quasi-delict: courts for the place where the harmful event occurred or may occur;
- as regards a civil claim for damages or restitution which is base on an act giving rise to criminal proceedings: the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
- as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object: courts for the place where the cultural object is situated at the time when the court is seised;
- as regards a dispute arising out of the operations of a branch, agency or other establishment: courts for the place where the branch, agency or other establishment is situated;
- as regards a dispute brought against a settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing: courts of the Member State in which the trust is domiciled;
- as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight: the court under the authority of which the cargo or freight in question: a) has been arrested to secure such payment; or b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.
Article 5(2):
In particular, the rules of national jurisdiction of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1) shall not be applicable as against the persons referred to in paragraph 1.

National **exorbitant grounds of jurisdiction** based on, for example:
* nationality of the claimant,
* the localisation of property within the forum state,
* the detention of property in the forum state.

They are internationally not acceptable.

The Commission established **the List with these national exorbitant grounds of jurisdiction**.

*All national exorbitant grounds of jurisdiction shall not be applicable against persons domiciled in a Member State.*

CROATIA: Article 54 of the Act on Resolution of Conflicts of Laws with the Regulations of Other Countries in Specific Relations (**the localisation of property within the forum state**) 

All national grounds of jurisdiction, including the exorbitant grounds, may be used for **provisional measures** according to Article 35.
ARTICLE 6
THE DEFENDANT IS NOT DOMICILED IN A MEMBER STATE

1. Content of Article 6(1)

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.

Application of rules of national jurisdiction of the Member State with a few exceptions.
2. Exceptions to the applicability of rules of national jurisdiction

a) Article 18(1) - Consumers

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.

The choice of the consumer.

Protection of the consumer as a weaker party.

Art. 17(2)

"Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member State, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.
b) Article 21(2) - Employees

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.

Article 21(1)(b):
(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 of was situated.

Article 20(2):
Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.
c) Article 24 – Exclusive Jurisdiction

The autonomous rules of the Brussels Ibis Regulation on exclusive jurisdiction shall be applied regardless of the domicile of the parties.

d) Article 25(1) sent. 1 – Prorogation of Jurisdiction

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 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.

+ e) Article 26(1) sent. 1 - Tacit submission

Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction.
3. The domicile of the defendant is unknown

The Brussels Ibis Regulation does not have an explicit provision on it.

**ECJ: Hypotečni banka a.s.v. Udo Mike Linder, Case C-327/10, 2011, ECR I-11543, paras 29-30.**

*If the national court is unable to identify the place of domicile of consumer and has no firm evidence to support the conclusion that the defendant is in fact domiciled outside the European Union (applicability of Article 6), the last known domicile of the consumer may be taken in account, if at the time of the court proceedings the consumer’s domicile is unknown.*

**ECJ: G v. Cornelius de Visser, Case-292/10, ECL:EU:C:2012:142**

*If the defendant is a Union citizen, the domicile of the defendant is unknown and it cannot be ascertained that the defendant is domiciled outside the European Union, the jurisdiction of the court of a Member State is to be established according to rules of jurisdiction of the Brussels Ibis Regulation.*
4. Recognition and enforcement of a judgment given against a defendant domiciled outside the Member States

The judgment has to be given in a Member State (Article 36).

The defendant’s domicile outside a Member State is not an obstacle to the recognition and enforcement of the judgment given against him/her.

*even if the jurisdiction is based on an exorbitant ground of national jurisdiction*
5. Content of Article 6(2)

As against such a defendant, any person domiciled in a Member State may, **whatever his nationality**, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to **point(a) of Article 76(1)**, in the same way **as nationals of that Member State**.

*If the defendant is not domiciled in a Member State, every claimant, whatever his nationality, may rely on rules of national jurisdiction of the forum state, including exorbitant rules of jurisdiction of the forum state.*
THANK YOU FOR YOUR ATTENTION!