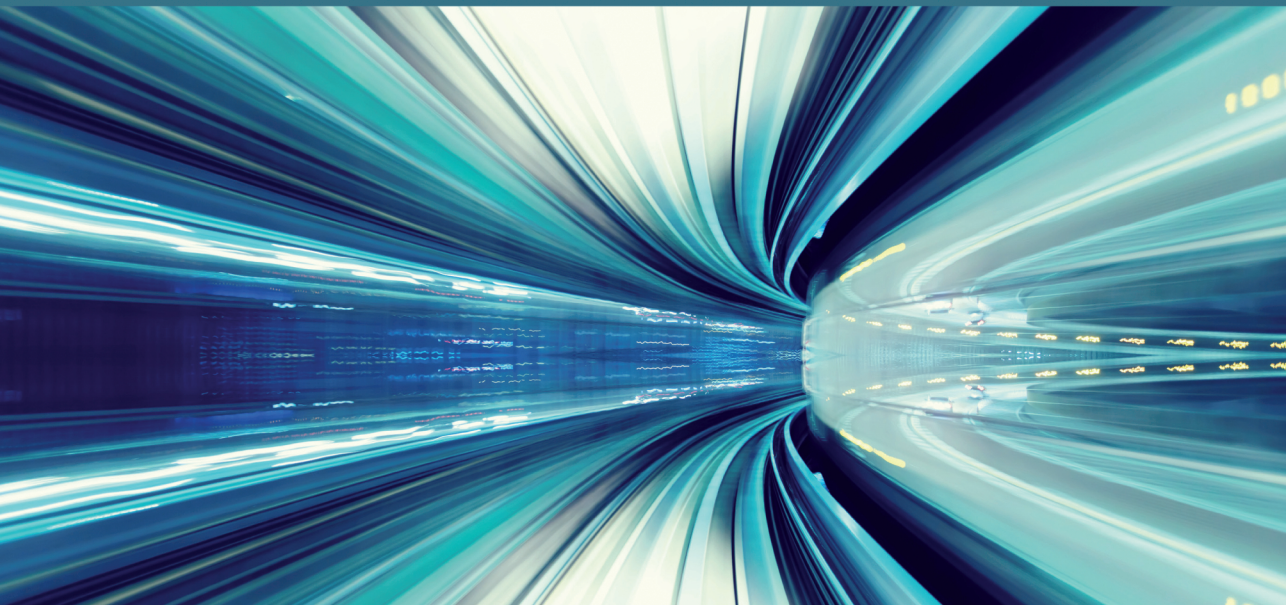




ELENA D'ALESSANDRO (edited by)



“LAW Train” SELF-LEARNING HANDBOOK

**on Brussels I Recast and
Brussels II bis Regulations**



G. Giappichelli Editore

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edited by
Elena D'Alessandro



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Introduction

The origin of this Handbook for self-learning on Brussels I Recast and Brussels II-bis Regulations lies in the LAWTrain Project: an innovative and interactive cross-border training for lawyers, funded by the European Union (Grant agreement no. 806937 - JUST-AG-2017/JUST-JTRA-EJTR-AG-2) and led by the University of Turin, Aix-Marseille Université, Ludwig-Maximilians-Universität München, Universidad Complutense de Madrid, Universität Passau, Univerza v Mariboru, Uniwersytet SWPS, the Consiglio dell'ordine degli avvocati of Lucca, Consiglio dell'ordine degli avvocati of Turin, Ilustre Colegio de Abogados de Madrid, Območnizbor OZS Ljubljana, OIRP Warszawa, Ordre des Avocats du Barreau de Marseille and Rechtsanwaltskammer München.

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The contents of this publication are the sole responsibility of the LAWTrain consortium and can in no way be taken to reflect the views of the European Commission. May this self-learning Handbook be a valuable assistance to its readers.

Elena D'Alessandro

LAWTrain Project coordinator

<https://www.eulawtrain.eu>

Case 1*

Jurisdiction over Cyber Torts

The Italian newspaper “*Nuovo corriere*”, published by Delta Editore s.p.a., a company with statutory seat in **Turin (Italy)**, in its Italian digital and printed version, published that Mrs. Mary Stuart, domiciled and habitually resident in **Warsaw (Poland)**, was involved in money laundering for a drug-trafficking network.

The **printed version** of the newspaper was mainly distributed in Italy and had minor circulation in Warsaw, with only 230 copies sold in that city.

The **digital version** was hosted on servers located in Turin, but visible everywhere in Europe.

Mrs. Mary Stuart is now planning to sue Delta Editore s.p.a. for damages, for having spread fake news.

Which Courts have international jurisdiction over the case?

Answer:

A. Find the relevant EU legal sources

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 judgements in civil and commercial matters (hereinafter: the “**Brussels I Recast Regulation**”) is the relevant instrument to determine which courts have jurisdiction over the case.

Material scope of application: the Brussels I Recast Regulation applies in “civil and commercial matters” (Article 1), **including torts and cyber torts**.

Territorial scope of application: the Brussels I Recast Regulation applies **between all Member States of the European Union** (if the defendant is domiciled in a Member State) **including Italy and Poland**.

* Elena D’Alessandro (University of Turin).

Temporal scope of application: the Brussels I Recast Regulation applies to **legal proceedings** instituted **on or after 10 January 2015** (Article 66.1).



FOR FURTHER READING on the Brussels I recast Regulation:

https://e-justice.europa.eu/content_brussels_i_regulation_recast-350-en.do

B. Find the correct provision

I. General jurisdiction

For actions in civil matters against companies domiciled in a EU Member State, general jurisdiction lies in **any Court of the Member State in which the defendant is domiciled** (cf. Article 4.1 Brussels I Recast Regulation). As **Delta Editore s.p.a. is domiciled in Italy** (cf. Article 63.1(a)(b) Brussels I Recast Regulation), **Italy has general jurisdiction over the case.**

Article 63.1(a)(b) Brussels I Recast Regulation

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

(a) **statutory seat;**

(b) central administration.

II. Special jurisdiction in matters relating to tort

In matters relating to tort, including cyber torts, **Article 7.2 Brussels I Recast Regulation** provides that, in addition to the general place of jurisdiction at the defendant's domicile, the Courts for **"the place where the harmful event occurred"** also have jurisdiction over the case.

Article 7.2 Brussels I Recast Regulation

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

2. in matters relating to tort [...] in the Courts for the place where the harmful event occurred or may occur.

The provision of Article 7.2 Brussels I Recast Regulation has to be interpreted broadly in accordance with the standards of an autonomous interpretation as held in CJEU, 27 September 1998, C-189/87, *Athanasios Kalfelis v Bankhaus Schröder*,

Münchmeyer, Hengst and Co. and others, ECLI: EU:C:1988:459 (concerning Article 5.3 Brussels Convention 1968):

CJEU, 27 September 1998, C-189/87, *Athanasios Kalfelis v Bankhaus Schröder, Münchmeyer, Hengst and Co. and others*, ECLI: EU:C:1988:459

17. In order to ensure uniformity in all the Member States, it must be recognized that the concept of “matters relating to tort” covers **all actions which seek to establish the liability of a defendant and which are not related to a “contract”** within the meaning of Article 5.1 [Article 7.2 Brussels I Recast Regulation].



FURTHER READING: In [CJEU, 17 June 1992, C-26/91, Jakob Handte & Co. GmbH v Traitements Mécano-chimiques des Surfaces SA](#), ECLI:EU:C:1992:268, the CJEU held that there can only be a contractual relationship when a party has undertaken a contractual obligation towards the other party.

III. “Place where the harmful event occurred”

The CJEU, 30 November 1976, C-21/76, *Handelskwekerij G. J. Bier BV v Mines de potasse d'Alsace SA*, ECLI:EU:C:1976:166 (concerning Article 5.3 Brussels Convention 1968) has clarified that:

CJEU, 30 November 1976, C-21/76, *Handelskwekerij G. J. Bier BV v Mines de potasse d'Alsace SA*, ECLI:EU:C:1976:166

15. [...] the place of the event giving rise to the damage no less than the place where the damage occurred can, depending on the case, constitute a significant connecting factor from the point of view of jurisdiction.

19. Thus the **meaning of the expression “place where the harmful event occurred”** [...] must be established in such a way as to acknowledge that the plaintiff has an option to commence proceedings **either** at the **“place where the damage occurred”** or the **“place of the event giving rise to it”**.

IV. “Place where the harmful event occurred” in case of defamation by a printed newspaper

The CJEU, 7 March 1995, C-68/93, *Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v Presse Alliance SA*, ECLI:EU:C:1995:61 (concerning Article 5.3 Brussels Convention 1968) held that, in a case of libel by a printed newspaper article, the words “the place where the harmful event occurred” in Article 7.2 of the Brussels I Recast Regulation means:

- a) either “*the place of the event giving rise to the damages*”, which is located where the publisher of the defamatory publication is established,
- b) or “*the place in which the damages occurred*”, which is the place where the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely with respect to the harm caused in the State of the court seised.

CJEU, 7 March 1995, C-68/93, *Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v Presse Alliance SA*, ECLI:EU:C:1995:61

24. In the case of a libel by a newspaper article distributed in several Contracting States, “**the place of the event giving rise to the damage**”, within the meaning of those judgments, can only be the **place where the publisher** of the newspaper in question is **established**, since that is the place where the harmful event originated and from which the libel was issued and put into circulation.

25. The Court of the place where the publisher of the defamatory publication is established must therefore have jurisdiction to hear the action for damages for all the harm caused by the unlawful act.

26. **However, that forum will generally coincide with the head of jurisdiction set out in the first paragraph of Article 2 of the Convention.**

27. As the Court held in *Handelskwekerij G. J. Bier BV v Mines de potasse d'Alsace SA*, the plaintiff must consequently have the option to bring proceedings also in the place where the damage occurred, since otherwise Article 5.3 of the Convention would be rendered meaningless.

28. The “**place where the damage occurred**” is the place where the event giving rise to the damage, entailing tortious, delictual or quasi-delictual liability, produced its harmful effects upon the victim.

29. In the case of an international libel through the press, the injury caused by a defamatory publication to the honour, reputation and good name of a natural or legal person occurs in the **places where the publication is distributed**, when the victim is known in those places.

30. It follows that the Courts of each Contracting State in which the defamatory publication was distributed and in which the victim claims to have suffered injury to his reputation have **jurisdiction to rule on the injury caused in that State to the victim's reputation.**



As the forum of “*the place of the event giving rise to the damages*” will generally coincide with the head of jurisdiction set out in the first paragraph of Article 4 Brussels I Recast Regulation, Mary Stuart cannot refer to Article 7.2 Brussels I Recast Regulation to sue Delta Editore s.p.a. in a Member State other than the Member State of its domicile.



However, as Warsaw (Poland) is the place where the publication was distributed (= “*the place where the damage occurred*”), the **Court of Warsaw** has spe-

cial jurisdiction over the case according to **Article 7.2 Brussels I Recast Regulation**. More precisely, the Court of Warsaw has jurisdiction to rule **solely** in respect of the **harm caused in Poland** by the **printed version** of the newspaper article.

V. “Place where the harmful event occurred” in case of defamation by a digital newspaper

Mary Stuart argues she was also defamed by the digital version of the newspaper “*Nuovo corriere*”. In this regard, CJEU, 25 October 2011, C-509/09 and C-161/10, *eDate Advertising GmbH and Others v X and Société MGN LIMITED*, ECLI:EU:C:2011:685 applies:

CJEU, 25 October 2011, C-509/09 and C-161/10, *eDate Advertising GmbH and Others v X and Société MGN LIMITED*, ECLI:EU:C:2011:685, operative part

In the event of an alleged infringement of personality rights by means of content placed online on an internet website, the person who considers that his rights have been infringed 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**, which is “**the place of the event giving rise to the damage**”,
- or before the Courts of the **Member State** in which the **centre of his/her interests** is based, which is “**the place where the damages occurred**”.

That person **may also**, instead of an action for liability in respect of all the damage caused, bring his action before the Courts of **each Member State** in the **territory** of which **content placed online** is **or** has been **accessible**. Those Courts have jurisdiction **only** in respect of the **damage caused in the territory** of the Member State of the Court seised.



Once again, as Italy is “*the place of the event giving rise to the damages*”, Mary Stuart cannot refer to Article 7.2 Brussels I Recast Regulation to sue Delta Editore s.p.a. in a Member State other than the Member State of its domicile.

VI. Localization of the “centre of interests” (“the place where the damages occurred”)

The CJEU, 25 October 2011, C-509/09 and C-161/10, *eDate Advertising GmbH and Others v X and Société MGN LIMITED*, ECLI:EU:C:2011:685 held that:

CJEU, 25 October 2011, C-509/09 and C-161/10, *eDate Advertising GmbH and Others v X and Société MGN LIMITED*, ECLI:EU:C:2011:685

49. The place where a person has the centre of his interests **corresponds in general to his habitual residence**. However, a person may also have the centre of his interests in a Member State in which he does not habitually reside, in so far as other factors, such as the pursuit of a professional activity, may establish the existence of a particularly close link with that State.



As Mary Stuart is habitually resident in Warsaw (Poland), which is the **forum actoris**, **Warsaw** is the place where her centre of interests is based. Thus, Warsaw is “the place where the damage occurred”. Therefore, the **Court of Warsaw** has special jurisdiction over the case according to **Article 7.2 Brussels I Recast Regulation**. More precisely, the Court of Warsaw has jurisdiction to rule in respect of the all the **damages caused everywhere** by the **digital version** of the newspaper article.

C. Conclusion



As the below chart illustrates, **Italy** has **general jurisdiction** over the case according to Article 4 Brussels I Recast Regulation, whereas the **Court of Warsaw** (Poland) has **special jurisdiction** over the case pursuant to Article 7.2 Brussels I Recast Regulation, with a restricted power to **rule solely** in respect of the **harm caused in Poland** by the **printed version** of the newspaper article, and a general power to rule in respect of **all the harm caused** by the **digital version** of the newspaper article.

| | Italy Art. 4 Brussels I Recast Regulation | Poland Art. 7.2 Brussels I Recast Regulation |
|--|--|---|
| International jurisdiction to award damages for ALL the harm caused by the defamation by a <i>printed</i> newspaper | ✓ | |
| International jurisdiction to award damages for ALL the harm caused by the defamation by a <i>digital</i> newspaper | ✓ | ✓ |