



**Transnational civil litigation and
International commercial arbitration**
Jurisdiction in civil and commercial matters within EU
– *Regulation UE n. 1215/2012 and Lugano
Convention 2007*
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20TH SEPTEMBER 2023

REGULATION EU N. 2015/2012

General features

- The **European Union** is a supranational (political and economic) institution that has, *inter alia*, the objective of maintaining and developing borderless common justice area where citizens and businesses can resolve legal issues in other EU Member States in the same way as they can at home. To reach this objective, EU political institutions can adopt measures relating to judicial cooperation in civil matters having cross-border implications.
- **Regulation (EU) No 1215/2012** (hereinafter referred to as Brussels I-bis) establishes uniform rules, applicable in all member States, aimed, *inter alia*, at avoiding conflicts of jurisdiction in civil and commercial matters.
- **Brussels I-bis** determines, primarily, the courts of which Member State have jurisdiction to decide on a civil and commercial dispute where there is a cross-border element

REGULATION EU N. 2015/2012

Scope of application

Article 1, paragraph 1

1. This Regulation shall apply in **civil and commercial matters** whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

- The concept of civil and commercial matters must be regarded as an autonomous concept and does not cover disputes resulting from the exercise of public powers by one of the parties to the case. Actions between a public authority and a private entity may come within the scope of Brussels I-bis, unless the public authority is acting in the exercise of its public powers. The exercise of 'sovereign power' is the distinctive and crucial element for the application of Brussels I-bis *ratione materiae*

REGULATION EU N. 2015/2012

Civil and commercial matters

- According to article 1, paragraph 2, Brussels I-bis regulation, certain civil and commercial matters are excluded from the material scope of application of it. For some of those matters there are other instruments of EU legislation which govern jurisdiction and the recognition and enforcement of judgments:
 - ✓ **Regulation (EU) n. 1111/2019** concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (art. 1, par. 2, let. a)
 - ✓ **Regulation (EU) n. 848/2015** on insolvency proceedings (art. 1, par. 2, let. b)
 - ✓ **Regulation (EU) n. 4/2009** on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (art. 1, par. 2, let. e)
 - ✓ **Regulation (EU) n. 650/2012** on jurisdiction, applicable law, recognition and enforcement of decisions in matters of succession

REGULATION EU N. 2015/2012

Rules of jurisdiction – General provisions

- **General ground of jurisdiction** – Jurisdiction is founded on the principle that jurisdiction is generally based on the defendant's domicile. According to article 4, par. 1, Brussels I-bis, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State
- For **natural person** Brussels I-bis does not provide an autonomous definition of domicile. It is for the Court seised, applying the law of the member state where the defendant is supposed to have his/her domicile, determine whether a party is domiciled in a member State (art. 61, par 1 and 2)
- For **legal person** Brussel I-bis lays down an autonomous definition for domicile: a legal person is domiciled at the place where it has its (a) statutory seat, or (b) central administration, or (c) principal place of business (art. 63, par. 1)
- A **defendant not domiciled in a Member State** should in general be subject to the national rules of jurisdiction applicable in the territory of the Member State of the court seised.

REGULATION EU N. 2015/2012

Rules of jurisdiction – Special provisions

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- **Special grounds of jurisdiction** – In addition to the defendant's domicile, there are alternative and special grounds of jurisdiction based on a close connection between the court and the action. According to art. 5, par. 1, , Brussels I-bis, 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 Sections 2 to 7 of Chapter I of Brussels I-bis regulation

REGULATION EU N. 2015/2012

Rules of jurisdiction – Matters related to contracts

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- In matters relating to a **contract**, art. 7, n. 1, provides for
 - (i) a **general provision** according to which the jurisdiction lies in the court for the place of performance of the obligation in question, and
 - (ii) **specific provisions** for contracts for the sale of goods and for the provision of services
 - Specific provision for **contracts for the sale of goods**: the place of performance of the obligation in question shall be the place in a member state where, under the contract, the goods were delivered or should have been delivered
 - Specific provision for **contracts for the provision of services**: the place of performance of the obligation in question shall be the place in a member state where, under the contract, the services were provided or should have been provided

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Rules of jurisdiction – Matters related to contracts

- **Basic principles** – The basic principles as to the question whether a dispute regards a matter relating to a contract are that: (i) contractual matters have to be defined autonomously and independently from the applicable national rules, and (ii) all claims based on obligations not voluntarily accepted by the debtor are excluded from the application of article 7(1) (C-34/82, Peters; C-26/91, Handte; C-96/00, Gabriel; C-27/02 Engle)
- **Special cases** – An action founded on the pre-contractual liability of the defendant is a matter relating to tort, as the obligation to behave in good faith stems from the law (Tacconi, C-334/00); actions seeking the annulment of a contract and the restitution of sums paid but not due on the basis of that contract constitute “matters relating to a contract” (Profit Investment, C-366/13); in the event of several places of delivery of goods in the same Member state, the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. (Color Drack, C-386/05); where services are provided in several Member States, the court which has jurisdiction to hear and determine all the claims arising from the contract is the court in whose jurisdiction the place of the main provision of services is situated (Wood Floor Solutions, C-19/09) ⁸

REGULATION EU N. 2015/2012

Rules of jurisdiction – Tort claims

- **Rules of jurisdiction** – In matters relating to **tort, delict or quasi-delict**, article 7 n. 2 Brussels I-bis, provides that the jurisdiction lies in the courts for the place where the **harmful event occurred or may occur**
- **General principle** – Matters relating to tort, delict or quasi-delict cover all actions which seek to establish the liability of a defendant and are not related to matters of contract

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Rules of jurisdiction – Tort claims

- **“place where the harmful event occurred or may occur”** – It is 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 applicant, in the courts for either of those places
- **defamation by printed media** distributed in several member States, action for damages against the editor may be brought either before the courts of the Member State of the place where the editor has its seat which will have jurisdiction to award damages for all the harm caused by the defamation, or before the courts of each member State in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the State of the court seised;
- in the event of **defamation by an online publication**, the person who considers that his/her reputation have been damaged 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 interests is based. In both cases, courts will have jurisdiction to award damages for all the harm caused by the defamation

STUDYING MATERIALS

In addition to this PPT presentation, students should:

- Read the text of Regulation EU n. 1215/2012 (you may find it at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:en:PDF>)
- Study pages 18-29, 31 (from paragraph 9)-41, 44-77 of the textbook T. Hartley, *International Commercial Litigation*, Third Edition, Cambridge University Press, 2022
- Study the case on jurisdiction over cyber torts discussed in class (LawTrain – Case 1 – pp. 7-12)