



**Transnational civil litigation and
International commercial arbitration**
Jurisdiction in civil and commercial matters within EU
– *Regulation UE n. 1215/2012 and Lugano
Convention 2007 (II)*
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REGULATION EU N. 1215/2012

Protective grounds of jurisdiction

- **Regulation (EU) No 1215/2012** (hereinafter referred to as Brussels I-bis) contains certain provisions relating to grounds of jurisdiction for cross border disputes which involve weaker parties
- Sections 3, 4 and 5 of Brussels I bis provide for special rules of jurisdiction
 - (i) in matters relating to **insurance** (art. 10-16),
 - (ii) over **consumer contracts** (art. 17-19), and
 - (iii) over **individual contracts of employment** (art. 20-23)
- These rules are aimed at protecting the weaker party (the **insured**, the **consumer** and the **employee**) providing for grounds of jurisdiction more favourable to his/her interests than the general rules.
- The basic rule is that the actions against the weaker party must be brought only before the courts of the member State where the weak party is domiciled

REGULATION EU N. 1215/2012

Jurisdiction over consumer contracts

- **Who is a Consumer:** a person who enters into a contract for a purpose which can be regarded as being outside his trade or profession. The same person may be regarded as a consumer in relation to certain contracts and as an economic operator in relation to others
- **Who is a Professional:** 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.
- **Consumer** may bring proceedings **against professional** either in the courts of the Member State in which the professional is domiciled or, regardless of the latter's domicile, in the courts of the member State where the consumer is domiciled. Where a professional is not domiciled in a Member State but it has a branch, agency or other establishment in one of the Member States, in disputes arising out of the operations of the branch, agency or establishment, the professional must be deemed to be domiciled in that Member State
- Proceedings **against a consumer** must be brought only in the courts of the Member State in which the consumer is domiciled

REGULATION EU N. 1215/2012

Jurisdiction over consumer contracts

- The rules on jurisdiction over **consumer contracts** constitute a derogation both from the general rule of jurisdiction laid down in Article 4(1), which confers jurisdiction upon the courts of the Member State in which the defendant is domiciled, and from the rule of special jurisdiction for contracts, set out in Article 7(1) of that regulation, under which jurisdiction lies with the courts for the place of performance of the obligation in question
- Only contracts concluded outside and independently of any trade or professional activity or purpose, solely for the purpose of satisfying an individual's own needs, are covered by the special rules laid down by the regulation to protect the consumer as the party deemed to be the weaker party
- As regards a person who concludes a contract for a dual purpose, partly for use in his or her professional activity and partly for private matters, that person could rely on protective rules of jurisdiction only if the link between the contract and the trade or profession of the person concerned was so slight as to be marginal.

REGULATION EU N. 1215/2012

Exclusive jurisdiction

- **Rules of exclusive jurisdiction** – In certain cases where the connection of a dispute with the territory of a Member State is very tight, the courts of that Member State shall have exclusive jurisdiction. Exclusive jurisdiction means that, in special and limited cases, only these special rules come into play to exclusion of all other general and special grounds of jurisdiction
- Exclusive rules of jurisdiction are
 - (i) typical and limited to those listed in **article 24** of Brussels I bis, therefore subject to restrictive interpretation
 - (ii) mandatory, as the parties that can not depart from them by way of a mutual agreement, and therefore applicable by the courts on their own motion, without the need for an objection to jurisdiction raised by the parties (*ex officio*)

REGULATION EU N. 1215/2012

Other rules of jurisdiction

- **Multiple defendants cases** – A person domiciled in a Member State may also be sued where he/she is one of a number of defendants, in the courts of the member state where any one of them is domiciled, provided the claims 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 (**art. 8, n. 1**)
- **Counterclaim:** where the defendant may wish to bring a claim arising from the same contract or facts on which the action already brought against him claim was based, the court in which the original claim is pending shall have jurisdiction over the counterclaim irrespective of the fact that claimant is domiciled in another member state (**art. 8, n. 3**)
- **Appearance:** without prejudice of exclusive jurisdiction cases, the courts of the member state before which the defendant appears shall have jurisdiction, unless the defendants appears before such court just for contesting the jurisdiction (**art. 26, paragraph 1**)

LUGANO CONVENTION 2007

Overview

- The Lugano Convention is an international convention concluded between the European Union (on behalf of all member states) and three states part of the European Free Trade Association (Switzerland, Iceland and Norway)
- The idea behind the conclusion of the Lugano Convention is to extend the rules and principles on conflict of jurisdiction in civil and commercial matters applicable to relations between EU Member states also to relations between EU Member states and these three states.
- There are however slight differences between the system applicable to relations between EU Member states according to Regulation Brussels I-bis and the system of Lugano Convention. Lugano Convention is, as matter of fact, a pure extension of the predecessor of Brussels I-bis (Regulation CE 44/2001), so it does not reflect, so far, the changes that have been made in the European Union when Brussels I-bis entered into force (jurisdiction in matters relating to contracts, employment contracts, defendants domiciled in non contracting states)

STUDYING MATERIALS

In addition to this PPT presentation, students should:

- Read the relevant provisions of Regulation EU n. 1215/2012
- Read paragraphs 1-10, 40-67 of the judgment rendered by the European Court of Justice, in case C-821/21, 14 September 2023, *Club La Costa*
- Read judgment rendered by the European Court of Justice, in case C-296/20, 30 September 2021 January 2018, *Commerzbank AG*
- Read judgment rendered by the European Court of Justice, in case C-498/16, 25 January 2018, *Schrems*
- Read paragraphs 1-13, 47-94 of the judgment rendered by the European Court of Justice, in case C-585/08, 7 December 2010, *Palmer Alpenhof*