

European Business Law

Part C.2 : CROSS BORDER LITIGATION

**University of Strasbourg
Faculty of Law – Master 1**

Prof. Jochen BAUERREIS
Avocat & Rechtsanwalt
Avocat spécialisé en droit de l'Arbitrage
Avocat spécialisé en droit international et de l'Union Européenne

PRESENTATION OUTLINE

- I. Cross-border judicial procedures**
- II. European order for payment**
- III. Recognition and enforcement of foreign decisions**
- IV. Litigation in the EU : Practical roadmap**

I. Cross-border judicial procedures

A. Three-step jurisdiction filter

- Article 25 of Brussels I bis : Prorogation of jurisdiction
- Article 7(1) (2) and (3) of Brussels I bis : Special Jurisdiction
- Article 4(1) of Brussels I bis : General Provisions

B. Additional jurisdiction rules

- Article 10-16 : matters related to insurance
- Article 17-19 : consumer contracts
- Article 20-23 : individual contracts of employment

1. Prorogation of jurisdiction

Article 25 of Brussels I bis

« 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;
- (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.

1. Prorogation of jurisdiction

2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.
3. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between those persons or their rights or obligations under the trust are involved.
4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 24.
5. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.
The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid. »

1. Prorogation of jurisdiction

- Choice of court agreements
- Parties may agree in advance on the court(s) of one or more EU MS for disputes relating to a specific legal relationship (contractual or non-contractual)
- Presumption : exclusive jurisdiction unless agreed otherwise
- Parties may name more than one court
- Parties may name in general “*the courts of the defendant*”

1. Prorogation of jurisdiction

- Scope :
 - Independent ground for applying the Regulation
 - Applies even if defendant is not domiciled in the EU
 - Brussels I bis Regulation (vs. previous versions) removed requirement for one party to be domiciled in the EU
 - Solely the court(s) chosen by the parties shall be established in the EU

1. Prorogation of jurisdiction

- Form :
 - written / confirmed in writing
 - established practice between parties
 - international trade custom
- Clause stands independent from the main contract → main contract void ≠ clause void

1. Prorogation of jurisdiction

- Substantive validity of a jurisdiction clause : governed by the law of the chosen court

→ Preamble of Brussels I bis Regulation :

« Where a question arises as to whether a choice-of-court agreement in favor of a court or the courts of a Member State is null and void as to its substantive validity, that question should be decided in accordance with the law of the Member State of the court or courts designated in the agreement, including the conflict-of-laws rules of that Member State. »

- Question : How to determine the applicable law to jurisdiction clause under Rome I

Article 2 lit. e) Rome I (“exclusions”)

« (...) arbitration agreements and agreements on the choice of court; (...)»

1. Prorogation of jurisdiction

- CJEU, 27 February 2025, SIL v. Agora (C-537/23) :
 - Facts : **asymmetric clause** → one party may sue only before the named court the other may sue before that court + « *any other competent court* »

Clause in that case :

“The court of Brescia (Italy) will have jurisdiction over any dispute arising from or related to this contract. [SIL] reserves the right to bring proceedings against the purchaser before another competent court in Italy or elsewhere.”

1. Prorogation of jurisdiction

- CJEU, 27 February 2025, SIL v. Agora (C-537/23):
 - Validity conditions :
 1. Jurisdiction clause must name court(s) of an EU MS / or of a Lugano Contracting State
 2. Jurisdiction clause must provide objective, precise criteria to identify any alternative court
 3. Jurisdiction clause must not breach protective rules (Art. 15, 19, 23) or exclusive jurisdiction (Art. 24)

2. Special jurisdiction

Article 7(1) and (2) of Brussels I bis Regulation

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

(a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

—in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

—in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if point (b) does not apply then point (a) applies;

(...) »

2. Special jurisdiction

Article 7(1) and (2) of Brussels I bis Regulation

« (...)

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur; »

2. Special jurisdiction

- Special jurisdiction rules : additional / complementary rules to general principle
- Give the claimant an alternative to the defendant's domicile (Art. 4)
- Precondition : defendant domiciled in an EU MS

2. Special jurisdiction

- Choice for claimant :
 - EITHER : Court under article 4 (domicile of defendant) : general principle
 - OR : Court under article 7 (closest connection to the dispute) : specific rules
 - 7(1) Contractual dispute
 - 7 (2) Extra-contractual dispute

2. Special jurisdiction

- **Contractual matters – article 7 (1)**
 - **Point (a)** : « *(a) in matters relating to a contract, in the courts for the place of performance of the obligation in question* »
 - Court of the place where the obligation forming the basis of the claim was performed
 - Requires identifying the main obligation and determining the place of performance under the applicable contract law (Rome I Regulation)

2. Special jurisdiction

- Contractual matters – article 7 (1)
 - **Point (b)** : « *for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:*
 - in the case of the **sale of goods**, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,*
 - in the case of the **provision of services**, the place in a Member State where, under the contract, the services were provided or should have been provided;* »
 - Simplification for two categories :
 - **Sale of goods** → place of delivery (in an EU MS)
 - **Provision of services** → place of provision (in an EU MS)
 - **Autonomous definition under EU law** (no reference to national law)

2. Special jurisdiction

- Contractual matters – article 7 (1)
 - **Point (b)** : « *for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:*
—*in the case of the **sale of goods**, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,*
—*in the case of the **provision of services**, the place in a Member State where, under the contract, the services were provided or should have been provided;* »
 - The role of the INCOTERMS clauses for the determination of the place of delivery of the goods (= transfer of risks)
 - Clause **EXW** (“Ex works”) : **Sellor**’s premises / seat / place of business
 - Clauses F- and C-class: during the transport
 - Clauses D-class (**DAP**, **DPU**, **DDP**): at place of destination named by **Buyer**

2. Special jurisdiction

- **Contractual matters – article 7 (1)**
 - **Point (c)** : « *if point (b) does not apply then point (a) applies* »
 - If the contract is neither a sale of goods nor a provision of services :
 - Return back to lit. (a) :
 - Determine the place of performance of the obligation forming the basis of the claim pursuant to the law applicable to the contact
 - ✓ Law applicable to the contract : "*lex causae*" – "*lex contractus*"
 - ✓ Rome I Regulation

2. Special jurisdiction

- **Tort/Delict – article 7 (2) :**

Art 7 (2) Brussels I bis Regulation

« *in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur* »

- Court where damage occurred or may occur
- Complex events (cause / harmful event vs. place of realization of the damage) :
→ claimant can choose between both connections (*Mines de Potasse d'Alsace*)

3. General principle

Article 4(1) of Brussels I bis

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

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. »*

3. General principle

- Main jurisdiction rule in civil and commercial matters under Brussels I bis Regulation
- Principle : any person domiciled in an EU MS must be sued in the courts of that State (regardless of nationality)
- Application to non-Europeans : a person with a non-EU nationality domiciled in an EU MS is treated in the same manner as an EU national

3. General Provisions

- Example :
 - German company domiciled in Munich and French company domiciled in Lyon
 - German company wants to sue French Company for price payment
 - German Company : Claimant
 - **French Company : Defendant (Art. 4)**
 - French courts have jurisdiction (Art. 4) unless a valid choice of court agreement (**Art. 25**) or special rule (**Art. 7**) applies
 - Art. 25 : **exclusive jurisdiction of the chosen Court**
 - Art 7(1): e.g., **place of delivery of goods** → incoterms EXW: place of delivery at seller's premises / German Company

B. Additional jurisdiction rules

1. Article 10-16 : matters related to insurance

Article 10 of Brussels I bis

« *In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7.*»

1. Article 10-16 : matters related to insurance

Article 11 of Brussels I bis

« 1. An insurer domiciled in a Member State may be sued :

- (a) *in the courts of the Member State in which he is domiciled;*
- (b) *In another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; or*
- (c) *if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer*

2. *An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State. »*

1. Article 10-16 : matters related to insurance

Article 12 of Brussels I bis

« *In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency. »*

1. Article 10-16 : matters related to insurance

Article 13 of Brussels I bis

« 1. *In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.*

2. *Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.*

3. *If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.»*

1. Article 10-16 : matters related to insurance

Article 14 of Brussels I bis

« 1. *Without prejudice to Article 13(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.*

2. *The provisions of this Section 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.»*

1. Article 10-16 : matters related to insurance

Article 15 of Brussels I bis

« *The provisions of this Section may be departed from only by an agreement:*

- (1) which is entered into after the dispute has arisen;*
- (2) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section;*
- (3) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State; (...).»*

1. Article 10-16 : matters related to insurance

Article 15 of Brussels I bis

« (...)

- (1) *which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or*
- (2) *which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.»*

1. Article 10-16 : matters related to insurance

Article 16 of Brussels I bis

« *The following are the risks referred to in point 5 of Article 15:*

(1) any loss of or damage to:

- (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;*
- (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft; (...) »*

1. Article 10-16 : matters related to insurance

Article 16 of Brussels I bis

« (...)

(2) any liability, other than for bodily injury to passengers or loss of or damage to their baggage:

- (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
- (b) for loss or damage caused by goods in transit as described in point 1(b); (...) »

1. Article 10-16 : matters related to insurance

Article 16 of Brussels I bis

« (...)

(3) any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;

(4) any risk or interest connected with any of those referred to in points 1 to 3;

(5) notwithstanding points 1 to 4, all 'large risks' as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) »

2. Article 17-19 : Consumer contracts

Article 17 of Brussels I bis

« 1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

- (a) *it is a contract for the sale of goods on instalment credit terms;*
- (b) *it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or*
- (c) *in all other cases, the contract has been concluded with a 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 or to several States including that Member State, and the contract falls within the scope of such activities.*

(...)»

2. Article 17-19 : Consumer contracts

Article 17 of Brussels I bis

« 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 States, 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.*

3. *This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation. »*

2. Article 17-19 : Consumer contracts

Article 18 of Brussels I bis

« 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. »

2. Article 17-19 : Consumer contracts

Article 19 of Brussels I bis

« *The provisions of this Section may be departed from only by an agreement:*

- (1) *which is entered into after the dispute has arisen;*
- (2) *which allows the consumer to bring proceedings in courts other than those indicated in this Section; or*
- (3) *which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State. »*

3. Article 20-23 : Individual contracts of employment

Article 20 of Brussels I bis

« 1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.

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. »

3. Article 20-23 : Individual contracts of employment

Article 21 of Brussels I bis

« 1. An employer domiciled in a Member State may be sued:

- (a) in the courts of the Member State in which 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. »

3. Article 20-23 : Individual contracts of employment

Article 22 of Brussels I bis

« 1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

2. The provisions of this Section 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. »

3. Article 20-23 : Individual contracts of employment

Article 23 of Brussels I bis

« *The provisions of this Section may be departed from only by an agreement:*

- (1) which is entered into after the dispute has arisen; or*
- (2) which allows the employee to bring proceedings in courts other than those indicated in this Section. »*

Article 6 Rome I Regulation

1. *Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:*
(a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or
(b) by any means, directs such activities to that country or to several countries including that country,
and the contract falls within the scope of such activities.
2. *Notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.*
3. *If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be determined pursuant to Articles 3 and 4.*
4. *Paragraphs 1 and 2 shall not apply to:*
(a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;
(b) a contract of carriage other than a contract relating to package travel within the meaning of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (15);
(c) a contract relating to a right in rem in immovable property or a tenancy of immovable property other than a contract relating to the right to use immovable properties on a timeshare basis within the meaning of Directive 94/47/EC;
(d) rights and obligations which constitute a financial instrument and rights and obligations constituting the terms and conditions governing the issuance or offer to the public and public take-over bids of transferable securities, and the subscription and redemption of units in collective investment undertakings in so far as these activities do not constitute provision of a financial service;
(e) a contract concluded within the type of system falling within the scope of Article 4(1)(h).

Article 7 Rome I Regulation

1. *This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States. It shall not apply to reinsurance contracts.*

2. *An insurance contract covering a large risk as defined in Article 5(d) of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (16) shall be governed by the law chosen by the parties in accordance with Article 3 of this Regulation. To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.*

3. *In the case of an insurance contract other than a contract falling within paragraph 2, only the following laws may be chosen by the parties in accordance with Article 3:*

- (a) the law of any Member State where the risk is situated at the time of conclusion of the contract;*
- (b) the law of the country where the policy holder has his habitual residence;*
- (c) in the case of life assurance, the law of the Member State of which the policy holder is a national;*
- (d) for insurance contracts covering risks limited to events occurring in one Member State other than the Member State where the risk is situated, the law of that Member State;*
- (e) where the policy holder of a contract falling under this paragraph pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different Member States, the law of any of the Member States concerned or the law of the country of habitual residence of the policy holder.*

Where, in the cases set out in points (a), (b) or (e), the Member States referred to grant greater freedom of choice of the law applicable to the insurance contract, the parties may take advantage of that freedom.

To the extent that the law applicable has not been chosen by the parties in accordance with this paragraph, such a contract shall be governed by the law of the Member State in which the risk is situated at the time of conclusion of the contract.

Article 7 Rome I Regulation

4. *The following additional rules shall apply to insurance contracts covering risks for which a Member State imposes an obligation to take out insurance:*

(a) *the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the Member State that imposes the obligation. Where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail;*
(b) *by way of derogation from paragraphs 2 and 3, a Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance.*

5. *For the purposes of paragraph 3, third subparagraph, and paragraph 4, where the contract covers risks situated in more than one Member State, the contract shall be considered as constituting several contracts each relating to only one Member State.*

6. *For the purposes of this Article, the country in which the risk is situated shall be determined in accordance with Article 2(d) of the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services (17) and, in the case of life assurance, the country in which the risk is situated shall be the country of the commitment within the meaning of Article 1(1)(g) of Directive 2002/83/EC.*

Article 8 Rome I Regulation

1. *An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.*
2. *To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.*
3. *Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.*
4. *Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.*

- **Comparison between protective dispositions**

	Insurance (Art. 10-16)	Consumer contracts (Art. 17-19)	Employment contracts (Art. 20-23)
Purpose	Protect policyholder / beneficiary	Protect consumer	Protect employee
“Weak” party’s claim	Policyholder, insured, or beneficiary may sue at their own domicile (Art. 11)	Consumer may sue at their domicile or trader's domicile (Art. 18(1))	Employee may sue at habitual place of work or employer's domicile (Art. 21)
“Strong” party’s claim	Insurer may only sue at defendant’s domicile (Art. 14)	Trader may only sue at consumer’s domicile (Art. 18(2))	Employer may only sue at employee’s domicile (Art. 22).
Choice of court	Only valid if favorable to the policyholder or agreed after dispute has risen (Art. 15)	Only valid if favorable to the consumer or agreed after dispute has risen (Art. 19)	Only valid if favorable to the consumer or agreed after dispute has risen (Art. 23)

- **Comparison between protective dispositions**

Brussel I bis (Jurisdiction)	Rome I (Applicable Law)
Determines which court has jurisdiction	Determines which law applies
Purpose: Protect weaker parties <ul style="list-style-type: none"> - Insurance (Art. 10-16) - Consumer (Art. 17-19) - Employee (Art. 20-23) 	Purpose : Protect weaker parties on the basis of mandatory provisions <ul style="list-style-type: none"> - Consumer (Art. 6) - Insurance (Art. 7) - Employee (Art. 8)
Choice of forum is limited to protect weaker parties	Choice of law possible but cannot remove mandatory provisions
Key factor: domicile of weaker party	Key factor: habitual residence of weaker party
Protects against being forced into distant litigation	Protects against losing local consumer or employee protections

II. European order for payment

- This procedure may help to obtain quickly the repayment of the sums owed by a debtor
- Only applies to cross-border disputes

REGULATION n° 1896/2006 Article 3 : Cross-border cases

- « *For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized.* »

II. European order for payment

- **Geographic determination of the competent Jurisdiction** : Application of Brussels I bis, except if the litigation concerns consumers being sued

REGULATION n° 1896/2006 Article 6 : Jurisdiction

- « 1. *For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No 44/2001.*
- 2. *However, if the claim relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled, within the meaning of Article 59 of Regulation (EC) No 44/2001, shall have jurisdiction.»*

II. European order for payment

- **Procedure**
 - Application for a European order for payment shall be made by the claimant
 - *“The defendant may lodge a statement of opposition within 30 days of service of the order on the defendant. He shall indicate that he contests the claim, without having to specify the reasons for this.”* (Art. 16)

II. European order for payment

- **Procedure**
 - « *If a statement of opposition is entered within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event. (...) »* (Art. 17)
 - *If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable. (...) »* (Art. 18)

II. European order for payment

- **Effect**
 - « *A European order for payment which has become enforceable in the Member State of origin shall be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.* » (Art. 19)

III. Recognition and enforcement of foreign decisions

A. Recognition vs. enforcement

B. Suppression of exequatur in the EU

A. Recognition vs enforcement

a. Recognition

- Definition : seeking the substantive effectiveness of the foreign judgment (e.g., cancellation of a contract, recognition of a debt)
- No need for enforcement → no need for a public authority to compel
- Principle : immediate and automatic recognition, unless later declared irregular

A. Recognition vs enforcement

b. Enforcement

- Purpose : obtain enforceable power → possibility to use public coercion
- Necessary procedure : exequatur (for judgments from States outside the EU)
- Jurisdiction :
 - Judicial tribunal (single judge, may refer to a panel)
 - Territorial jurisdiction : court of defendant's domicile (or residence, or place chosen by claimant if justified)

A. Recognition vs enforcement

b. Enforcement

- Exequatur decision :
 - Finds the judgment regular or not → enforceable or refused
 - Appeals : common law procedures
- EU specificity : procedure abolished since Brussels I bis Regulation (2015)
 - Mutual recognition of State Court decisions within the EU
 - Certificate (Annex I) to be issued by the Court of origin (Article 53)

B. Suppression of exequatur in the EU

- A posteriori control still possible :
 - Recognition :
 - Main procedure for recognition (to confirm regularity)
 - Incidental control within another case
 - Enforcement :
 - Art. 45 : execution can be refused upon request (specific grounds)
 - Jurisdiction : enforcement judge

IV. Litigation in the EU: Practical Roadmap

- **Step 1 : Checking Jurisdiction (Three-Tier Test)**
- **First filter : Exclusive Jurisdiction ?**
 - Is there a valid jurisdiction clause in the contract ? (Art. 25)
 - Exclusivity of the jurisdiction chosen by the parties is presumed
- **If not : Default Rule**
 - Defendant's domicile = competent court (Art. 4(1))
 - Domicile in any EU Member State is decisive
- **Complementary Rules (Special Jurisdiction)**
 - Contract disputes → place of performance (Art. 7(1))
 - Tort dispute → place of harmful event (Art. 7.2))
- **Always check for overriding exclusive EU rules (immovable property, company registers, etc.)**

IV. Litigation in the EU: Practical Roadmap

- **Step 2 : Drafting & filing the Claim**

- Identify competent court → ensure correct jurisdictional basis
- Draft claim following national procedural law of chosen court
- Include all relevant evidence (contracts, invoices, correspondence)
- Prepare for translations : court language + service abroad requirements

IV. Litigation in the EU: Practical Roadmap

- **Step 3 : Notifying the Claim Abroad**

- Governed by EU Service Regulation (1393/2007)
- Transmission options :
 - Central authorities between MS
 - Postal services where accepted
- Defendant must receive translation into the official language of the state

IV. Litigation in the EU: Practical Roadmap

- **Step 4 : Conduct of the Proceedings**

- Defendant may contest jurisdiction at early stage
- Gathering evidence abroad via EU Evidence Regulation (1206/2001)
- Cross-border cooperation between courts

IV. Litigation in the EU: Practical Roadmap

- **Step 5 : Judgment & Recognition**

- Judgments are automatically recognized across MS (Art. 36)
- Since 2015 : no exequatur procedure needed
- Refusal of recognition possible only on limited grounds:
 - Public policy violation
 - Lack of due process
 - Irreconcilable judgment with earlier one

IV. Litigation in the EU: Practical Roadmap

- **Step 6 : Enforcement Abroad**

- Enforcement follows national law of execution state
- Required documents :
 - Certified copy of judgment
 - Standard Brussels I bis certificate (Annex I) (Art. 53)
- Judgment has same force as domestic ones in execution state
- In practice : apply through bailiff/court officer

Thank you for your attention !



Sans limites.
Ohne Grenzen.
Without limits.

ABC International Selarl
ABCI Rechtsanwaltsgesellschaft mbH
jochen.bauerreis@abci-avocats.com
www.abci-avocats.com