B. Additional jurisdiction rules

1. **Arts. 10-16** : matters related to insurance
2. **Arts. 17-19** : matters related to consumers
3. **Arts. 20-23** : matters related to employement

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. »

- **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 employee'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 - Insurance (Art. 10-16) - Consumer (Art. 17-19) - Employee (Art. 20-23)	**Purpose :** Protect weaker parties on the basis of mandatory provisions - 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. Recognition and enforcement of foreign decisions

A. Recognition vs. enforcement

B. Abolition of the exequatur procedure in the EU

A. Recognition vs enforcement

1. Recognition

- Definition : seeking the substantive effectiveness of the foreign judgment (e.g., cancellation of a contract, recognition of a debt)

- No need for enforcement

- Principle : immediate and automatic recognition, unless later declared irregular

A. Recognition vs enforcement

2. Enforcement

- Purpose : obtain power of enforcement of a court decision → possibility to use public coercion

- Necessary procedure : “exequatur” (for judgments from States outside the EU)

- Jurisdiction on competence :
  - Material compliance : judicial tribunal (tribunal jurisdiction)
  - Territorial competence : court of defendant’s domicile

A. Recognition vs enforcement

2. Enforcement

- "Exequatur" decision for jurisdiction from states outside EU :

  - Rules on the formal regulatory of foreign judgment → enforceable or not

  - Appeal against "exequatur" decision : common law procedures

B. Abolition of the exequatur procedure in the EU

- A posteriori control still remains possible for recognition (art. 45 Brussels I bis) :

Article 45

« 1. On the application of any interested party, the recognition of a judgment shall be refused:
(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;
(b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;
(d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or
(e) if the judgment conflicts with:
(i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or
(ii) Section 6 of Chapter II. »

B. Abolition of the exequatur procedure in the EU

- A posteriori control still remains possible for recognition (art. 45 Brussels I bis) :

Article 45

« *2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.*

3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.

4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4. »

IV. Litigation in the EU: Practical Roadmap

Step 1 : Checking Jurisdiction (Three-Tier Test)

Step 2 : Drafting & filing the Claim

Step 3 : Notifying the Claim Abroad

Step 4 : Conduct of the Proceedings

Step 5 : Judgment & Recognition

Step 6 : Enforcement Abroad

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 required

- **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 (real estate 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 designated 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 of the seized courts

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)

  - Refusal of recognition possible only on limited grounds (Art. 45):
    - Public policy violation
    - Lack of due process
    - Irreconcilable between same parties with earlier judgement
    - Conflict specific weaker part protection rules on the exclusive jurisdiction rules

- EU specificity for EU judgements : “exequatur” procedure abolished since Brussels I bis Regulation (2015)
  - Mutual recognition of State Court decisions within the EU
  - Automatic enforcement on the basis of the Certificate (Annex I) to be issued by the Court of origin (art. 53)

IV. Litigation in the EU: Practical Roadmap

- **Step 6 : Enforcement Abroad**

  - Since 2015 : no exequatur procedure required for judgment from EU member state

  - Required documents :
    - Certified copy of judgment
    - Standard Brussels I bis certificate (Annex I) (Art. 53)

  - Foreign EU judgment has same force as domestic ones in execution in member states

  - In practice : execution carried out through bailiff/court officer (huissier / commissaire de justice

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Thank you for your attention !



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