



# Domicile under Brussels I Regulation

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# The aims of the presentation

- To provide an overview of domicile as connecting factor under Brussels I Regulation



# General jurisdiction based on domicile

- Art. 2(1) Regulation:
  - Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State



# The rationale for domicile as general jurisdictional rule

- Actor sequitur forum rei → Natural forum
- Predictability and legal certainty
- Jurisdictional rules which depart from this gen.rule can only be used in the specific cases as expressly provided for in the Regulation

# Domicil of natural persons (art. 59)

- 1. In order to determine whether a party is **domiciled in** the Member State whose courts are seised of a matter, the **court** shall apply its **internal law**.
- 2. In order to determine whether the party is domiciled **in another Member State**, the **court** shall apply the **law of that Member State**.



# Lack of autonomous def. of natural person

- Domicile of natural persons is not defined autonomously in the Regulation
- Grounds: Huge differences in the understanding of domicile among MS (esp. GB and Ireland v continental legal systems)

# Moment of domicile

- Moment of a domicile – moment of instituting the proceedings is decisive
- Changes in domicile in time - perpetuatio fori, i.e. court retains its jurisdiction

# Domicil of companies, other legal persons, associations ...

- Art. 60 reg.
- Autonomous definition of domicile
- Domiciled at the place where it has (criteria to ascertain domicile):
  - Statutory seat
  - Central administration
  - Principle place of business



# Company or other legal persons

- Divide natural persons and the other persons
- Encompasses also organisations not having legal personality(e.g.):
  - Smlouva o sdružení (§ 829 Czech Civil Code)
  - Partnership ( English law)
  - Società semplice (Italian law)
  - European Company, European Economic Interest Grouping (uder specific Regulations)



# Criteria for ascertaining domicile

- These three criteria taken from art. 48 TEC
- There is no hierarchy among these criteria
- Criteria are equal but exhaustive

# Statutory seat

- Legal person has its statutory seat in MS where is incorporated
- it could be find in a public register (e.g. Obchodní rejstřík)
- Unknown to the legal systems of the UK and Ireland → special provision (art. 60/3/ Regulation)
- Legal concept ( it need not to be identical with real seat)



# Central Administration

- Management and control center
- So called **real seat**
- Less easier to ascertain than statutory seat ( it will depend on claimant to prove this place as a domicile)
- Factual concept



# Principal place of business

- Where the main business activities are located (cf also art. 4(2) Rome Convention)
- Factual concept
- Do not confuse with ‘branch, agency or other establishment’ according to art. 5(5) Regulation

# Domicile in practice 1

- Example 1:
- Company C has its statutory seat in Czech Republic, central administration in Czech Republic and principal place of business, surprisingly, in Czech Republic
- Where could be C sued?

# Domicile of legal persons in practice 2

- Example 2:
- Company C has its statutory seat in Netherlands, its central administration is in Germany and principle place of business in Greece
- C could be sued in every of these MS

# Domicile in practice 3

- Example 2:
- Company C is registered in Delaware, USA and has its central administration in Germany and its principle place of business is France
- C could be sued in Germany or France



# Conclusion

- Legal person or similar persons under art. 60 may have more than 1 domicile
- Potentially, legal person could be sued in 1-3 MS (only the rules of domicile taken into account, letting aside special jurisdictions etc.)



# Exclusive jurisdiction under art. 22(2) Regulation

- Proceedings which have as an object the validity of the constitution, the nullity or the dissolution of companies or other legal persons, associations and so forth, or of the validity of the decisions of their organs, the court of MS, where company and other similar persons has its seat. The court of MS shall apply its PIL to determine the seat.
- The exception to art. 60