

# **Jurisdiction: a general overview**

## **Lecture 2**

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# Agenda

- Brussels I Regulation
- Brussels II Regulation
- Maintenance Regulation

# **1. Brussels I Regulation**

## Scope of application

- Territorial scope: EU except Denmark
- Scope *ratione materiae*:
  - civil and commercial matter,
  - excluded matters: (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession; (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; (c) social security; (d) arbitration.
- Scope *ratione personae*:
  - if the defendant has his place of living or seat in the EU
  - except Articles 22 (exclusive jurisdiction), 23 (prorogation of jurisdiction)

## Exorbitant bases of jurisdiction

- The Brussels I Regulation excludes exorbitant bases of jurisdiction.
- Jurisdiction based on presence
  - Transient or Tag Jurisdiction
  - Common law
- Jurisdiction based on the plaintiff's nationality
  - French Code Civil
  - Art. 14: *An alien, even if not residing in France, may be cited before French courts for the performance of obligations contracted by him in France with a French person; he may be called before the courts of France for obligations contracted by him in a foreign country towards French persons.*
  - Art. 15: *French persons may be called before a court of France for obligations contracted by them in a foreign country, even with an alien.*
- Jurisdiction based on presence of property
  - Austrian, German and Hungarian law
  - Umbrella jurisdiction

## The architecture of the jurisdictional rules

- General jurisdiction
- Specific jurisdiction
- Special rule for contracts involving a weaker party (consumer, insurance, employment contracts)
- Exclusive jurisdiction
- Prorogation of jurisdiction
- Jurisdiction based on appearance

## General jurisdiction – Article 3

- Actor sequitur forum rei.
- This is not simply a general rule, it is one of the fundamental value/principal of the Regulation.

*„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 this Chapter.”*

- All the exceptions are to be interpreted in accordance with the purpose that justified their inclusion in the system.
- The plaintiff's identity is in itself not decisive.

## Specific jurisdiction – Articles 5-7

- The reason of specific jurisdiction is that there is a close connection between the matter and the forum in terms of procedural efficiency and convenience.
- Examples include (select):
  - Contracts
  - Maintenance (now we have a new regulation: Maintenance Regulation!)
  - Torts (delictual liability)
  - Civil claims in a criminal proceeding
  - Disputes arising out of the operations of a branch, agency or other establishment
  - Joinder of actions
  - *In rem* rights related to immovable property



## Contracts – Article 5(1)

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

*1. (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 subparagraph (b) does not apply then subparagraph (a) applies;*

## The bier-licence case

- An Austrian enterprise grants an exclusive license to a Hungarian licensee to use the Austrian firm's technology in the Czech Republic, while the latter promises to transfer the license fee to the licensor's bank account in Vienna.
- The contract contains an exclusivity clause and the Austrian licensor, breaching this clause, grants a concurring license to another company in the Czech Republic.
- Which courts have jurisdiction if the Hungarian company requests the judicial declaration of the breach of the contract?
- Which courts have jurisdiction if the Hungarian firm cancels the contract and claims damages on the basis of contractual liability, or the payment of liquidated damages if the contract provided so?

## Torts/Delicts and other non-contractual obligations Art 5(3)

- Art 5(3)

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

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

- Case: distance delict

- An Austrian company operates a plant in the near of Vienna, which emits pollutants contaminating the water of the Danube.
- A Hungarian company operates a horticulture (a flower garden) in Győr (Hungary) and irrigates the flowers with water from the Danube. The flowers perish due to the contamination.
- How to apply Article 5 to the above fact pattern?
- Cf. 21/76 *Bier BV v Mines de Potasse d'Alsace*

## Case analysis: consequential damages

- French parent sues German banks in France for cancelling a credit contract (C-220/88 *Dumez v Hessische Landesbank*)
- Chain of causality: German banks cancel the credit contract → the contractor of the real estate development project cancels the project → sub-contractors (German companies) go bankrupt → their French parent companies suffer a detriment due to their subsidiaries' insolvency.
- Do French courts have jurisdiction?

## Civil claims in a criminal procedure

- Article 5(4)

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

*4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;*

- The original court's criminal jurisdiction cannot be revised in the recognition/enforcement stage. (C-7/98 *Krombach/Bamberski*).

## Libel/defamation cases

- The French actor Olivier Martinez and his father sue before the Tribunal de grande instance de Paris (Paris Regional Court), asserting interference with their private lives and infringement of the right of Olivier Martinez to his image by reason of posting on the public website [www.sundaymirror.co.uk](http://www.sundaymirror.co.uk) an English text (dated 3 February 2008) entitled 'Kylie Minogue is back with Olivier Martinez'. The text contains the details of their meeting. (Joined Cases C-509/09 and C-161/10 eDate Advertising GmbH and Olivier Martinez)
- Do French courts have jurisdiction?

## Joseph Weiler case

- Case No. 0718523043 *Public Prosecutor v Weiler* (Judgment of March 3, 2011) (Tribunal de Grand Instance de Paris)
- Prof Weiler (NY Univeristy) is the Editor in Chief of the European Journal of International Law and its associated Book Review website [www.GlobalLawBooks.org](http://www.GlobalLawBooks.org), which are seated in NY (the website is operated from a NY server). He refused to remove a book-review written by a German scholar (Prof Weigend) about the book of an Israeli scholar (Prof Calvo-Goller), who also had French citizenship. Prof Calvo-Goller instituted a criminal proceeding in France against Prof Weiler.

## Joinder of actions

- Article 6(1)

*A person domiciled in a Member State may also be sued:*

*1. where he is one of a number of defendants, in the courts for the place 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;*



## **2. Brussels II Regulation**

## Scope of application

- Applicable to matrimonial matters (divorce, legal separation or marriage annulment) and parental responsibility.
- In matrimonial matters, the jurisdictional rules are exclusive only as to EU-defendants.

### *Article 6*

*A spouse who:*

*(a) is habitually resident in the territory of a Member State; or*

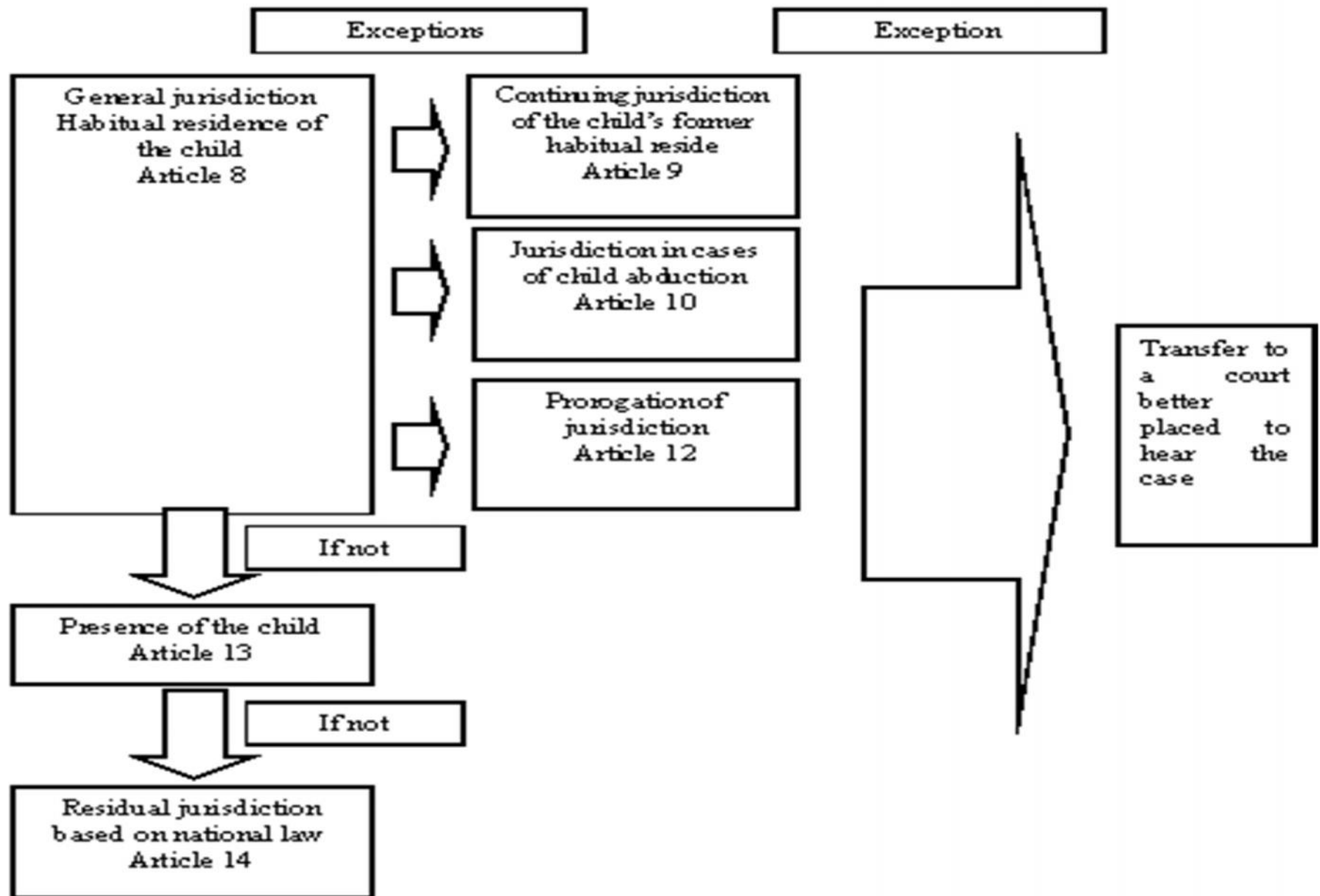
*(b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her "domicile" in the territory of one of the latter Member States,*

*may be sued in another Member State only in accordance with Articles 3, 4 and 5.*

## Jurisdiction in matrimonial matters

- Article 3
- 1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State
- (a) in whose territory:
  - - the spouses are habitually resident, or
  - - the spouses were last habitually resident, insofar as one of them still resides there, or
  - - the respondent is habitually resident, or
  - - in the event of a joint application, either of the spouses is habitually resident, or
  - - the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
  - - the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;
- (b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.

# Parental responsibility



### **3. Maintenance Regulation**

## Scope and jurisdiction

- Territorial scope: EU, except Denmark
- Scope *ratione materiae*

### *Article 1*

*1. This Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.*

- Jurisdiction:
  - habitual residence of the defendant;
  - habitual residence of the maintenance creditor;
  - if the maintenance matter is ancillary to a matter on personal status or parental responsibility, except jurisdiction in the personal status or parental responsibility matter is based solely on nationality;
  - choice-of-court: the parties' options are limited.

**Thank You for your attention!**

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