

Jerca Kramberger Škerl, PhD, Assistant Professor
Faculty of Law of the University of Ljubljana (Slovenia)
Poljanski nasip 2, SI-1000 Ljubljana, Slovenia
jerca.kramberger@pf.uni-lj.si.

THE APPLICATION “RATIONE TEMPORIS” OF THE BRUSSELS I REGULATION (RECAST)

ABSTRACT

The recast Brussels I Regulation entered into force on 10 January 2015. The application ratione temporis of this Regulation is regulated in its Article 66, which provides that judgments issued in proceedings started before the mentioned date, are subjected to the rules of the original version of the Regulation, adopted in 2000. However, the latter entered into force at different times in different Member States, depending on the date of their accession to the EU. As a consequence, in a dispute falling into the material scope of the Regulation, the judges must first determine, which act is temporally applicable, which can sometimes be difficult, especially concerning the recognition and enforcement of judgments.

As was confirmed by the Court of Justice of the EU, the Regulation of 2000 can be applied to the recognition and enforcement of a judgment from another Member State only if, upon the issuance of the judgment, it was already in force in both the state of origin and the state of enforcement. But even in such case, the application of the Regulation is only automatic if also the judicial proceedings were started after the entry into force of the Regulation in both states. If the proceedings were started before that time, the Regulation can only be applied if the court of origin based its jurisdiction on the same rules as can be found in the Regulation or on an international convention in force between the Member States “involved”. In all other cases, national rules or an international convention concerning the recognition and enforcement of judgments must be applied. The article represents a thorough study of the different most common cases where the problem of the application ratione temporis of the Regulation arises or could arise. The article specifically addresses the application ratione temporis of the recast Brussels I Regulation and the relationship between the original and the recast version of the Regulation.

Keywords: *Regulation 44/2001, Regulation 1215/2012, Brussels I Regulation, recast Brussels I Regulation, scope of application, application ratione temporis, recognition and enforcement of judgments, exequatur, Brussels Convention, Lugano Convention, jurisdiction, international jurisdiction, foreign judgments.*

1. INTRODUCTION

In January 2015, the recast Brussels I Regulation¹ entered into force. The transitional provision of Article 66 regarding the temporal scope of application reads as follows:

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.
2. Notwithstanding Article 80, Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.

In cross-border disputes, falling into its material scope of application, the courts will thus have to assess their jurisdiction following the rules of the recast regulation, if the proceedings have been started on or after 10 January 2015. Furthermore, judgments from other EU Member States shall be recognized and enforced under the rules of the recast regulation only if the proceedings have been started on or after the mentioned date. Article 66 provides for no exception to this rule. This means that for many years to come, the Brussels I Regulation of 2000² or the national law of the Member State of enforcement will remain applicable to the recognition and enforcement of judgments issued in proceedings started before 10 January 2015. Thus, it is very important that the courts have clear understanding of which legislation is applicable to the case at hand.

The Brussels I Regulation was adopted in December 2000. Article 76 of the Regulation determined that the Regulation was to enter into force on 1 March 2002. Regarding the temporal scope of application of the Regulation, the transitional provision of Article 66 provides:

- “1. This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.

¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L 351.

² Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L 12.

2. However, if the proceedings in the Member State of origin were instituted before the entry into force of this Regulation, judgments given after that date shall be recognised and enforced in accordance with Chapter III,

(a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels or the Lugano Convention both in the Member State of origin and in the Member State addressed;

(b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.”

The case law of the national courts shows that these apparently clear rules, when applied to the real cases, prove(d) to be quite problematic, especially regarding the recognition and enforcement³ of judgments. The original version of the Regulation namely entered into force at different times in different Member States. What to do if, for example, at the time of issuing a judgment the original Regulation was in force in the country of origin of the judgment (e.g. in Slovenia in 2012), but not yet in the country where the enforcement of this judgment would later be sought (e.g. in Croatia), whereas the enforcement is sought when the Regulation is already in force also in the country of enforcement (e.g. in 2014)? What if the proceedings were instituted when the Regulation was in force in the country of origin (e.g. Italy in 2003), but not in the country of enforcement (e.g. the Czech Republic), whereas the judgment was issued when the Regulation was already in force in both countries “involved” (e.g. in 2005)? What if the judgment is delivered when the Regulation was in force in both countries (e.g. in Croatia and Slovenia in 2014), whereas the proceedings were instituted when the Regulation was in force only in the country of enforcement (e.g. in Slovenia in 2012), but not in the country of origin (e.g. Croatia)?

The Regulation of 2000 namely entered into force in different Member States in the moment of their accession to the European Union (hereinafter the EU). Almost half of today’s Member States entered the EU after the “initial” entry into force of the Regulation in March 2002. The question of the application of the Brussels I Regulation *ratione temporis* (and thus the application of the transitional provision of Article 66) has thus not lost its relevance in the several years following

³ In this article, the term “enforcement” will be used in the sense of private international law, i.e. in the sense of the declaration of enforceability (*exequatur*) and not in the sense of the specific acts in the enforcement proceedings (e.g. seizure), which are conducted under the national law of the country where the enforcement is sought.

the entry into force of the Regulation, as is usually the case regarding the transitional provisions in legislative acts, but continues to be relevant even after the adoption of the recast Regulation, limiting its temporal scope of application only to proceedings started after 10 January 2015.

Namely, if the Regulation of 2000 is applicable, it must naturally be applied as a whole, i.e. including its own transitional provision providing for an exceptional application to the judgments issued in proceedings started before the entry into force of this Regulation. Therefore, much time will still have to pass before a clear and unequivocal interpretation of Article 66 of the Brussels I Regulation of 2000 will no longer be needed. This article will attempt to systematically present when during this on-going transitional period the original and the recast version of the Brussels I Regulation are temporally applicable. When they are not, the national laws of the Member States or, if they exist, the international treaties between the states “involved” must be applied.

Before we can begin the search for answers to the above questions, two deciding moments must be defined: first, for the purposes of application *ratione temporis* – *What is the moment when the proceedings were initiated?*; and second, for the purposes of application *ratione temporis* – *When did the Regulation enter into force?*

2. WHEN WERE THE PROCEEDINGS INITIATED?

Different legal systems consider different moments as the starting point of judicial proceedings. This was obvious, for example, when the *lis pendens* rule of Article 21 of the Brussels Convention (Article 29 of the Brussels I bis Regulation) had to be interpreted. Some of the Member States namely consider the filing of the lawsuit as the beginning of the proceedings; some other Member States consider that proceedings start with the service of the introductory document on the defendant; the third group, however, considers that the determining moment is the handing over of the lawsuit to the person authorised for service. Furthermore, the moment of the beginning of the proceedings is not everywhere also the moment of the *lis pendens* coming into existence. In Slovenian law, for example, the proceedings are instituted upon the filing of the lawsuit, but the moment of the establishment of *lis pendens* is the service of the introductory document on the defendant, i.e. when the litigation is deemed to be started.⁴

⁴ Articles 179 and 189 of the Slovenian Civil Procedure Act of 1999 (*Zakon o pravdnem postopku*), Official Gazette No. 26/1999, with further amendments

In 1984 the Court of Justice of the EU (hereinafter the CJEU)⁵ first declined to provide an autonomous interpretation of the term “court first seised” and referred the courts to the application of their national rules.⁶ However, as this approach proved to be problematic, since the courts of more than one country could consider that they were the “court first seised”, the European legislature decided to insert a new rule in Article 30 of the Brussels I Regulation (Article 32 of the Brussels I bis Regulation). This rule provides that

“a court shall be deemed to be seised: 1. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or 2. if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.”

Article 30 expressly refers only to the rules on *lis pendens* and the so-called related actions. It is questionable whether the interpretation of the term “court first seised” from this article can also be applied to the transitional provision of Article 66. The problem is accentuated by the differences in different language versions of the Regulation, e.g. in the Slovenian version, the same term is used regarding *lis pendens* and in Article 66, whereas different terms are used in the English and the French versions: “*court first seised*” and “*tribunal saisi*” (Article 27), and “*proceedings instituted*” and “*actions judiciaires intentées*” (Article 66), respectively.

The CJEU has not yet had the opportunity to provide an answer to this question, and the case law of national courts, according to the information available, diverges. For example, in 2002 the Austrian Supreme Court adopted the interpretation that in spite of the restrictive introduction of Article 30 of the Brussels I Regulation, the rule it contains should also be used to interpret the moment when the “proceedings are instituted” for the purposes of Article 66.⁷ However, in December 2003 and December 2004 the German *Bundesgerichtshof* found that the determining moment in Germany was the service of the lawsuit,⁸ i.e. that the national law

⁵ For the purposes of clarity, the current name of this court will be used throughout this article.

⁶ CJEU, *Zelger v. Salintri*, 129/83 of 7 June 1984.

⁷ Judgment No. 3 Nd 509/02 of 18 December 2002.

⁸ BGH, XI ZR 474/02 of 16 December 2003, and BGH, XI ZR 366/03 of 7 December 2004. In 2003 the appellate court in Koblenz, Germany, decided on a case where the lawsuit was filed with the court before the entry into force of the Brussels I Regulation, whereas this lawsuit was served on the defendant after the entry into force of the Regulation. The court decided that Article 66 does not determine

is applicable to the question of when the lawsuit was filed.⁹ In February 2004 and in December 2005 the same court applied the interpretation of Article 30 of the Regulation to Article 66 and found that the determining moment was the filing of the lawsuit.¹⁰ In 2005, an English court decided that the moment when the proceedings are initiated must be determined according to the national law of the country where the proceedings are being conducted.¹¹

In the case of *lis pendens*, where a “competition” between the courts of two or more countries must be resolved and the issuance of conflicting judgments prevented, it is understandable that all courts must consider the same moment as the starting point of the proceedings. This is, however, probably not necessary in the case of the rules on the recognition and enforcement of judgments from other Member States. Nevertheless, at least the law applicable to this question should be determined. If there were namely more options, the recognition or the declaration of the enforceability of the same judgment could be assessed under different rules in different countries – in some of them the Brussels I Regulation would be considered applicable, in others, the conditions for such application would be considered to not be satisfied. In this regard, it seems reasonable to apply the law of the country where the proceedings which led to the issuance of the judgment were conducted.¹² Still, in such case, actions filed in different Member States at the same moment could be subjected to different rules – in one country the Brussels I Regulation and in the other the formerly applicable rules. Therefore, it would nevertheless be prudent to set up a uniform interpretation of the moment when the proceedings were initiated for the purposes of the temporal application of the Regulation.

the moment of the beginning of the proceedings, and also that the interpretation of Article 30 cannot be applied to the transitional provision; therefore, the national law of the Member State where the proceedings are being conducted must be applied, in this case German law (OLG Koblenz, No. 23 U 199/02 of 7 March 2003, and the same also OLG Düsseldorf, No. I 23 U 70/03 of 30 January 2004, and OLG Düsseldorf, No. I 24 U 86/05 of 22 December 2005.

⁹ In German law proceedings are started when the lawsuit is served on the defendant (*“Klageerhebung”*, Article 261 of the German Civil Procedure Act (*Zivilprozessordnung*)).

¹⁰ BGH, III ZR 226/03 of 19 February 2004, and in BGH, III ZR 191/03 of 1 December 2005. Same also OLG Frankfurt, No. 16 U 26/04 of 25 November 2004.

¹¹ High Court – Queen’s Bench Division England, *Advent Capital Plc v. GN Ellinas Imports- Exports Ltd and S. Trading Limited*, No. [2005] EWHC 1242 (Comm) of 16 June 2005.

¹² See also A. Borrás in: T. Simons, R. Hausmann (ed.), *Brüssel I – Verordnung, Kommentar zur VO (EG) 44/2001 und zum Übereinkommen von Lugano*, IPR Verlag GmbH, München 2012, p. 1006.

3. WHEN DID THE REGULATION OF 2000 ENTER INTO FORCE/ BECOME APPLICABLE?

The date of the applicability of the Regulation is the decisive moment in the determination whether the Regulation is applicable to the recognition and the enforcement of a certain judgment or not. The answer is clear concerning the recast version of the Regulation – it became applicable in all Member States of the EU on 10 January 2015. However, the Regulation of 2000 entered into force in March 2002 in the then Member States, in May 2004 in the ten new Member States, in 2007 in Romania and Bulgaria and in 2013 in Croatia. The question which showed to be the most problematic is whether the Regulation had to be in force/applicable in both countries “involved” at the beginning of the proceedings or at the moment of the issuance of the judgment, or if it suffices that the Regulation was, at that time, in force only in the country of origin of the judgment (the country of origin) or, perhaps, only in the country where the recognition or enforcement is sought (the country of enforcement).

For example, in the Slovenian case law we can find several decisions in which the Brussels I Regulation was applied regarding the declaration of the enforceability of judgments from Member States which joined the EU before 2004, which were delivered after 1 March 2002, when the Regulation entered into force in those countries, but before 1 May 2004, when Slovenia entered the EU and the *acquis communautaire* became applicable. The courts expressly state that such judgments were issued after the Regulation entered into force.¹³ On the other hand, we can also find Slovenian case law in which it is explained that the proceedings had to be instituted after the entry into force of the Regulation in both states “involved”.¹⁴

The international doctrine is in agreement that, for the purposes of Article 66, the entry into force of the Regulation is the first day when the Regulation was in force in both the country of origin and the country of enforcement. If, at the moment

¹³ For example, Judgment of the Supreme Court of the Republic of Slovenia (hereinafter the SC RS), No. Cp 2/2005 of 25 August 2005, regarding the recognition of an Italian judgment of 2003, where the court assessed whether it could apply the Brussels I Regulation and for that purpose verified on which rules the jurisdiction of the court of origin was based. It would have been correct for the court to establish that the Regulation is not applicable, since in 2003 it was not yet in force in Slovenia. See also Judgment of the SC RS No. Cpg 5/2006 of 26 February 2007 and Judgment No. Cp 22/2008 of 15 January 2009. In the cases where the judgment was delivered after the entry into force of the Regulation in the country of origin and in Slovenia, however, this court often did not (expressly) verify when the proceedings were started, in order to establish whether the basis for jurisdiction of the court of origin had to be reviewed, e.g. Judgment of the SC RS No. Cp 13/2009 of 18 February 2010.

¹⁴ In Judgment No. Cp 7/2010 of 31 January 2011, the SC RS correctly justified the application of the Brussels I Regulation by establishing that the Polish judgment had been delivered in 2008 and the proceedings had been started in 2005.

of the issuance of the judgment, the Regulation was not in force in both countries, its provisions cannot be applied to the recognition or declaration of the enforceability of such judgment. On the other hand, the Regulation is always applicable if the proceedings were instituted and the judgment was delivered after the Regulation had entered into force in both countries. Concerning the recognition and enforcement of judgments issued after the entry into force of the Regulation in both countries, whereas the proceedings were instituted before the entry into force in both countries, the Regulation is applicable only under the special conditions of the transitional provision of Article 66.¹⁵

In 2012 the CJEU confirmed this interpretation. In the case *Wolf Naturprodukte GmbH v. SEWAR spol. s r.o.*¹⁶ the court ruled as follows: “Article 66(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, for that regulation to be applicable for the purpose of the recognition and enforcement of a judgment, it is necessary that at the time of delivery of that judgment the regulation was in force both in the Member State of origin and in the Member State addressed.” The case concerned the enforcement in the Czech Republic of an Austrian judgment delivered in 2003, whereas the Regulation entered into force in Austria in 2002 and in the Czech Republic in 2004. At the moment of the issuance of the judgment, the Regulation was thus in force in the country of origin, but not yet in the country of enforcement, whereas it was already in force in both states at the time when the enforcement was sought.

The position that the Regulation in principle had to be in force in both countries already at the moment when the proceedings were instituted is logical if we would like to protect the defendant from the so-called exorbitant jurisdictions provided for in many national legislations. If the Regulation was not yet in force at the time of the beginning of the proceedings, the court will namely apply the national rules of the country of origin to determine its international jurisdiction. It cannot be self-evident that the judgment issued in such proceedings can profit from the more advantageous Brussels regime of recognition and enforcement just because

¹⁵ See, e.g., P. Stone, *EU Private International Law*, 2nded., Edward Elgar Publishing, 2010, p. 236; A. Borrás in: T. Simons, R. Hausmann (eds.), *op. cit.* note 12, pp. 1004, 1005; P. Oberhammer in F. Stein, M. Jonas (eds.), *Kommentar zur Zivilprozessordnung*, 22nd ed., 2011, Band 10, Article 66, No. 8, p. 777, and the references cited there; A. Galič, *Die Anerkennung von gerichtlichen Entscheidungen in Slowenien*, in: M. Kengyel, W. H. Rechberger (eds.), *Europäisches Zivilverfahrensrecht: Bestandsaufnahme und Zukunftsperspektiven nach der EU-Erweiterung*, Neuer Wissenschaftlicher Verlag, Graz, Vienna 2007, pp. 134, 135; M. Becker, K. Müller, *Intertemporale Urteilsanerkennung und Art. 66 EuGVO*, in: *IPrax*, 2006, pp. 432-438.

¹⁶ C-514/10 of 21 June 2012.

the country of origin has joined the EU while the proceedings were conducted.¹⁷ It is, however, also important to emphasise that the same is true in the inverse case, i.e. if the country of origin was a Member State at the beginning of the proceedings (thus the Regulation was already in force), whereas the country which is later requested to recognise this judgment was at that moment not yet a Member State. In disputes against defendants with domicile outside the EU¹⁸ the Member States will namely (in principle) apply the national rules that can provide for exorbitant jurisdiction (as, for example, jurisdiction on the basis of the location of any property of the defendant (Article 58 of the Slovenian Private International Law and Procedure Act of 1999 (hereinafter the PILPA)¹⁹ or jurisdiction based on the nationality of the plaintiff (Article 14 of the French Civil Code)). Even though the proceedings were initiated in one of the “old” Member States in the period between 1 March 2002 and 1 May 2004 (or the respective dates in 2007 and 2013 regarding the accession of Romania, Bulgaria, and Croatia), this does not entail that the jurisdiction was determined under the Brussels I Regulation.²⁰ Therefrom we can deduce the need to review the basis of jurisdiction in each individual case, even though the judgment was issued when the Regulation was already in force in both countries.²¹

¹⁷ Thus, in September 2013 the SC RS, in a situation where the Regulation was, at the time of the issuance of the foreign judgment (2007), not yet in force in the country of origin of the judgment (Croatia), but was already in force in the requested country (Slovenia), correctly decided that the Regulation was not applicable to the recognition of such judgment, even though at the time of the recognition proceedings the Regulation was already in force in both countries (Judgment No. Cpg 3/2013 of 10 September 2013). However, some courts in the “old” Member States have encountered problems in such cases: e.g. the first instance court in Coburg (Germany) declared a Czech judgment from 2002 enforceable under the Brussels I Regulation, even though the Czech Republic accessed the EU only in 2004 (the opposite decision was later adopted by the appellate court in Bamberg: OLG Bamberg, No. 3 W 17/05 of 9 February 2005).

¹⁸ Recognition and enforcement are very often requested in the country where the defendant has his/her domicile or headquarters, since the defendant’s property or its biggest part is most often in that country.

¹⁹ *Zakon o mednarodnem zasebnem pravu in postopku*.

²⁰ See also A. Galič, *op. cit.* note 15, pp. 134, 135, especially footnote No. 26.

²¹ We can mention two digressions from this logic: first, the Regulation is never applicable to judgments delivered before the Regulation was in force in both countries, regardless of the basis for the international jurisdiction, which can also in these cases be perfectly acceptable and “accords” with the Regulation’s rules; and second, the Regulation is always applicable to judgments delivered in proceedings started after the entry into force of the Regulation in both countries, even though the jurisdiction could, if the defendant was domiciled outside the EU, be exorbitant on the basis of the application of the national rules on international jurisdiction.

4. THE APPLICATION *RATIONE TEMPORIS* OF THE RULES ON INTERNATIONAL JURISDICTION

The rules on international jurisdiction are usually not very problematic from the point of view of their application *ratione temporis*. The Regulation is applicable to proceedings instituted after its entry into force in the country where the proceedings are being conducted. Since international jurisdiction is determined at the beginning of proceedings (the existence of international jurisdiction is one of the formal prerequisites for the court to start deciding on the merits of the case), international jurisdiction is not assessed again in subsequent stages of proceedings (it can only be verified if, regarding the circumstances at the beginning of the proceedings, international jurisdiction was determined correctly).

The question might arise as to how courts should act in cases where the Regulation entered into force after the beginning of the proceedings but before the court (of first instance) decided on its jurisdiction. The Brussels I Regulation does not contain an express provision regarding this question. However, it can be deduced from the case law of the CJEU that the decisive moment is the beginning of the proceedings (“*when the procedure is set in motion*”; Ger. “*wenn die Klageerhobenist*”).²²

As was explained above, the setting in motion of the proceedings is, however, interpreted differently in different Member States. In a case where the lawsuit was filed before the entry into force of the Brussels I Regulation in Slovenia, but the first instance court was deciding on its jurisdiction when the Regulation had already entered into force, the Supreme Court of Slovenia decided that jurisdiction had to be assessed under the national rules on international jurisdiction (i.e. the PILPA) applicable at the beginning of the proceedings.²³ Also the Austrian Supreme Court decided in 2003 that the Regulation was not applicable to lawsuits filed before the entry into force of the Regulation, even if the Regulation entered into force during the proceedings.²⁴ In German law, however, proceedings begin with the service of the lawsuit on the defendant (as is also true for the coming into existence of the *perpetuatio fori* and the *lis pendens*).²⁵ In cases where the Regulation had not yet entered into force at the moment of the filing of the lawsuit, whereas it was already in force at the moment of the service of the lawsuit on the defendant, in assessing their jurisdiction the German courts would apply the Regulation.²⁶

²² CJEU, *Sanicentral GmbH v. René Collin*, 25/79 of 13 November 1979.

²³ SC RS, Judgment No. III Ips 164/2008 of 3 February 2009.

²⁴ OGH, No. 7 Ob 89/03v of 30 June 2003.

²⁵ *Klageerhebung, Rechtshängigkeit*, Article 261/3 of the German Civil Procedure Act (*Zivilprozessordnung*).

²⁶ OLG Koblenz, No. 23 U 199/02 of 7 March 2003, the same also in OLG Düsseldorf, No. I 23 U 70/03 of 30 January 2004.

It has also proven to be problematic which choice of court agreements had to be assessed under the Regulation, regarding the time of their conclusion and of their assertion in proceedings. Very early the CJEU had an opportunity to decide on the question of which legal act had to be applied in assessing the choice of court agreement if such was concluded before the entry into force of the Brussels Convention (the predecessor of the Brussels I Regulation with very similar provisions regarding choice of court agreements), while the proceedings in which this agreement was submitted were commenced when the Convention was already in force. The CJEU decided that the legislation in force at the beginning of the proceedings had to be applied, and not the legislation in force at the conclusion of the agreement. Therefore, in cases where the agreement was invalid under the national law of the chosen court, but valid under the Regulation, it is deemed to be valid.²⁷ Such was also the decision of the Austrian Supreme Court in 2008. In cases where the choice of court agreement was concluded before the entry into force of the Brussels I Regulation, and the lawsuit was filed after the entry into force of the Regulation in both countries, the jurisdiction had to be assessed under the Regulation.²⁸

Article 66 of the Regulation does not tackle the intertemporal application of the Regulation in the possibly problematic situations of *lis pendens*, i.e. especially in cases where the first action was filed before the entry into force of the Regulation and the second one after its entry into force. When resolving this issue regarding the intertemporal application of the Brussels Convention, the CJEU decided for an analogous application of the transitional provision²⁹ in that the Convention was applicable (i.e. that the court second seized must dismiss the claim after the court first seized has accepted its jurisdiction) if the court first seized based its jurisdiction on rules according with the jurisdictional rules of the Convention or the international treaty in force between the “involved” states when the proceedings were instituted; “*if the court first seized has not yet ruled on whether it has jurisdiction, the court second seized must apply that article provisionally*”.³⁰ There is,

²⁷ CJEU, *Sanicentral GmbH v. René Collin*, 25/79 of 13 November 1979. For more on the question of the application *ratione temporis* of the choice of court agreements in the Brussels I Regulation, see J. Kramberger Škerl, *Choice of Court Agreements in the Brussels I Regulation*, in: Recent Trends in European Private International Law – Challenges for the national legislations of the south-east European countries: collection of papers IX Private International Law Conference, September 23, 2011, Saints Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law, 2011, pp. 127, 128.

²⁸ OGH, No. 5Ob201/08g of 23 September 2008.

²⁹ Article 54/2 of the Brussels Convention (the wording is parallel to Article 66/2 (b) of the Regulation).

³⁰ CJEU, *Elsbeth Freifrau von Horn v. Kevin Cinnamon*, C-163/95 of 9 October 1997.

in our opinion, no reason not to apply the same interpretation to Article 66 of the Regulation.³¹

4. THE APPLICATION *RATIONE TEMPORIS* OF THE RULES ON THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN THE REGULATION OF 2000

Under Article 66 of the recast Regulation, this Regulation is only applicable to the recognition and enforcement of judgments issued in proceedings started after 10 January 2015. The mere issuance of the judgment after that date does not suffice. If the proceedings were commenced earlier, the original version of the Regulation will apply.

As has been explained earlier, the Regulation of 2000 applies to the recognition of enforcement of judgments issued in proceedings started after its entry into force in the State of origin of the judgment as well as in the State of enforcement. In Article 66/2 the Brussels I Regulation of 2000 determines its application in the transitional period, i.e. in cases where, at the beginning of court proceedings, the Regulation had not yet entered into force in the country where the proceedings are being conducted or in the country where the recognition of enforcement of the judgment issued in the first country is later requested. In such cases, only if the conditions of this article are satisfied does the Regulation replace the national law and the existing international treaties between the Member States at issue.³²

The purpose of the transitional provision is to guarantee that the Regulation would only be applicable if certain prerequisites are fulfilled, on the basis of which the Member States have enacted the simpler regime of the “movement” of judgments in the EU. The goal is to achieve predictability, i.e. that the parties can, at the beginning of proceedings, know under which conditions the judgment issued in these proceedings would be effective in other countries. Furthermore, the milder conditions for the recognition and enforcement of judgments from other Member States are based mainly on the supposition that the dispute was decided on the merits by a court whose jurisdiction was based on a connecting factor which is acceptable for the country of origin of the judgment as well as for the country in which the enforcement is requested (i.e. it was not the case of an exorbitant jurisdiction used against a person domiciled in the country of enforcement).³³

³¹ Cf. P. Oberhammer in F. Stein, M. Jonas (eds.), *Kommentar zur Zivilprozessordnung*, 22nd ed., Band 10, Article 66, No. 16, 2011, p. 779.

³² Which agreements these are is determined in Article 69 of the Brussels I Regulation.

³³ See, e.g., P. Stone, *EU Private International Law*, 2nd ed., Edward Elgar Publishing, 2010, p. 237.

Besides the determination of the moment when the lawsuit was filed, the definition of the moment when the judgment was issued can present difficulties, as the laws of different Member States also differ on this question. The convincing opinion of the majority of authors is that the answer must be sought in the national law of the country where the judgment was issued.³⁴

In this regard, another question should be addressed: What to do if the conditions for the recognition or enforcement under the Regulation are fulfilled regarding one part of the judgment (concerning the claims or the defendants) but not for the other part? In principle, partial recognition of a foreign judgment is possible if different parts are sufficiently autonomous and not interdependent. According to this principle, it should be possible to recognise the first part of the judgment under the Regulation's rules, and the other part under the national rules. If, however, the parts are not sufficiently autonomous, we should return to the finding that Article 66/2 only provides for exceptional application of the Regulation, therefore the Regulation cannot be applied if only one part of the judgment fulfils its conditions and the other not; the national rules should prevail in such cases.

Regarding the structure of Article 66/2, three situations must be distinguished: first, the Regulation was not in force either at the beginning of the proceedings or when the judgment was issued; second, the Regulation was not in force at the beginning of the proceedings, but was in force when the judgment was issued; and third, the Regulation was in force at the beginning of the proceedings and when the judgment was issued.

5.1 The Proceedings were Initiated and the Judgment was Issued before the Entry into Force of the Regulation of 2000

Article 66/1 of the Brussels I Regulation determines that the “*Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.*” The Regulation rules on the recognition and enforcement of judgments are thus normally applicable only to judgments issued in proceedings *started* after the entry into force of the Regulation in both countries “involved”. The exceptions of the second paragraph of Article 66 apply only to judgments *issued* after the Regulation was already in force. Therefore, it is not possible (regardless of the basis for international jurisdiction or any other circumstance) to apply the Regulation to the recognition and enforcement of judgments issued before the Regulation was in force in both the country of ori-

³⁴ See, e.g. P. Oberhammer in F. Stein, M. Jonas (eds.), *Kommentar zur Zivilprozessordnung*, 22nd ed., Band 10, Article 66, No. 7, 2011, p. 776 and the references cited there.

gin and the country of enforcement. The national rules regulating the recognition and enforcement of foreign judgments will apply.

5.2. The Proceedings Were Initiated before the Entry into Force of the Regulation of 2000, while the Judgment was Issued after the Entry into Force of the Regulation

Article 66/2 of the Regulation of 2000 refers to cases when the rules of the Regulation are exceptionally applicable to the recognition and enforcement of judgments issued in other Member States after the entry into force of the Regulation, even if the condition under the first paragraph is not fulfilled (i.e. at the moment of the beginning of the proceedings the Regulation was not yet in force). This is possible:

“(a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels or the Lugano Convention both in the Member State of origin and in the Member State addressed;

(b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.”

5.2.1. The Proceedings were Initiated after the Entry into Force of the Brussels or the Lugano Convention in both the Country of Origin and in the Country of Enforcement

The exception of point a) is applicable regarding “old” Member States, i.e. the countries where the Brussels Convention of 1968³⁵ was applicable before the entry into force of the Brussels I Regulation of 2000, as well as regarding the countries which were, at the beginning of the court proceedings, bound by the Lugano Convention. The Brussels I Regulation is namely the successor of the Brussels Convention and its wording is very similar to the wording of the convention, with some actualisations and amendments. The Lugano Convention of 1988³⁶ was concluded between the then Member States of the European Economic Community (EEC) and the then Member States of the European Free Trade Association (EFTA). The Lugano Convention had practically the same wording as the Brussels Convention, as its purpose was to enlarge the successful “Brussels regime”

³⁵ Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

³⁶ Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters.

to EFTA members. The Lugano Convention was open to accession by other countries, however only Poland accessed and the Convention entered into application there in 2000.³⁷ Poland became a Member State of the EU in 2004, when the Lugano Convention was replaced, in relation to other Member States, by the Brussels I Regulation. In 2007, the EU concluded a recast Lugano Convention with Iceland, Liechtenstein, Norway, and Switzerland.³⁸ The text of the new Convention is in concordance with that of the Brussels I Regulation of 2000.

Article 66/2(a) of the Brussels I Regulation expressly determines that the Brussels or Lugano Conventions had to be in force at the beginning of court proceedings in both the country of origin and the country of enforcement. The situation is thus analogous to cases where the proceedings started after the entry into force of the Brussels I Regulation and should not present much difficulty.

Nevertheless, in 2006, the German Supreme Court decided on the following case. The proceedings started when the Brussels Convention was in force in both the country of origin and the country of enforcement, while the judgment was delivered when the Brussels I Regulation was already in force in both countries. The jurisdiction of the court was based on Article 13 of the Brussels Convention, which determines jurisdiction in consumer disputes. The parallel Article 15 of the Regulation was, however, slightly different, so that the jurisdiction could not have been based on that article, even though the actually applied Article 13 of the Convention was not violated. The question arose whether it is possible to refuse a declaration of enforceability under Article 35/1 of the Brussels I Regulation, which provides that the judgment is not declared enforceable if the Regulation's rules on the protection of consumers were not respected in the proceedings of origin of the judgment. The court judged that that was not possible.³⁹

The court left open the question of what should be done if it is established that the court of origin of the judgment erroneously applied the provisions of the Brussels Convention. Commentators are of the opinion that the requested court can review the correctness of the application of the provisions of the Brussels or the Lugano Convention in the case of a consumer or insurance dispute or exclusive jurisdiction.⁴⁰

³⁷ A. Borrás, I. Neophytou, F. Pocar, 13th *Report on National Case Law Relating to the Lugano Conventions*, May 2012, URL=<https://www.bj.admin.ch/content/dam/data/wirtschaft/ipr/lugjurispr-13-e.pdf>. Accessed on 14 February 2014, p. 21.

³⁸ Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, UL L 339 of 21 December 2007.

³⁹ BGH, Judgment of the IX Senate No. IX ZB 102/04 of 30 March 2006.

⁴⁰ N. Joubert, M. Weller in: T. Simons, R. Hausmann (eds.), *op. cit.*, pp. 1010, 1011.

5.2.2. *The Jurisdiction was Based on the Rules of Chapter II of the Regulation*

If the proceedings were initiated before the entry into force of the Brussels I Regulation or one of the aforementioned conventions, the application of the Regulation's rules on the recognition and enforcement of judgments from other Member States is also possible if the jurisdiction of the court which issued the judgment was based on "*rules which accorded with those provided for [...] in Chapter II*", i.e. the chapter devoted to international jurisdiction.

The question could arise whether the requested court must verify if the jurisdiction would have existed in general, i.e. under any of the rules of the Regulation, or, on the other hand, it must be verified whether the actually applied rule "accords" with any of the rules of the Regulation. Namely, we can think of a case where the court in the country of origin would base its jurisdiction on one of the exorbitant jurisdictions, for example because some movable property of the defendant is situated in that country, whereas we would see from the circumstances of the case that the court could have established its jurisdiction also, for example, because the contractual obligation was to be fulfilled in that country (such rule is provided for in Article 5/1 of the Regulation).

Since Article 66/2 provides for exceptions and the exceptions must be interpreted strictly, and the Regulation furthermore expressly states that the jurisdiction *was* founded on rules which accorded with those of its Chapter II, we think that, from the point of view of the Regulation, it would be correct to assess only the specific basis for jurisdiction cited in the foreign judgment.⁴¹ Thus, the question which must be resolved is whether, in case the Regulation had already been in force in the country of origin and would thus be applied, the court would have had jurisdiction on the basis of the cited connecting factor. There are certainly many cases where it is difficult to take that decision and draw a line between rules

⁴¹ It must be noted that the adoption of the opinion that the courts should verify if the court of origin could have had jurisdiction on the basis of a circumstance that that court had not actually deemed as determining would open new questions and problems. Under Article 35/2 of the Regulation, the requested court is namely, when reviewing the jurisdiction, bound by the establishment of the facts on which the court in the country of origin based its jurisdiction. Therefore, the requested court could in no case establish that the jurisdiction in a specific case could have also been based on other facts not established by the court of origin. Thus, the specific basis of jurisdiction cited by the court of origin will be decisive. It could be established that the facts established by the foreign court could obviously serve as a connecting factor regarding another basis of jurisdiction that is acceptable from the point of view of the Regulation, but in such a case the question again arises what to do if the national law of the country of origin applied by the court of origin does not provide for such a basis for jurisdiction. Cf. P. Oberhammer in F. Stein, M. Jonas (eds.), *Kommentar zur Zivilprozessordnung*, 22nd ed., Band 10, Article 66, No. 11, 2011, p. 778. The author is of opinion that the court in the country of enforcement is not bound by the rules on jurisdiction applied by the court of origin; however, it is bound by that court's findings on the facts.

which “accord” and those which do not. It is naturally not necessary that the applied provision contains exactly the same wording as the Regulation, however the purpose and the meaning of the applied rule should be compared to that of the Regulation’s rule, and the principle of the strict interpretation of exceptions should also be respected.

The task of the courts is made easier by the list of exorbitant jurisdictions contained in Annex I to the Regulation. Those are the jurisdictions that are certainly not acceptable from the point of view of the Regulation so that judgments issued on the basis of such jurisdictions (in proceedings that started before the entry into force of the Regulation) cannot be recognised or declared enforceable under the Regulation. Besides the already cited jurisdiction on the basis of the defendant’s property (provided for, e.g., in the national legislation of Slovenia,⁴² the United Kingdom, and Croatia), such exorbitant jurisdictions also include jurisdiction based on a temporary residence of the defendant in Slovenia (Article 48 of the PILPA)⁴³, jurisdiction on the basis of the plaintiff’s nationality (France), or jurisdiction on the basis of the service of the lawsuit on the defendant (United Kingdom).⁴⁴

In assessing whether the jurisdiction was based on rules similar enough to those of the Brussels I Regulation, one must also pay attention to the so-called derived jurisdictions of Article 6 of the Regulation (Article 8 of the Brussels I bis Regulation). These are the possibilities of the joinder of actions that are provided for by the Regulation in the case of multiple defendants, counter-claims, third party proceedings, and connected actions *in rem* and *in personam*. If there are several claims or several defendants, it must be verified if the joinder of actions regarding different claims or defendants would also have been permitted under the Brussels I Regulation. If, for example, in the case of multiple defendants, the jurisdiction regarding one of the defendants has been based on a choice of court agreement and for the second one on the basis of the joinder of actions, the condition of Article 66/2 would not have been fulfilled regarding the second defendant, since the Brussels I Regulation only permits a joinder of actions before the court of the place of domicile of one of the defendants and not before any of the courts compe-

⁴² Article 58 of the PILPA provides: “(1) A court in the Republic of Slovenia shall also have jurisdiction in disputes regarding property claims when the object of the suit is located in the territory of the Republic of Slovenia. (2) If any of the defendant’s property is located in the territory of the Republic of Slovenia, then a court in the Republic of Slovenia shall also have jurisdiction if the defendant’s permanent residence or head office is in the Republic of Slovenia, provided that the plaintiff proves as probable that the decision can be enforced out of this property.”

⁴³ Article 48/2 of the PILPA provides: “If the defendant does not have his/her permanent residence in the Republic of Slovenia or any other country, then a court in the Republic of Slovenia shall have jurisdiction if the defendant’s temporary residence is in the Republic of Slovenia.”

⁴⁴ See Annex I to the Brussels I Regulation.

tent for the first defendant under the Regulation (Article 6/1 of the Regulation).⁴⁵ The CJEU interprets the rules on the joinder of actions strictly, since this is an exception to the general rules; in the case *Réunion européenne* the CJEU thus rejected the joinder of actions before the court of the place of the performance of the contractual obligation.⁴⁶

Finally, it should be emphasised that the exception of Article 66/2(b) is only applicable if the judgment contains information on the basis for jurisdiction applied by the court of origin. If this information is not provided it should be deemed that the condition of the “according” rule on jurisdiction is not satisfied.⁴⁷

5.2.3. An International Treaty Concerning International Jurisdiction was In Force Between the Country of Origin and the Country of Enforcement at the Time when the Proceedings Were Initiated

The second situation regulated by Article 66/2(b) is that an international treaty between the countries “involved” was in force at the beginning of the proceedings that provided for common rules on international jurisdiction. Since the main purpose of the transitional provision is to guarantee that the jurisdiction of the court which issued the judgment was based on a connecting factor acceptable to all countries “involved”, i.e. that no exorbitant jurisdiction was applied against a person domiciled in the country of enforcement, such purpose can also be attained if the jurisdiction was based on a common rule on international jurisdiction adopted by the country of origin and the country of enforcement. Thus, in such cases, the rules of the Brussels I Regulation are also applicable to the recognition and enforcement of judgments (naturally, only those delivered after the entry into force of the Regulation in both countries).

As in the case of judgments delivered under the jurisdictional rules of the Brussels or Lugano Conventions, the possibility of the refusal of recognition or a declaration of enforceability on the basis of Article 35/1 of the Regulation (i.e. because certain most important rules of the Regulation were not applied regarding the jurisdiction of the court of origin) must also be denied in cases where the jurisdic-

⁴⁵ See, e.g., S. Corneloup and C. Althammer in: T. Simons, R. Hausmann (eds.), *op. cit.*, p. 302. Under the Regulation the court must thus not only be in the country but also in the place of the domicile of the defendant.

⁴⁶ CJEU, *Réunion européenne v. Spliethoff's Bevrachtungskantoor*, C-51/97 of 27 October 1998.

⁴⁷ N. Joubert, M. Weller in: T. Simons, R. Hausmann (eds.), *op. cit.*, pp. 1011, 1012, and the case law of the Austrian Supreme Court and the Swiss courts cited therein.

tion was (correctly) founded on a bilateral agreement between the countries. A review of jurisdiction from the point of view of public policy is also excluded (Article 35/3 of the Regulation).

5.3. The Proceedings Were Initiated and the Judgment Was Issued after the Entry into Force of the Regulation

Regarding the original and the recast version of the Regulation, in cases where the court proceedings started after the entry into force of the Regulation in both the country of origin as well as the country of enforcement, the Regulation applies without a review of any other circumstances being necessary (naturally within its scope of application *ratione personae* and *ratione materiae*).

It must also be emphasised that in this case, the rules on the recognition and the enforcement from the Regulation are applicable regardless of whether the jurisdiction was, in the specific case, also determined under the Regulation.⁴⁸ The Regulation's rules on jurisdiction are namely in principle (with some exceptions) only applicable if the defendant is domiciled in an EU Member State, otherwise the national rules should be applied to determine the international jurisdiction of the court of origin. Thus, it can happen that the possibly existing exorbitant jurisdictions from the national legislation are applied and the judgment will nevertheless be able to be recognised and enforced in other EU Member States under the "Brussels regime" (except for the exception of Article 72 of both Regulations).⁴⁹ The exorbitant jurisdictions cannot even be asserted indirectly, via the public policy defence, because Article 35/3 of the Regulation of 2000 (Article 45/3 of the recast) expressly forbids the review of jurisdiction from the point of view of public policy.⁵⁰ If, in such cases, it is not guaranteed that the court decides on the basis of a jurisdiction that is acceptable in the EU context, at least predictability is guaranteed, since it is clear from the beginning of the proceedings that the judgment

⁴⁸ See, e.g., P. Rogerson, *Collier's Conflict of Laws*, 4th ed., Cambridge University Press, 2013, p. 221.

⁴⁹ Article 35/1 of the Brussels I Regulation. Article 72 of the Regulation determines the following: "This Regulation shall not affect agreements by which Member States undertook, prior to the entry into force of this Regulation pursuant to Article 59 of the Brussels Convention, not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention."

⁵⁰ It would only be possible to assert, on the basis of Article 35/1, that the court did not apply the Regulation's rules on jurisdiction in insurance and consumer matters or on exorbitant jurisdiction, even though it should have done so – i.e. that the court incorrectly applied the national rules instead of the Regulation.

issued in these proceedings will profit from the “Brussels regime” of recognition and enforcement.

6. CONCLUSION

In principle, the procedural rules in force at the time of the proceedings are applied. Hence, since during the proceedings (from the beginning of the proceedings until the judgment takes effect) the procedural rules can change, such situations are regulated in the transitional provisions of the newer legislation. The Brussels I Regulation of 2000, arguably the most important EU act in the field of EU Civil Procedure, and its successor the recast Brussels I Regulation of 2012 contain such provision in Article 66.

The transitional provision of the Regulations demands the application of each Regulation in cases where court proceedings were initiated after the entry into force of such Regulation. Regarding the recognition and enforcement of judgments from other EU Member States, however, the Brussels I Regulation of 2000 provides for an exception: the Regulation is also applicable in cases where the proceedings were started before its entry into force, but only if the judgment was issued after its entry into force and the jurisdiction of the court issuing the judgment was based on a connecting factor which is acceptable in the EU context or at least by the two “involved” states.

Many problems in the interpretation of the aforementioned rules arose regarding the moment of the entry into force of the Regulation of 2000. In an absolute sense, the Regulation entered into force on 1 March 2002, but naturally only in the then EU Member States. In the countries that entered the EU later, the Regulation entered into force on the date of their accession, i.e. in 2004, 2007, or 2013. Which date should thus be deemed as the date of the entry into force of the Regulation, if it entered into force on different dates in the country of origin of the judgment and in the country where the recognition or the declaration of the enforceability of the judgment is requested? The interpretation adopted by legal doctrine was finally confirmed by the CJEU in 2012, when it adjudged that, for the purposes of the application of Article 66 of the Regulation, the Regulation is deemed to have entered into force on the later of the aforementioned dates.

The analysis of the most common possible situations where the application of the Regulation of 2000 *ratione temporis* could prove problematic shows that the judge must execute a meticulous task in interpreting the transitional provision of Article 66. The work of the courts can be especially difficult in cases where the application of the Regulation depends on the question of whether the court that issued the

judgment based its jurisdiction on a substantially same rule as is contained in the Regulation. The courts must also be vigilant of the possible application of the rules on the joinder of proceedings that must also be assessed from the point of view of the Regulation's provisions on such joinder. In the event of doubt, we suggest a strict interpretation of the transitional provision.

Lastly, a brand new issue must be mentioned when speaking of the application *ratione temporis*, namely the so-called Brexit. The United Kingdom will soon leave the EU, probably somewhere in 2019. Under which rules should the remaining Member States recognize and enforce British judgments after that date? Under both versions of the Brussels I Regulation, the "Brussels regime" is provided for the "judgments given in a Member State". Does this mean that the State of origin had to be a Member State at the moment of the issuing of the judgment or also at the moment when the enforcement is sought in another (still) Member State? This is just one of the numerous questions and problems Brexit raises in private international law that will have to be resolved in the following years.

REFERENCES

BOOKS AND ARTICLES

1. Simons, T., Hausmann, R. (eds), *Brüssel I – Verordnung, Kommentar zur VO (EG) 44/2001 und zum Übereinkommen von Lugano*, IPR Verlag GmbH, München 2012.
2. Stone, P., *EU Private International Law*, 2nd ed., Edward Elgar Publishing 2010.
3. Stein, F., Jonas, M. (eds.), *Kommentar zur Zivilprozessordnung*, 22nd ed., 2011, Band 10.
4. Galič, A., *Die Anerkennung und Vollstreckung von gerichtlichen Entscheidungen in Slowenien nach dem Beitritt zur EU*, in: Kengyel, M., Rechberger, W. H. (eds), *Europäisches Zivilverfahrensrecht : Bestandsaufnahme und Zukunftsperspektiven nach der EU-Erweiterung*, Wien; Graz: Neuer Wissenschaftlicher Verlag; Berlin: Berliner Wissenschafts-Verlag, 2007, pp. 117-151,
5. Becker, M., Müller, K., *Intertemporale Urteilsanerkennung und Art. 66 EuGVO*, in: IPrax5, 2006, pp. 432-438.
6. Kramberger Škerl, J., *Choice of Court Agreements in the Brussels I Regulation*, in: *Recent Trends in European Private International Law – Challenges for the national legislations of the south-east European countries: collection of papers IX Private International Law Conference*, September 23, 2011, Saints Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law, 2011, pp. 123-143,
7. Rogerson, P., *Collier's Conflict of Laws*, 4th ed., Cambridge University Press 2013.

COURT OF JUSTICE OF THE EUROPEAN UNION

1. CJEU, *Wolf Naturprodukte GmbH v. SEWAR spol. s r.o.*, C-514/10 of 21 June 2012,
2. CJEU, *Réunion européenne v. Spliethoff's Bevrachtingskantoor*, C-51/97 of 27 October 1998,
3. CJEU, *Elsbeth Freifrau von Horn v. Kevin Cinnamon*, C-163/95 of 9 October 1997,
4. CJEU, *Zelger v. Salinitri*, 129/83 of 7 June 1984,
5. CJEU, *Sanicentral GmbH v. René Collin*, 25/79 of 13 November 1979,

EU LAW

1. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L 351.
2. (Lugano) Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2007] UL L 339.
3. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L 12.
4. (Lugano) Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters.
5. (Brussels) Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters,

LIST OF NATIONAL REGULATIONS, ACTS AND COURT DECISIONS

Slovenia

1. (Slovenian) Civil Procedure Act (*Zakon o pravnem postopku*), Official Gazette No. 26/1999, with further amendments.
2. (Slovenian) Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku*), Official Gazette No. 56/1999, with further amendments.
3. Supreme Court of the Republic of Slovenia (SC RS), judgment No. Cp 2/2005 of 25 August 2005.
4. SC RS, judgment No. Cpg 5/2006 of 26 February 2007.
5. SC RS, judgment No. Cp 22/2008 of 15 January 2009.
6. SC RS, judgment No. Cp 13/2009 of 18 February 2010.
7. SC RS, judgment No. Cp 7/2010 of 31 January 2011.
8. SC RS, judgment No. Cpg 3/2013 of 10 September 2013.
9. SC RS, Judgment No. III Ips 164/2008 of 3 February 2009.

Austria

10. Oberster Gerichtshof (OGH) (Austria), Judgment No. 3 Nd 509/02 of 18 December 2002.

11. OGH, No. 5Ob201/08g of 23 September 2008.
12. OGH, No. 7 Ob 89/03v of 30 June 2003.

Germany

13. German Civil Procedure Act (*Zivilprozessordnung*), BGBl. I S. 3202, ber. 2006 I S. 431, ber. 2007 I S. 1781.
14. Bundesgerichtshof (BGH), XI ZR 474/02 of 16 December 2003.
15. BGH, IX ZB 102/04 of 30 March 2006.
16. BGH, XI ZR 366/03 of 7 December 2004.
17. BGH, III ZR 226/03 of 19 February 2004.
18. BGH, III ZR 191/03 of 1 December 2005.
19. Oberlandesgericht (OLG) Koblenz, No. 23 U 199/02 of 7 March 2003.
20. OLG Düsseldorf, No. I 23 U 70/03 of 30 January 2004.
21. OLG Düsseldorf, No. I 24 U 86/05 of 22 December 2005.
22. OLG Frankfurt, No. 16 U 26/04 of 25 November 2004.
23. OLG Bamberg, No. 3 W 17/05 of 9 February 2005.
24. OLG Koblenz, No. 23 U 199/02 of 7 March 2003.
25. OLG Düsseldorf, No. I 23 U 70/03 of 30 January 2004.

United Kingdom

26. High Court – Queen’s Bench Division England, *Advent Capital Plc v. GN Ellinas Imports-Exports Ltd and S. Trading Limited*, No. [2005] EWHC 1242 (Comm) of 16 June 2005.

WEBSITE REFERENCES

1. A. Borrás, I. Neophytou, F. Pocar, 13th Report on National Case Law Relating to the Lugano Conventions, May 2012, accessed on 20 March 2017 through web search, no direct web page accessible.