

Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“Brussels I a”)

*Dr. Liviu Zidaru – Judge at the Court of Appeals in Bucharest,
17 June 2015*



Jurisdiction, recognition and enforcement of civil judgements in Europe

- Brussels Convention (1968)
- Brussels I Regulation (No. 44/2001)
- Recast: Brussels I a Regulation (No. 1215/2012)
- *Same core principles, gradual and evolutionary adaptment*
- Earlier jurisprudence interpreting provisions with the same or similar language is still relevant (pervasive recital in quite recent ECJ – decisions) – *Recital 34*
- *Practical point of view*: Understanding Reg. No. 44/2001 is the key to the Recast Regulation (Brussels I a)



Scope

- *Ratione materiae*: Civil and commercial cases (broad meaning of “civil cases”)
- *Exclusions* – selective discussion (*acta iure imperii*, insolvency proceedings)
- *Ratione temporis*: Proceedings instituted, authentic instruments formally drawn up or registered and court settlements approved or concluded starting with the 10th of January, 2015
- *Instruments*: Judgements, court settlements, authentic instruments - art. 2 a) – c) Reg.



What is new in the Recast Regulation?

- Autonomous definition of judgements according to ECJ – jurisprudence
- New jurisdiction rule in claims regarding recovery of cultural objects (art. 7 par.4)
- extension of jurisdiction rules protecting weaker parties to disputes involving third States defendants - greater protection for Member States domiciled consumers/employees contracting with non-Member States traders/employers (art. 18 par.1 and art. 21 par. 2)
- Formal provision to the separability of the choice-of-court agreement from the contract in which it is contained (art. 25 par. 5) – *ad validitatem* – provisions in national law should not extend to the agreement!
- New obligation to inform protected parties to insurance, consumer, employment contracts of their right to contest the courts' jurisdiction and of the consequences of entering an appearance without challenge (art. 26 par. 2)



What is new in the Recast Regulation? (II)

- The prior tempore *lis pendens* rule is adapted to cases where the court was seized in breach of an exclusive choice-of-court agreement (art. 31 par. 2 – prevention of the so-called “*Italian torpedo*”)
- Discretionary *lis pendens* and related actions – rules concerning third States litigation (art. 33 – 34)
- Abolition of *exequatur*: A prior declaration of enforceability is no longer necessary; the certificate issued acc. to art. 53 is to be served to the debtor prior to the 1st enforcement measure (art. 43)
- The grounds of refusal of recognition are THE SAME as in the R. 44/01, but the burden of application is inversed: it is an application for refusal issued by the interested party (art. 45 seq.)



Special jurisdiction concerning liability out of tort

- Art. 7 par.2 Recast Reg., identical in wording to ex-art. 5 par. 3 Brussels I Reg.
- ‘matters relating to tort, delict or quasi-delict’ - all actions which seek to establish the liability of a defendant and which do not concern ‘matters relating to a contract’ within the meaning of Article 5 (1) (a) R. 44/01 – *Kalfelis* (C – 189/87)
- The classification of the legal relationship under national law is irrelevant - *Réunion Européenne* (C – 51/97)
- Contractual matters – there must be an obligation freely assumed by one party towards the other – *Handte* (C – 24/91);
- Circle closed > all other actions which seek to establish the liability of a defendant - ‘matters relating to tort, delict or quasi-delict’



Jurisdiction concerning liability out of tort (II)

- Broad meaning of “harmful event”- liability for defective products; *culpa in contrahendo*; covers not only situations where an individual has personally sustained damage but also, in particular, preventive action brought by a consumer protection organization against the use of unfair terms who undermine legal stability – *Henkel* (C – 167/00)
- 'place where the harmful event occurred' - either at the place *where the damage occurred* or the place of *the event giving rise to it* – *Mines de potasse d'Alsace* (C – 21/76); only the initial, immediate damage is relevant, not the mediate consequences – *Marinari* (C – 364/93)
- Purpose of the special rule: proximity, easy taking evidence – therefore it must be a particularly close connection between the dispute and the courts of the place where the harmful event occurred – *ÖFAB* (C – 147/12)



Jurisdiction concerning liability out of tort (III)

- Immaterial ways of communication raise the problem of the potential ubicuity of the place “where the harmful event occurs”
- Illeged infringement of personality rights by means of content placed online on an internet website – domicile of the content publisher *or* center of interests of the plaintiff – *Martinez* (C – 509/09)
- infringements of intellectual property rights: an action relating to infringement of a trade mark registered in a Member State through the use, by an advertiser, of a keyword identical to that trade mark on a search engine website operating under a country-specific top-level domain of another Member State may be brought before the courts of the Member State in which the trade mark is registered – *Wintersteiger* (C – 523/10)



- Questions?

- Thank you very much!

