



# CONNECTIONS, DISCONNECTIONS AND FRAGMENTATION IN INTERNATIONAL CIVIL PROCEDURE: THE CASE OF INTELLECTUAL PROPERTY RIGHTS

Presentation based on the report of Mrs Paula-Carmen Ettori  
Under the supervision of Pr Jean-Sylvestre Bergé

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

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# INTRODUCTION

- The chapter 4 was prepared by a master degree student under my supervizion.
- The objective of this presentation is :
  - to recall the key principles on international intellectual property (IP) litigation ;
  - to present the main solutions provided by national jurisdictions ;
  - to present new solutions for improving the application of the regulation Bibis.

# KEY PRINCIPLES ON INTERNATIONAL INTELLECTUAL PROPERTY (IP) LITIGATION (I)

- **THE FRAGMENTATION OF INTELLECTUAL PROPERTY DISPUTES : THE PRINCIPLE OF TERRITORIALITY (ECJ CASE LAW : PINCKNEY)**
- **LEGISLATIVE INFLATION TO DETERMINE JURISDICTIONAL COMPETENCE AND TO RULE ON RECOGNITION IN INTELLECTUAL PROPERTY MATTERS : B1BIS AND EU TRADEMARK REG., COMMUNITY DESIGN REG., COPYRIGHT AND RELATED RIGHTS IN THE DSM DIR., EUROPEAN PATENT CONV.**

# KEY PRINCIPLES ON INTERNATIONAL INTELLECTUAL PROPERTY (IP) LITIGATION (II)

- **BRUSSELS REGULATIONS USED FOR MIXED STRATEGIES:**  
GLOBAL JURISDICTION, FRAGMENTATION OF THE JURISDICTIONS, LIS PENDENS, FORUM SHOPPING.... FOR EXAMPLE: TORPEDO, COUNTERTORPEDO STRATEGIES
- ***DIFFICULTIES TO OBTAIN EXTRATERRITORIAL INJUNCTIONS***  
(ECJ CASE LAW : *BOLAGSUPPLYSNINGEN*)

# THE MAIN SOLUTIONS PROVIDED BY NATIONAL JURISDICTIONS (I)

- **REGULATING THE FRAGMENTATION OF INTELLECTUAL PROPERTY DISPUTES WITH THE PRINCIPLE OF TERRITORIALITY** (CASE LAW FROM FRANCE, BELGIUM, LUXEMBOURG, SPAIN, ITALY)
- **NATIONAL JUDGES OVERSEEING THE RECONCILIATION OF EUROPEAN TEXTS** (CASE LAW FROM ITALY, GERMANY, SPAIN, FRANCE)

# THE MAIN SOLUTIONS PROVIDED BY NATIONAL JURISDICTIONS (II)

- **NATIONAL JUDGES' USE OF THE BRUSSELS REGULATIONS:**
  - **Growing interest in Lis pendens and related actions** (case law from France, Italy, Spain)
  - **The principle of mutual recognition fades into the background** (very few decisions)
- **THE TOOLS AVAILABLE TO NATIONAL JUDGES FOR PUNISHING INFRINGEMENTS** (specific provisional measures in the national contexts)

# **NEW SOLUTIONS FOR IMPROVING THE APPLICATION OF THE REGULATION BIBIS**

- **HELPING JUDGES TO FIGHT THE PHENOMENON OF FRAGMENTATION (EUIPO' GOOD PRACTICES)**
- **SUPPORTING JUDGES' EFFORTS TO BETTER RECONCILE DIFFERENT EUROPEAN TEXTS (SPECIALIZATION, TRAINING)**
- **REFORMING THE REGULATION RATHER THAN ITS USE (EXTENSION OF THE EXCLUSIVE JURISDICTION)**
- **PROMOTING THE USE OF ANTI-SUIT INJUNCTIONS (?)**

# THANK YOU FOR YOUR ATTENTION

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# “IP LITIGATION IN EUROPE: GENERAL FRAMEWORK AND ITS RELATION TO EU INSTRUMENTS IN PARTICULAR MATTERS”

Prof. Dr. Guillermo Palao Moreno  
Univ. Valencia

COORDINATING BRUSSELS IA WITH OTHER INSTRUMENTS OF EU LAW:  
A ROUNDTABLE ON THEORETICAL AND PRACTICAL ISSUES  
Genoa roundtable: online, TEAMS platform  
Date: 24 September 2020

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### I. General remarks on the coordination of Brussels Ia Regulation and other EU instruments in the field of IP Litigation (ETM/ CD)

- 1. The lex specialis principle and art. 67 of the Brussels Ia Regulation.*
- 2. The coordination rules in Regulations on the European Trade Mark and on Community Designs.*

### II. An overview of the jurisdiction rules contained in the Regulations on the ETM/ CD and their limits

- 1. Scope.*
- 2. Heads on jurisdiction.*

### III. A practical example from both Spanish and ECJ Case Law

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# I. GENERAL REMARKS ON THE COORDINATION OF BRUSSELS IA REGULATION AND OTHER EU INSTRUMENTS IN THE FIELD OF EUROPEAN TRADE MARKS AND ON COMMUNITY DESIGNS.

## EU Instruments in the field of IP Law (with jurisdiction rules):

- Regulation (EC) No 207/2009, on the Community trade mark (codified version)
- Regulation (EU) 2017/1001, on the European Union trade mark (codification) (repealing Regulation (EC) No 207/2009, by art. 211)
- Regulation (EC) No 6/2002, on Community designs
- Regulation (EC) No 873/2004, amending Regulation (EC) No 2100/94 on Community plant variety rights

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### “Unitary Patent Package”.

- Regulation (UE) No 1257/2012, implementing enhanced cooperation in the area of the creation of unitary patent protection
- Regulation (EU) No 1260/2012, implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements
- Regulation (EU) No 542/2014, amending Regulation (EU) No 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice
- Agreement on a Unified Patent Court of 2013

### Goals of the research:

- Analysis of the relationship between Brussels Ia Regulation with Regulation (EU) 2017/1001 and Regulation (EC) No 6/2002: jurisdictional issues:
- Analysis of ECJ and Spanish Case Law

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## THE *LEX SPECIALIS* PRINCIPLE AND ART. 67 OF THE BRUSSELS IA REGULATION

In respect to Regulation (EU) 2017/1001 (Chapter X, Arts. 122-135) and Regulation (EC) No 6/2002 (Title IX, Arts. 79-94)

ECJ Case C-360/12, Coty Germany (27) (28)

ECJ Case C-617/15, Hummel Holding (26)

ECJ Case C-433/16, Bayerische (39)

ECJ Cases C-24/16 y C-25/16, Nintendo (43) (44)

ECJ Case C-172/18, AMS Neve (34) (35) (36)

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## THE COORDINATION RULES IN REGULATIONS ON THE ETM/ CD

Two main principles:

- a) Jurisdiction rules of Regulation (EU) 2017/1001 and Regulation (EC) No 6/2002 take priority over those of Brussels Ia Regulation;
- b) Some provisions of Brussels Ia Regulation still retain a subsidiary application in relation to specific situations

a) Art. 122 Regulation (EU) 2017/1001 (“Application of Union rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters”) **and** Art. 79 Regulation (EC) No 6/2002 (“Application of the Convention on Jurisdiction and Enforcement”)

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**b) Art. 82 Regulation (EC) No 6/2002 and Art. 125 Regulation (EU) 2017/1001**  
("International jurisdiction") "Subject to the provisions of this Regulation as well as to any provisions of Regulation (EU) No 1215/2012", "proceedings in respect of the actions and claims (referred to Art. 81 Regulation (EC) No 6/2002 and Art. 124 Regulation (EU) 2017/1001) shall be brought in the courts of the Member State (...)"

**ECJ Cases C-24/16 y C-25/16, Nintendo**

**c) Art. 90 Regulation (EC) No 6/2002 and Art. 131 Regulation (EU) 2017/1001**  
("Provisional and protective measures")

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## II. AN OVERVIEW OF THE JURISDICTION RULES CONTAINED IN THE REGULATIONS ON THE ETM/ CD

The Community design and Trade Mark courts shall have exclusive jurisdiction over **infringement and validity actions** related to those EU IPRs according to **Art. 81 Regulation (EC) No 6/2002 and Art. 124 Regulation (EU) 2017/1001** (“Jurisdiction over infringement and validity”)

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## a) 82 Regulation (EC) No 6/2002 and Art. 125 Regulation (EU) 2017/1001 ("International jurisdiction")

- a) Prorogation of jurisdiction and jurisdiction by appearance (exclusive jurisdiction); if not
- b) Defendant's domicile or establishment; if not
- c) *Forum actoris* (domicile or establishment); if not
- d) Seat of the Office (EUIPO); or
- e) Place where act of infringement has been committed or threatened (Mosaic principle)

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ECJ Case C-360/12, Coty  
ECJ Case C-617/15, Hummel Holding  
ECJ Case C-433/16, Bayerische  
ECJ Cases C-24/16 y C-25/16, Nintendo  
ECJ Case C-172/18, AMS Neve

b) Art. 90 Regulation (EC) No 6/2002 and Art. 131 Regulation (EU) 2017/1001  
("Provisional measures, including protective measures")

c) Art. 91 Regulation (EC) No 6/2002 and Art. 133 Regulation (EU) 2017/1001  
("Specific rules on related actions")

ECJ Case C-678/18, Procureur-Generaal bij de Hoge Raad der Nederlanden

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### III. A practical example from both Spanish and ECJ Case Law

#### SPANISH *TRIBUNAL SUPREMO*, JUDGEMENT 1/2017

##### FACTS:

- In 2011 BMW brought an action against Acacia -an Italian company which manufactures and markets alloy rims for automobile wheels, registered as Community designs- and Autohaus Motorsport –a Spanish domiciled car repair shop who sells Acacia products-, before the Commercial Court of Alicante (Spain), seeking a declaration of infringement of Community designs (of which BMW is the proprietor) and to cease the use the protected designs at issue throughout the European Union.

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(...)

- Acacia entered an appearance by lodging a defence before that court contesting the jurisdiction of the Spanish courts. The Alicante Community trade mark Court accepted its jurisdiction (2012), and held that there had been an infringement and that Acacia should to cease the use the protected designs (2013).

- In 2014 Acacia lodged before the referring court, the *Audiencia Provincial de Alicante* (Higher Provincial Court), who accepted the arguments of Acacia and declined its jurisdiction. BMW referred the case to the Spanish *Tribunal Supremo*, alleging *inter alia* the wrong application of Art. 6(1) Regulation No 44/2001 and objecting that the Spanish courts had jurisdiction to hear the case.

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## RULING:

Art. 6.1 Regulation (EC) No 44/2001 cannot avoid the application of arts. 79 and 82 Regulation (EC) No 6/2002, with the objective to determine the jurisdiction of the Court of a Member State which is not closely connected to avoid the risk of irreconcilable judgments resulting from separate proceedings, when the infringement of several Community designs took place in another Member State where the defendant was also domiciled, to avoid forum shopping practices.

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## ECJ: Case C-433/16, Bayerische

### FACTS:

- In 2013, Acacia –an Italian company which manufactures and markets alloy rims for automobile wheels, registered as Community designs-, brought an action against BMW before the *Tribunale di Napoli* (Italy) seeking a declaration of both non-infringement of Community designs (of which BMW is the proprietor), and of abuse of a dominant market position and unfair competition by BMW. Acacia also sought an injunction to prevent BMW from taking any action hindering the marketing of the replica rims.

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- BMW entered an appearance by lodging a defence before that court: objecting that the notification of the application was non-existent or void, and contesting the jurisdiction of the Italian courts. Furthermore, BMW claimed that Acacia's applications should be rejected as having no basis in fact or in law. In May 2014, the *Tribunale di Napoli* set time limits for lodging further submissions on questions of procedure.
- In October 2014, BMW lodged before the referring court, the *Corte suprema di cassazione*, an application for the question of jurisdiction, still pending before the *Tribunale di Napoli*, to be settled as a preliminary issue. It repeated its argument that the Italian courts have no jurisdiction to hear the case brought by Acacia. Acacia, for its part, contends that the jurisdiction of the Italian courts was tacitly accepted by BMW given that, after raising the objection that notification of Acacia's application was non-existent or void, as was the mandate of its counsel, before the *Tribunale di Napoli*, BMW raised the objection that the Italian courts had no jurisdiction to hear the case only in the alternative.

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## RULING:

“1) **Article 24 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 to the effect that a challenge to the jurisdiction of the court seised, raised in the defendant’s first submission in the alternative to other objections of procedure raised in the same submission, cannot be considered to be acceptance of the jurisdiction of the court seised, and therefore does not lead to prorogation of jurisdiction pursuant to that article.

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2) Article 82 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs must be interpreted to the effect that **actions for declaration of non-infringement under Article 81(b) of that regulation must, when the defendant is domiciled in an EU Member State, be brought before the Community design courts of that Member State, except where there is prorogation of jurisdiction within the meaning of Article 23 or Article 24 of Regulation No 44/2001, and with the exception of the cases of *litis pendens* and related actions referred to in those regulations..**

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3) The rule on jurisdiction in Article 5(3) of Regulation No 44/2001 does not apply to actions for a declaration of non-infringement under Article 81(b) of Regulation No 6/2002.

4) The rule on jurisdiction set out in Article 5(3) of Regulation No 44/2001 does not apply to actions for a declaration of abuse of a dominant position and of unfair competition that are connected to actions for declaration of non-infringement, in so far as granting those applications presupposes that the action for a declaration of non-infringement is allowed”.

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# THANK YOU!

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# *Enforcing and coordinating Brussels Ia with «other» Brussels regulations*

Presentation based on the report by Mrs Chirouette ELMASRY  
under the supervision of Pr Giulio Cesare GIORGINI  
*Université Côte d'Azur (Nice, France)*

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# Objectives of the presentation

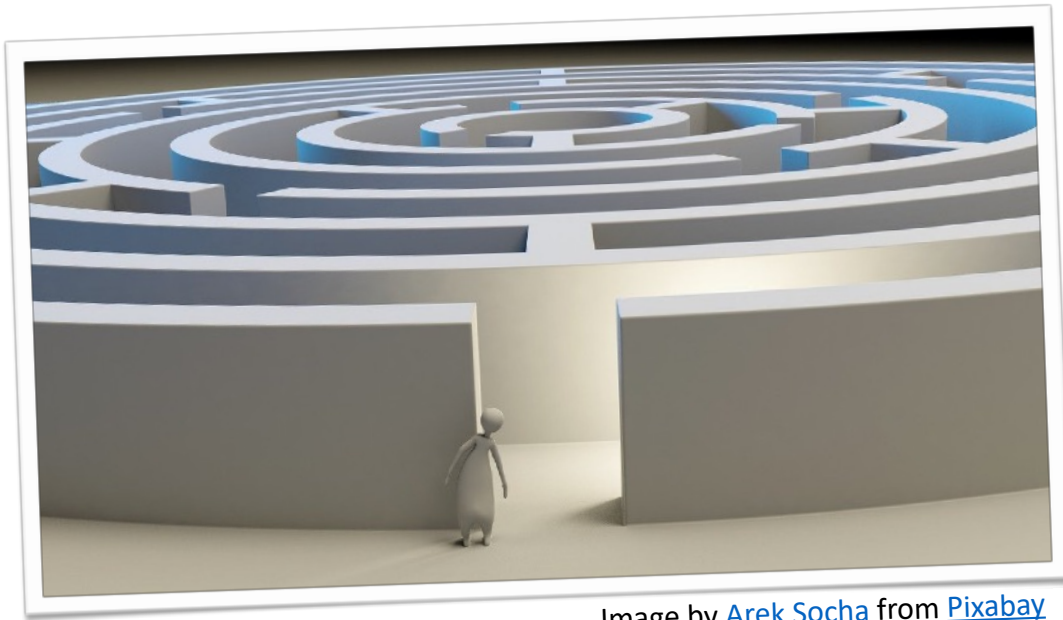


Image by [Arek Socha](#) from [Pixabay](#)

**Key principles** of coordination

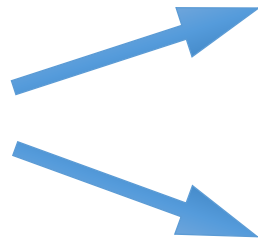
Overview of **collected case-law**

**Proposals** for enhancing  
enforcement of Brussel Ia

## Scope of Bruxelles Ia



Brussels Ia, **article 1**



Concept of **civil and commercial matters**

Exclusion of some **civil and commercial matters**

# The resulting framework



Image by [JayMantri](#) from [Pixabay](#)

Regulation (EC) N° **2201/2003**  
and Regulation (EU) **2019/1111**

Regulation (EC) N° **4/2009**

Regulation (EC) N° **1346/2000**  
and Regulation (EU) **2015/848**

Regulation (EU) n° **650/2012**



## EN2BRIa database



Image by [Colossus Cloud](#) from [Pixabay](#)

**300** decisions

**82** decisions related to  
Brussels Ia and other  
regulations



## EN2BRIa database



Image by [gouv](#) from [Pixabay](#)

And the **winners** are...

Regulation (EC) N° **1346/2000**  
and Regulation (EU) **2015/848**

Regulation (EC) N° **4/2009**

Regulation (EC) N° **2201/2003**  
and Regulation (EU) **2019/1111**

# Brussels Ia and the European Insolvency Regulations



ECJ, 22 February 1979, n° C-133/78,  
*Henri Gourdain c/ Franz Nadler*

ECJ, 10 September 2009, n° C-292/08,  
*German Graphics*

ECJ, 4 September 2014, n° C-157/13,  
*Nickel & Goeldner Spedition*

ECJ, 4 December 2014, n° C-295/13,  
*H c/ H.K*

ECJ, 9 November 2017, n° C-641/16,  
*Tünkers France et Tünkers Maschinenbau*  
ECJ, 20 December 2017, n° C-649/16,  
*Valach e.a.*

**Exclusive** jurisdiction

# Brussels Ia and Regulation (EC) n° 4/2009

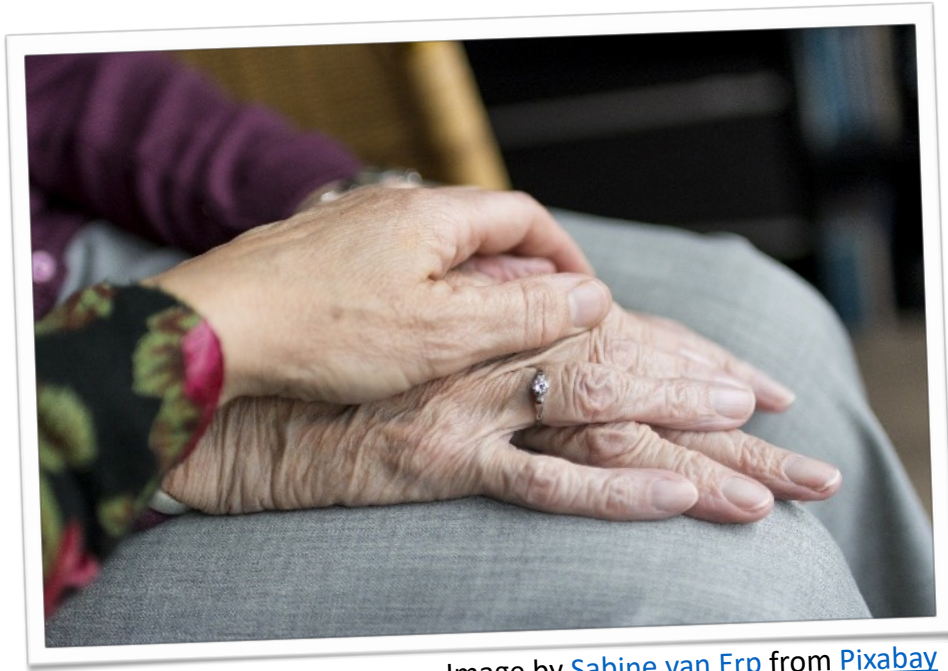


Image by [Sabine van Erp](#) from [Pixabay](#)

Concept of **maintenance obligation**

**Strategies** based on regrouping  
of actions

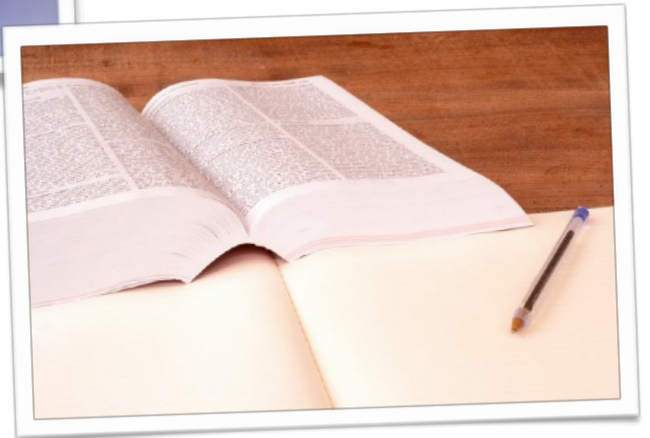
# Proposals



**Facilitate the mission**  
of European judges



**Revision** of Brussels Ia



A new **code** for PIL ?





In order to move others, I must be moved.

*Niccolò Paganini*

*Thanks for your attention*



LAW, POLITICAL SCIENCE  
AND MANAGEMENT  
GRADUATE SCHOOL AND RESEARCH



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# ENFORCING AND COORDINATING BRUSSELS IA AND INTERNATIONAL LAW: FUTURE PERSPECTIVES

Presentation based on the report of Mrs Jessica Sanchez  
Under the supervision of Pr Jean-Sylvestre Bergé

Investigation conducted in the framework of "Enhancing Enforcement under Brussels Ia" – EN2BRIa, Project funded by the European Union Justice Programme 2014-2020, JUST-JCOO-AG-2018 JUST 831598

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# INTRODUCTION

- The chapter 8 was prepared by a master degree student under my supervizion.
- The objective of this presentation is :
  - to recall the general guidelines on reconciliation between the Brussels I bis Regulation and international agreements ;
  - to present the main solutions provided by national jurisdictions ;
  - to present prospects and solutions.



# GENERAL GUIDELINES ON RECONCILIATION BETWEEN THE BRUSSELS I BIS REGULATION AND INTERNATIONAL AGREEMENTS (I)

- ***Internal relationships***

- Article 351 of the TFEU
- Articles 67 to 71 of the Brussels I bis Regulation
- The disconnection clause mechanism
- Clarifications from European case law (on CMR convention notably)

# GENERAL GUIDELINES ON RECONCILIATION BETWEEN THE BRUSSELS I BIS REGULATION AND INTERNATIONAL AGREEMENTS (II)

- ***External relationships***

- Effects of the Brussels I bis Regulation on relationships between Third States and Member States
- Reconciling European and international instruments in situations involving Third States (certain Hague Conventions, Bilateral Convention, Lugano Convention)

# THE MAIN SOLUTIONS PROVIDED BY NATIONAL JURISDICTIONS (I)

- ***Applying special international conventions between Member States***
  - In matters of transport law (*CMR, COTIF, WARSAW, MONTREAL, CNI*) : case law from France, Belgium, Germany
  - In matters of the international sale of goods : case law from France
  - Bilateral conventions between Member States : case law from Belgium

# THE MAIN SOLUTIONS PROVIDED BY NATIONAL JURISDICTIONS (II)

- ***Situations involving Third States: the Lugano Convention:***
  - Case law from France

# PROSPECTS AND SOLUTIONS

- The practical application of the Brussels I bis Regulation does not cause any insurmountable difficulties;
- New issues related to Brexit;
- *Potential codification of European private international law.*

# THANK YOU FOR YOUR ATTENTION

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Enhancing Enforcement under Brussels Ia



This Project is funded by the European Union  
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# *The lex specialis principle in Brussels Ia: A cross reading of articles 71 and 67*

*PEPP EN2BRIA Roundtable*  
*24 September 2020, Univ. of Genoa*  
*Online session*

Stefano Dominelli  
Researcher in International Law, University of Genoa

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# Fragmentation and coordination

- Fragmentation of rule on jurisdiction – less frequent: on free movement of decisions
- Complexities for lawyers with native “comprehensive codes” approaches
- No “hierarchy” methodology to solve issue of application of concurring rules
- No “temporal” methodology as well





# The *lex specialis* approach

- Art. 67 Brussels Ia: reason to favour technical and more appropriate rules in given fields
- Permanent disconnection clause (*past, present, and future concurring provisions*)
- Unilateral coordination of the Brussels Ia...
- In favour of special rules... *in specific matters* (not applicable to *general concurring regimes*)
- Are there (or should there be) additional requirements other than those expressly identified in the provision?



## Art. 71 Brussels Ia

- Disconnection in favour of international treaties concluded by Member States *in specific matters*
- Principles developed by the case law
  - **Special regimes are not self-contained:** Brussels Ia plays a “fill-the-gap” function (*lis alibi pendens*; choice of court agreements...) [*Tatry*, Case C-406/92, para. 23 f; Nejvyšší soud (CZ) 16.02.2011 - 4 Nd 418/2010; OGH 27.11.2008 - 7Ob194/08t... ]
  - **Brussels Ia as benchmark application for international treaties:** international treaties in special matters can be applied only so long such concurring regimes respect the fundamental ratio of Brussels Ia [superimposing this condition: *TNT Express*, Case C-533/08, para 49 ff]
  - Is it still possible for the EU to conclude international treaties with less-developed models of the free movement of decisions (e.g. *exequatur* still necessary)?



# The importance of the venue of coordination

- Should the principles developed under art. 71 be extended to art. 67?
  - **Fill-the-gap approach:** yes
  - **Super-imposed benchmark approach:** no – the unitary origin of the different rules to coordination (all provisions adopted by the EU lawgiver) should lead to advocate against restrictions of the *lex specialis* principles explicitly adopted
- International treaties concluded by MS, subsequently by the EU (Montreal Convention on air carrier liability for the transport of passengers): should art. 67 or 71 operate?



# Conclusion

The *lex specialis* principle should be declined in different operative rules depending on the context and on the *ratio* for coordination with the general regime

A transposition of the golden rules developed under art. 71 to art. 67 as well might be dogmatically incoherent with the aim of the law



Thank you for your attention!

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