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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

on the application of 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)

{SWD(2025) 135 final}

1. INTRODUCTION

1.1. Background

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)[1], hereafter 'the Regulation', is indisputably the backbone of EU private international law. It lays down uniform rules to settle conflicts of jurisdiction and sets the standard for the free circulation of judgments, authentic instruments, and court settlements in the European Union with the ultimate aim of facilitating access to justice in all areas of civil and commercial law outside the realm of family, succession, and insolvency law. It repealed and replaced Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[2] ('the Brussels I Regulation'). The Regulation has to a large extent confirmed and reinforced the provisions of its predecessor, but has also introduced relevant novelties, such as the abolition of *exequatur*.

The Regulation, as amended in 2014[3], has been applied since 10 January 2015 between all Member States, including Denmark[4].

1.2. Preparation and the objectives of this Report

This Report has been prepared in accordance with Article 79 of the Regulation. In its preparation, the case-law of the Court of Justice of the European Union ('the CJEU' or 'the Court')[5], constituted a key source of information on the application of the Regulation. The Report also uses the findings of the study commissioned by the Commission to support the preparation of this Report[6] ('the Study'). Member States have been consulted as part of this Study and their views, as well as the additional elements provided by certain Member States following the Commission's request at the meeting of the Council Working Party on Civil Matters (General Questions) of 28 February 2024, have been considered.

This Report has also been informed by the findings of the JUDGTRUST project[7], and the information on the practical application of the Regulation collected through the European Judicial Network in Civil and Commercial Matters in the course of 2023. Finally, relevant national case-law, where available, was consulted in the preparation of this Report.

The objective of the Report is to present an overall assessment of the application of the Regulation with a special focus on its most challenging aspects as well as those explicitly

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1 OJ L 351, 20.12.2012, p. 1.

2 OJ L 12, 16.1.2001, p. 1.

3 Regulation (EU) No 542/2014 of the European Parliament and of the Council of 15 May 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, OJ L163, 29.5.2014, p.1. The amendment aimed at enabling the implementation of the so-called 'patent package' first, by allowing the entry into force of the Unified Patent Court Agreement (OJ C 175, 20.6.2013, p. 1) and second, by ensuring the compliance with the Regulation of this Agreement as well as the Protocol to the Benelux Treaty of 1965.

4 Denmark applies the Regulation in line with the Agreement of 19 October 2005 between the European Community and Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 299, 16.11.2005, p. 62.

5 Only judgments and Opinions of the Advocates general issued before 1 April 2025 were considered.

6 The Study was prepared by Milieu SRL and is available at Publications Office of the EU (europa.eu).

7 The project 'Regulation Brussels Ia: a standard for free circulation of judgments and mutual trust in the European Union' (JUDGTRUST) funded by the European Commission's Justice Programme (JUST-AG-2017/JUST-JCOO-AG-2017) was implemented by the T.M.C. Asser Instituut in cooperation with Universität Hamburg, University of Antwerp and Internationaal Juridisch Instituut. The main findings of the project are available at: Asser.nl.

listed in Article 79. Moreover, it looks into a number of new and emerging issues such as digitalisation, collective redress and areas that could benefit from the simplification and modernisation of current rules.

Additional information on selected issues, including more detailed analysis, and references to the case-law of the CJEU are included in the Staff working document accompanying this Report.

1.3. General overview of the application of the Regulation

It is generally agreed that the Regulation is a highly successful instrument and the enhancements that it provided, such as the abolition of *exequatur*, have strengthened judicial cooperation in civil and commercial matters and as such have been welcomed by the Member States and the stakeholders. The rules of the Regulation, as a whole, are considered to be clear and simple and, for this reason, are highly appreciated amongst practitioners.

There is also a broad consensus that in principle the case-law of the CJEU provides sufficient guidance and assistance for the judiciary when applying the rules of the Regulation. However, on some specific issues several Member States take the view that the interpretation of the Regulation raises complex issues, and they suggest clarifications by the legislator.

Given the general satisfaction with the operation of the Regulation, any modifications should respond to real practical difficulties and should not lead to an overhaul of the well-functioning system of the Regulation. In particular, such modifications should aim to further simplify the Regulation and reduce administrative burdens, specifically for weaker parties, such as consumers, or for SMEs. At the same time, difficulties that can be adequately resolved by future case-law should be left out from the scope of any legislative intervention.

2. SCOPE OF APPLICATION AND DEFINITIONS

2.1. Scope of application (Article 1)

The Regulation applies in civil and commercial matters in cases with cross-border implications. A number of subject matters which could otherwise be classified as civil or commercial are expressly excluded from the scope of application. Generally speaking, the scope provisions function well, but some questions of interpretation seem to come back regularly, in particular with regard to the notion of cross-border implications or the exclusion of arbitration.

It follows from the case-law of the CJEU and the consultations conducted in the framework of the Study that a number of issues require special attention in the assessment of the application of the Regulation:

- The standard to be used in order to decide whether a matter has cross-border implications.
- The definition of ‘civil and commercial’.
- The delineation of insolvency-related claims (excluded from the scope).
- The exclusion of arbitration[8].

[8] With the exception of this point, analysed below, the other three issues are presented in more detail in Part I of the Staff working document accompanying this Report.

The exclusion of arbitration

Matters related to arbitration have been excluded from the scope of the Regulation ever since the Brussels Convention was adopted in 1968. However, the Regulation reinforced this exclusion by inserting clarifying language in Recital 12, as well as a specific provision in Article 73(2) aimed at avoiding any overlap with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[9] ('the New York Convention').

In *London Steam-Ship Owners' Mutual Insurance Association* (C-700/20) decided in 2022 under the Brussels I Regulation, the CJEU ruled that an irreconcilable judgment given in the terms of an arbitral award can prevent the recognition of a judgment from another Member State on the basis of Article 34(3) of the Brussels I Regulation (Article 45 of the Regulation), but then tied the applicability of the refusal ground to the condition that it is only available where the content of the arbitral award could have been the object of a judgment given in accordance with the rules of the Brussels I Regulation. It should be noted in this context that the Court reached this decision not on the basis of irreconcilability of the foreign judgment with an arbitral award but only with reference to a judgment confirming an arbitral award. At the same time, the Court ruled that the public policy exception cannot be relied upon on the basis of such irreconcilability.

The Study revealed a mixed picture. While a majority of respondents did not encounter any issues with the application of this exclusion, national case-law in eight Member States shows that the arbitration exception covers not only the recognition and enforcement of arbitral awards, but also that of judgments confirming such awards. This practice would seem to be at odds with the Court's judgment in *London Steam-Ship Owners' Mutual Insurance Association*.

The judgment of the CJEU also points to another issue, namely the lack of a *lis pendens* rule regarding arbitration proceedings. In fact, the risk of irreconcilability between arbitral awards or the judgments confirming such awards and other judgments would probably be reduced or even eliminated if the Regulation would have a clear rule of priority in such circumstances.

As a result, a possible future review could further look into whether certain practical situations can be addressed in the Regulation, for instance by providing a clear *lis pendens* rule which could prevent situations of irreconcilability between an arbitral award/judgment confirming such an award and another judgment.

2.2. Definitions (Articles 2 and 3)

The Regulation contains a number of definitions in Article 2, among others of 'judgment', 'court settlement' or 'authentic instrument'.

The definition of 'judgment' refers to any such act of the judiciary, whatever it may be called, issued by a 'court or tribunal of a Member State'. The Regulation does not contain a definition of 'court or tribunal'.

As a novelty in the Regulation, Article 2(a) expressly extended the definition of judgment to include certain types of provisional, including protective, measures. However, it subjects the recognition and enforcement of such measures in other Member States to two conditions.

First, it limits the circulation of provisional measures to those ordered by courts having jurisdiction as to the substance of the matter under the Regulation. This means that while

[9] Convention on the recognition and enforcement of foreign arbitral awards adopted 10 June 1958, entered into force on 7 June 1959 330 UNTS 38.

provisional measures can still be ordered by courts that have jurisdiction as to the substance of the matter under national law, such decisions cannot be recognised and enforced abroad under the Regulation.

Second, the definition codifies existing case-law (see, for instance, *Denilauler*, 125/79) to exclude purely *ex parte* measures from circulation. As a result, provisional measures can be recognised or enforced only if the debtor has been summoned to appear or has been served with the decision containing the measures prior to enforcement. This exclusion of *ex parte* provisional measures from circulation under the Regulation seems to pose some practical problems. For instance, the Study showed that in AT and CZ most provisional measures are *ex parte* and thus cannot benefit from enforcement under the Regulation. More generally, while the current system favours the protection of the procedural rights of the defendant, a key element of provisional measures, namely their ability to be quickly and efficiently enforced, is affected. Under the current regime a creditor has to choose between the surprise effect inherent in *ex parte* proceedings and a restriction of the enforceability of the measures to the Member State where they were granted or between a decision that can circulate but has to be based on the prior involvement (and thus warning) of the debtor.

Another issue concerns the authorities expressly stipulated in Article 3 as being a "court" for the purposes of the Regulation. In *Pula Parking* (C-551/15), when faced with the question whether Croatian notaries can be qualified as a 'court or tribunal' under the Regulation, the CJEU replied in the negative, citing the lack *of inter partes* proceedings as the main reason in line with previous case-law (*Denilauler*, 125/79). It needs to be taken into account though that the Croatian procedure is very similar to the Hungarian notarial summary order for payment proceedings referred to in Article 3(a) of the Regulation. It is not surprising, also from an equal treatment perspective, that most of the respondents that considered the concept of 'court or tribunal' problematic were from Croatia and that some Member States stated that in the event of an amendment or recast they would like to introduce additional entities under the exceptions of Article 3. The overwhelming majority of respondents in the Study did not find any issues with the definitions in the Regulation.

As a result, a possible future review of the Regulation could further look into this matter, including the possibility to provide a definition or description of the concept of 'court or tribunal' that would, on the one hand, enhance the effectiveness of the Regulation and, on the other hand, would possibly do away with the need to provide for exceptions. Further reflection is also needed on the concept of provisional measures, in particular on whether *ex parte* measures should be included.

3. JURISDICTION

3.1. Possible extension of the jurisdiction rules to defendants domiciled in third countries

The rules on jurisdiction set out in Chapter II of the Regulation apply to cases where the defendant is domiciled in a Member State, save for some specific situations (consumer contracts, individual contracts of employment, situations where courts have exclusive jurisdiction or where a court is chosen by the parties). For any other disputes involving a defendant domiciled outside the Union, jurisdiction is governed by the national laws of the Member States[10].

[10] See Article 6 of the Regulation.

The 2010 Commission proposal for the recast of the Brussels I Regulation[11] (the '2010 Proposal') suggested the extension of the Regulation to also cover jurisdiction in disputes where the defendants are domiciled outside the Union. During the legislative process it was considered that such a solution would be appropriate in some situations, for instance where one of the parties to the contract is considered to be a weaker party (such as in consumer contracts or in individual contracts of employment), but that for an application across the board a multilateral solution would be preferable. At the time such a multilateral solution could have been envisaged, in particular in the framework of the Hague Conference on Private International Law.

Such a solution could have been found in the framework of the then ongoing negotiations that eventually led to the adoption in 2019 of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the 'Judgments Convention'). However, that instrument does not contain direct grounds of jurisdiction, but only refers to jurisdiction in an indirect manner, as a pre-condition for recognition and enforcement. Currently work is still ongoing at the Hague Conference in the area of jurisdiction, but this work is unlikely to lead to a binding multilateral solution on direct grounds of jurisdiction.

The absence of such rules in the Regulation poses several challenges[12]. Firstly, as the national laws of the Member States vary greatly, the current state of affairs creates an unequal access to justice and an unequal playing field for EU and non-EU businesses and citizens that are involved in international (extra-EU) dealings depending simply on where they have their domicile. While parties in some Member States can sue third country defendants based on a large array of jurisdictional grounds, including sometimes exorbitant ones, other parties in other Member States may face a more limited spectrum of jurisdictional grounds to sue such parties[13]. This unequal footing is further exacerbated by the fact that the judgments at hand can be recognised and enforced throughout the Union based on the Regulation, even where the jurisdiction of the court of origin is exorbitant.

In addition, this state of affairs seems to have a negative impact on business and human rights litigation. In this type of litigation often victims[14] would seek to sue both a foreign business domiciled outside the EU and a controlling parent company, often based in the EU. Different Member States have different rules on the possibility to establish jurisdiction on the third-country subsidiary at the seat of the parent company. This situation creates legal uncertainty and, once again, puts EU parties, in this case both the plaintiff and the defendant parent EU company, on an unequal footing. The current rules of Article 8, which enable the concentration of proceeding at the domicile of one of the defendants, do not apply if one of them is domiciled outside the EU (see *Sapir and Others* (C-645/11)). This means that if the national rules do not allow concentration of proceedings there could be two parallel cases, one against the parent company in the EU and the other one against the subsidiary in the third country, with the risk of having irreconcilable judgments.

The Study revealed a mixed picture on the extension of the jurisdiction rules to defendants domiciled in third countries. Many respondents did not have an opinion on whether the lack of such rules constitutes a problem. A majority of Member States did not consider the absence

[11] See the Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, 14.12.2010 COM(2010) 748 final.

[12] As confirmed by the consultation activities conducted in the framework of the Study.

[13] This could be of relevance for example in relation to influencers domiciled outside the EU who are involved in the marketing of products vis-à-vis EU buyers without being the sellers of those products.

[14] Irrespective of the domicile of the victim, in or outside the EU.

of rules as being an issue but some criticised the current situation as increasing transaction costs and adding complexity for plaintiffs, practitioners, and the judiciary.

As a result, a possible future review of the Regulation could further look into the matter of extending the jurisdictional rules to include disputes involving defendants domiciled outside the Union.

3.2. Special jurisdiction (Articles 7 – 9)

The Study and the National Reports of the JUDGTRUST project unsurprisingly illustrate that, amongst the rules on special jurisdiction, Article 7 is most frequently relied upon, whilst Article 8 is rarely applied[15] and there is almost no practice or discussions in the literature relating to Article 9[16].

Article 7 has been only slightly modified during the prior recast process and continues to be extensively applied by national courts. As a result, it has generated more referrals for preliminary rulings to the CJEU than any other provision of the Regulation.

The majority of the Member States reported the application of Article 7 to be non-problematic. According to the Study, no issues were reported on the operation of Articles 7(3) to 7(7)[17], as they continue to be rarely applied in practice. However, numerous referrals from national courts to the CJEU, as supported by the responses of several Member States, reveal several major issues related to Articles 7(1) and 7(2):

- An increasingly broad interpretation of the scope of 'matters relating to a contract'.
- Determination of the place of performance of contractual obligations.
- Determination of the place of damage in cases of pure financial loss.
- The application of the 'mosaic' principle in cases involving the violation of privacy rights.

3.2.1. Article 7(1)

Article 7(1) establishes a rule of special jurisdiction in disputes concerning contractual obligations. However, it does not establish the definition of contractual matters and does not provide any indicia in this respect.

Recent judgments of the CJEU, such as *flightright GmbH* (Joined Cases C-274/16, C-447/16, and C-448/16) and *Feniks* (C-337/17), illustrate that concept of 'matters relating to a contract' is interpreted in a broad manner. This concept extends to actions that can be linked to a contract, even if no contract was concluded between the parties to the proceedings[18], if the contract is disputed or void, or if the contract was made between different parties than those involved in the proceedings.

The Study and the referrals from national courts to the CJEU show that the broad interpretation of 'matters relating to a contract' may present practical difficulties in some cases, in particular when such an interpretation differs from the interpretation of similar

[15] It is worth noting however that recent referrals to the CJEU show an increasing use of Article 8(1) in cartel cases. Detailed analysis of the application of Article 8(1) is included in Part I of the Staff working document accompanying this Report to this Report.

[16] For this reason, this Report does not look into the application of Article 9.

[17] Except for academic discussions concerning Articles 7(4) and 7(5) in a handful of the Member States.

[18] For example, where a passenger asks the operating carrier to pay compensation for a delayed flight, despite the fact that the contract was concluded with a different carrier.

national concepts or is considered challenging to reconcile with the principles of proximity and predictability underlying Article 7(1). In this regard, it is suggested that the broad interpretation of the notion of 'matters relating to a contract' could lead to significant legal uncertainties for third parties, which might find themselves sued in the place of performance of a contract they were unaware of. This concern is particularly relevant for claims based on *actio pauliana*, which, according to the ruling in *Feniks* (C-337/17), are also considered 'matters relating to a contract'.

Once a national court establishes that a situation falls withing the scope of application of Article 7(1), i.e., is 'a matter relating to a contract', it has to determine the place of performance of the contractual obligation. This appears to be challenging due to the fact that the solutions adopted by the CJEU[19] in specific cases cannot always be extended to cases with different factual settings, especially in situations involving multiple places of performance, and multiple obligations, or in relation to contracts that do not involve any physical transfer of goods, which are increasingly relevant in the digital economy (e.g. contracts for the provision of digital services or digital content, including data). The latter aspect is illustrated by a recent judgment in *VariusSystems* (C-526/23), where the place of performance had to be determined for a contract under which the applicant, based in Austria, developed and supplied software for the defendant, based in Germany, for the evaluation of COVID-19 screening tests for use in German testing centres. In this case the referring court doubted whether the place of performance is in Austria, where the intellectual creation ('programming') behind the software is performed and the undertaking is established or in Germany where the software reaches the customer and is accessed and used.

When it comes to determining the place of performance in cases involving multiple places of performance, the fact that national courts continue to seek guidance on the application of Article 7(1) from the CJEU each time a situation in the main proceedings differs from those previously addressed by the CJEU suggests that there may be a need for more general guidance, all the more so since the rule in Article 7(1) governs not only international jurisdiction but also territorial jurisdiction within a Member State.[20][21]

Finally, regarding the determination of the place of performance, the Study reveals that some Member States express concerns over what they perceive as a complex structure of Article 7(1). Article 7(1) provides for an autonomous concept of the place of performance for two types of contracts (sales and services) in Article 7(1)(b), while maintaining the seldom-applied *Tessili*-formula for other types of contracts in Article 7(1)(c), although that formula is seen as particularly complicated and unsuitable in practice. In line with *Tessili* (12/76), national courts must rely on the applicable national law to determine the place of performance in the absence of an agreement by the parties in that respect. This means that, already at the stage of assessing jurisdiction, national courts must engage in a multi-step exercise: they must first determine which is the 'obligation in question', as a second step, they have to determine the applicable substantive law based on the conflict of law rules and

[19] See, to that effect, the judgments of 3 May 2007, *Color Drack*, C-386/05, ECLI:EU:C:2007:262, of 9 July 2009, *Rehder*, C-204/98, ECLI:EU:C:2009:439, of 11 March 2010, *Wood Floor Solutions Andreas Domberger GmbH v Silva Trade SA*, C-19/09, ECLI:EU:C:2010:137.

[20] Similar issues when applying Article 7(2) in cases where damage occurs in multiple places were evidenced by the Dutch court in recent referral (*Apple*, C-34/24)).

[21] According to the Study, in such cases (and more generally in all cases where the determination of the place of performance is difficult), some scholars suggest making Article 7(1) unavailable for claimants. Alternatively, they suggest, subject to various conditions, replacing the criterion in Article 7(1) by the domicile of the claimant.

only then the courts can apply that national substantive law to determine the place of performance.

The future review of the Regulation could look into the possibilities to simplify rules on the place of performance in Article 7(1).

3.2.2. Article 7(2)

While Article 7(1) concerns contractual obligations, Article 7(2) lays down special jurisdiction rules for torts. The autonomous interpretation of the concept of 'torts' has created some complexities[22] but the delineation between Article 7(1) and Article 7(2) has not caused major problems in practice, partly because of the recent comprehensive guidance provided by the CJEU in *Wikingerhof* (C-59/19)[23].

The localisation of the place of damage in cases of pure financial loss and the maintenance of the mosaic principle in cases involving the violation of personality rights appear to be the most problematic aspects of the application of Article 7(2).

- *Localisation of purely financial loss*

Regarding the localisation of purely financial damage, the CJEU has developed a substantial body of case-law, that may, however, not always offer the desired level of legal certainty. It seems judgments such as *Kolassa* (C-375/13) and *Universal Music* (C-12/15)[24] have not provided comprehensive guidance, leading to further requests from national courts for clarification of Article 7(2).

It follows from the case-law of the Court that the mere location of an investment account cannot be considered as sufficient to establish the place where purely financial loss occurs. Moreover, no approach yet exists that is clear and consistent in all respects regarding the specific circumstances that must be present to determine court jurisdiction in cases involving the place where the damage occurred. This is illustrated by the judgment in *Kronhofer* (C-168/02), where the CJEU ruled that neither the place of the applicant's domicile nor the place where his assets are concentrated could be considered as a factor attributing jurisdiction if the

[22] Several Member States reported that they consider this autonomous interpretation as complex, inconsistent and a source of legal uncertainty. For example, in *Brogsitter* (C-548/12) the CJEU ruled that the civil liability claim at issue was to be considered as 'a matter relating to a contract' despite its qualification as tort under national law. Moreover, under the case-law of the CJEU one concept within the scope the Rome II Regulation (*culpa in contrahendo*) falls within the scope of Article 7(2) of the Regulation, whereas another (unjust enrichment) does not.

[23] In paragraphs 32 and 33 of this judgment, the CJEU established that an action concerns matters relating to a contract if the interpretation of the contract between the defendant and the applicant appears indispensable to establish the lawful or, on the contrary, unlawful nature of the conduct complained of against the former by the latter. That is in particular the case of an action based on the terms of a contract or on rules of law which are applicable by reason of that contract. By contrast, where the applicant relies on rules of liability in tort, delict or quasi-delict, namely breach of an obligation imposed by law, and where it does not appear indispensable to examine the content of the contract concluded with the defendant in order to assess whether the conduct of which the latter is accused is lawful or unlawful, since that obligation applies to the defendant independently of that contract, the cause of the action is a matter relating to tort, delict or quasi-delict within the meaning of point 2 of Article 7 of the Regulation.

[24] In both *Kolassa* and *Universal Music* a party that suffered pure financial loss as a result of an unfavourable contract claimed damages on a non-contractual basis from a third party, that was not a party to the contract but that was responsible for the unfavourable contract and the consequential damages. In *Kolassa*, the CJEU ruled that the courts of the Member State where the investor is domiciled and where the damaged bank account is located have jurisdiction to hear cross-border non-contractual claims concerning pure financial loss. In *Universal Music*, the CJEU found that it would be insufficient to look solely at the location of the bank account where the financial damage directly materialized.

relevant investment account is in another jurisdiction, but did not indicate which connecting factor would suffice.

In the recent judgment of the CJEU in *VEB* (C-709/19), the CJEU relied on the so-called 'market localisation' of the damage and ruled that only the courts of the Member State in which a listed company must fulfil its statutory reporting obligations have international jurisdiction and dismissed the residence of the shareholders that suffered financial loss on their investment accounts as a decisive factor in establishing the location where the loss occurred. It is however not entirely clear whether the national courts still need to consider those two criteria or not when determining the place of purely financial loss.

The uncertainty about the criteria that the national courts have to consider when determining the place of purely financial loss for the purpose of international and territorial jurisdiction and the lack of clarity in the case-law of the CJEU in this respect is undesirable and creates a risk of non-uniform application of Article 7(2) of the Regulation. For this reason, it has been suggested to abandon the choice between the place of the event giving rise to the damage and the place where the damage occurred in situations involving purely financial loss, and to give jurisdiction only to the courts of the place of the event giving rise to the damage (*locus delicti commissi)*.[25] In this context, it should however be borne in mind that the Rome II Regulation[26] only admits the country where the damage occurs to determine applicable law.

- *Violation of personality rights*

As for the protection of personality rights, the main controversies concern the application of the criterion of the place where damage occurs to publications, and the so-called 'mosaic' principle first established in *Shevill* (C-68/93) in respect to paper publications and later extended to online publications. In *Shevill* the CJEU ruled that Article 7(2) of the Regulation attributes jurisdiction to the courts of each Member State in which the publication was distributed and where the victim claims to have suffered injury to his or her reputation as the place where damage materialized, but only in respect of the harm caused in that State, not for the world-wide damage[27]. In *eDate* (C-509/09 and C-161/10), the mosaic principle was extended to cases of personality rights violations online. However, in the case of online content, the courts of the place where the victim's centre of interests is located[28] were considered to have jurisdiction to adjudicate the entirety of damage[29]. The distinction between online and offline content could be criticised as difficult to apply in practice, since most of the newspapers are available both in print (offline) and online[30].

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[25] See the Opinion of the Advocate General Sánchez-Bordona delivered on 17 December 2020 in *VEB*, paragraph 33.

[26] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

[27] That damage can only be claimed in the Member State where the defendant is domiciled (Article 4) or where the event giving rise to the damage occurred (Article 7(2)).

[28] Understood as referring more precisely to the place where the person concerned draws the most important economic, political, social or even simply relational benefits from his or her reputation.

[29] This was confirmed in *Bolagsupplysningen* (C-194/16), *Mittelbayerischer Verlag* (C-800/19) and *Gtflix Tv v DR* (C-251/20) as well as the fact that the courts of every other Member State, in which the information was accessible, are competent to adjudicate only for the damage accruing in that Member State. The CJEU further clarified that only courts having jurisdiction over the entire damage are competent to rule on requests for removal and rectification of allegedly disparaging content since those requests are not separable per Member State as the amount of damages.

[30] As a result, the courts are required to complete the challenging task of finding out at the centre of interest which damage has been caused online (can be claimed world-wide) or offline (can only be claimed in a single Member State).

According to the Study and the findings of the JUDGTRUST project, the CJEU's case-law on the violation of personality rights has been criticized by scholars, some Advocates General and practitioners. Critics claim that the mere accessibility of the infringing content is not sufficient to establish jurisdiction based on the place where the damage occurred, and that the application of the mosaic principle brings about a multiplication of fora that does not serve the legitimate interest of any party and defies the objectives of predictability and sound administration of justice[31].

This criticism is particularly pertinent in the context of the phenomenon of strategic lawsuits against public participation ('SLAPPs') that the recently adopted Anti-SLAPP Directive[32] aims to combat. SLAPPs constitute an abuse of court proceedings as their objective is not to genuinely exercise the right of access to justice, but to serve as a tool to intimidate the defendant. These proceedings can be based on various grounds, with allegations relating to defamation or other violations of privacy rights being most common. Defamation lawsuits claiming compensation for damages or injunctions often target journalists and may be intentionally used to silence criticism or to prevent the media from exercising its role as 'watchdog'. Such judicial harassment can be facilitated through the application of the mosaic approach, which leads to a large number of available jurisdictions that can be seised by the applicant, also in parallel, in order to exhaust the defendant's resources. For this reason, during the negotiations of the Anti-SLAPP Directive, the Commission engaged, by means of a declaration, to further look into this issue in the context of the upcoming review of the Regulation.

In conclusion, while Article 7 generally functions well, numerous referrals from national courts to the CJEU, supported by the responses of Member States, highlight issues in the application of Article 7(1) and 7(2). With respect to Article 7(1), the main issues are the broad interpretation of the concept of 'matters relating to a contract' and the determination of the place of performance. Regarding Article 7(2), debates focus on the difficulties in relation to the determination of the place of damage in cases of purely financial loss, as well as the continued relevance of the mosaic principle in cases involving the violation of privacy rights. A future review of the Regulation could therefore consider ways to simplify and modernize Article 7(1) and 7(2).

3.3. Protective jurisdiction rules over consumer contracts[33] (Articles 17 – 19)

Articles 10 to 23 of the Regulation lay down the jurisdiction rules that aim to protect the procedural position of the weaker party in disputes relating to insurance, consumer, and employment matters.

Compared to its predecessors, the Regulation further strengthened this protection. The major change, introduced via the extension of personal scope in Article 6(1) and subsequent adjustments to Articles 18(1), and 21(2), enabled the use of the protective jurisdiction rules by consumers domiciled in a Member State and employees in disputes against traders and

[31] In turn, most of the Member States request guidance on the practical quantification of damages, the distinction between the habitual residence and the centre of interests to be provided either by the CJEU or by the legislator.

[32] Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation'), OJ L, 2024/1069, 16.4.2024.

[33] The application of jurisdiction rules over consumer contracts raised most of the questions in practice. For this reason, the analysis of the application of these rules is included in the main text of the Report. The analysis of the application of jurisdiction rules in insurance matters and over the individual employment contracts is included in Part I of the Staff working document accompanying this Report.

employers domiciled outside the EU. Furthermore, the amendment of Article 20(1) enabled the filing of claims by the employees against multiple employers under Article 8(1), altering the position as articulated previously in *Glaxosmithkline* (C-462/06)[34].

The protective jurisdiction rules over consumer contracts provide consumers a choice between the *forum rei* and *forum actoris* for consumer contracts within the meaning of Article 17 of the Regulation. Conversely, Article 18(2) restricts the possibility to sue consumers exclusively to the courts of the place where they are domiciled.

Based on the National Reports of the JUDGTRUST project, the majority of the Member States find that the rules in the Regulation ensure a sufficient level of consumer protection, even though scholarship in some Member States suggests the level should be further enhanced through, for example, the extension of the scope of application of Articles 17-19 to tort claims going beyond those indissociably linked to a liability under a contract that a consumer actually concluded with the seller or supplier.

The major difficulties relating to the application of protective jurisdiction rules over consumer contracts concern:

- The notion of a 'consumer'.
- The notion of 'directing the commercial activity'.
- The exclusion of transport contracts in Article 17(3).
- The non-applicability of jurisdiction rules in collective redress actions[35].

a) Notion of 'consumer' and the consequences of change in the consumer's domicile

The Study underscored the challenges involved in classifying a person as a consumer.

As a rule, the CJEU interprets the notion of 'consumer' restrictively and defines it by contrast to an 'economic operator' (a professional)[36]. Nevertheless, in some cases, the CJEU seems to have adopted a somewhat broader interpretation. For example, *in Petruchová* (C-218/18), the CJEU concluded for online investments that financial expertise alone does not preclude the consumer status. Similarly, in *Personal Exchange International* (C-774/19), an online poker player was considered a consumer, despite playing the game for a large number of hours per day and receiving substantial winnings, as long as he has neither officially declared such activity nor offered it to third parties as a paid service. In *Schrems* (C-498/16) the CJEU ruled that the change of use of the Facebook account from exclusively non-professional to partially professional, does not entail the loss of a 'consumer' status within the meaning of the Regulation provided that the predominately non-professional use of those services, for which the applicant initially concluded a contract, has not subsequently become predominately professional. Concretely, the Court ruled that the use of the account for the activities of publishing books, lecturing, operating websites, fundraising and being assigned the claims of numerous consumers for the purpose of their enforcement do not entail the loss of a private Facebook account user's status as a 'consumer'.

[34] In addition, a new rule was introduced in Article 26(2) to the rule on the tacit prorogation of jurisdiction following the CJEU judgment in *ČPP Vienna Insurance Group* (C-111/09): the court seised is now obliged to ensure that a weaker party (defendant) is informed of the right to raise the objection of a lack of jurisdiction and of the consequences of failing to do so.

[35] This issue is addressed in point 6.1 of the Report.

[36] See, to this end, *Schrems* (C-498/16), paragraph 29 and the case-law cited.

By contrast, in *Wurth Automotive GmbH* (C-177/22), the CJEU relied on its earlier judgment in *Gruber* (C-464/01) to rule that, when establishing whether a person can be considered as consumer, it may also be taken into account whether a person who is a customer had in fact, by his or her own conduct with respect to the other party, given the latter the impression that he or she was acting for business purposes, such that the other party could legitimately have been unaware of the non-professional purpose of the transaction at issue. If that was the case, the special rules of jurisdiction for matters relating to consumer contracts would not apply in spite of the objective existence of a consumer contract.

b) Notion of 'directing the commercial activity'

In *Pammer* (C-585/08) and *Hotel Alpenhof* (C-144/09), the CJEU has ruled that among the factors for establishing whether an activity is directed to the Member State of the consumer's domicile are 'all clear expressions of the intention to solicit the custom of that State's consumers' and a rather extensive non-exhaustive list of circumstances that may be taken into account for this purpose[37]. Those circumstances include the international nature of the activity at issue, such as certain tourist activities; mention of telephone numbers with the international code; use of a top-level domain name other than that of the Member State in which the trader is established, for example '.de', or use of neutral top-level domain names such as '.com' or '.eu'; the description of itineraries from one or more other Member States to the place where the service is provided; and mention of an international clientele composed of customers domiciled in various Member States, in particular by presentation of accounts written by such customers[38].

Nevertheless, the national courts have continued to refer questions for preliminary rulings in different cases involving the offering of services and products on the internet [39], thus showing that the interpretation and application of the requirement of directing the commercial activity within the meaning of Article 17(1)(c) of the Regulation remains challenging in a digital context.

c) The exclusion of transport contracts in Article 17(3)

The rules of the Regulation governing jurisdiction in respect of consumer contracts cover all types of contracts. The only exclusion is provided in Article 17(3) relating to transportation contracts other than those which, for a fixed price, combine travel and accommodation.

Although the underlying reasons for such exclusion did not evolve, i.e. special sectoral rules in international conventions and other EU instruments on transport continue to apply, the Study and the National Reports show that many Member States now consider the exclusion to be unjustified and call for its deletion. Some Member States state that this exclusion restricts consumer's access to justice in disputes over flight passenger rights, in particular in cases where the consumer's domicile does not coincide with the place of departure or arrival of the plane that are the fora available on the basis of the place of performance.

Moreover, the Study shows that the lack of coverage of transport contracts leads to an uneven application of the Regulation in the Member States. Several Member States determine the

[37] Paragraph 80.

[38] Paragraph 81.

[39] As regards, in particular, Article 15(1)(c) of Regulation No 44/2001, see the judgments *Mühlleitner* (C-190/11), *Emrek* (C-218/12), and in *Hobohm* (C-297/14). More recently, see, for example, request for the preliminary ruling in *Commerzbank* (C-296/20) that concerns the interpretation of the identical provision in Lugano convention; in *Länen MCE* (C-104/22) that rotated around the interpretation of this concept in the field of EU trademark.

jurisdiction for such contracts based on the general rules of the Regulation (DE, DK, BG, NL, PT), on international conventions prevailing over the Regulation (CY, DE, HU, IT, PT), or on national rules (LT, PT).

In order to decide whether the exclusion should be maintained or deleted from the Regulation, it is necessary to assess, in particular, whether other EU instruments or international agreements provide adequate protection for consumers in relation to international jurisdiction.

In conclusion, the rules on protective jurisdiction of the Regulation generally function well and provide a satisfactory level of consumer protection. However, certain aspects of consumer protection could be further clarified through the case-law or strengthened by a legislative intervention, subject to further analysis during the review.

3.4. Exclusive jurisdiction (Article 24)

Provisions on exclusive jurisdiction that have primacy over general rules and are mandatory are contained in the Section 6 of Chapter II of the Regulation, which consists of a single Article 24. Except for a codification of the *GAT* (C-4/03) case-law in Article 24(4), the Regulation did not further modify this head of jurisdiction.

The Study shows that the Member States did not identify major difficulties relating to the application of this head of jurisdiction or reported scarce national case-law on the matter. The main criticism concerns the unique modification brought by the Regulation, namely, the extension of the scope of application of Article 24(4) to proceedings concerned with the validity of patents where the issue is raised as a defence[40].

Some Member States, supported by Advocate General Emiliou[41], have criticized the codification of the *GAT* case-law in Article 24(4) as failing to provide clarity on whether the infringement of an industrial property right falls within its scope; extending the solution adopted by the CJEU in a very specific ('abnormal') case that concerned an action by which a company sought a declaration from the German courts that it had *not* infringed two French patents held by a German company ('negative declaration') to 'normal' patent infringement cases; standing out in the system of exclusive jurisdiction in so far as other rules in Article 24 do not apply to proceedings in which the issues referred thereof are raised only by way of a defence; enabling the abuse via so-called 'torpedo' claims and hindering the patent holder's right to an effective remedy as well as the requirement of efficiency of procedure and the sound administration of justice.

In addition, it has been questioned whether Article 24 could have reflexive effect (*effet réflexe*) and whether Member State courts are obliged to adjudicate on disputes within the scope of Article 24 that feature strong connections to third States. In particular, the question was whether Article 24 gives an option to the courts of the Member States or obliges them not to adjudicate the case, although the defendant is domiciled in the Member State or the court of the Member State can base its jurisdiction on other rules in the Regulation, in cases where a patent is registered, or immovable property is situated in a third State as it does with respect to patents registered or immovable property situated in other Member States.

The recent ruling by the CJEU in *BSH Hausgeräte* (C-339/22) has provided an answer to the question that had previously split the courts of the Member States and scholars into two

[40] Several other difficulties relating to the application of Article 24 were reported by few Member States: the problematic distinction between rights *in rem* and rights *in personam*, and inconsistent case-law on the matter.

[41] Opinion of AG Emiliou of 22 February 2024 in *BSH Hausgeräte*, C-339/22, ECLI:EU:C:2024:159.

opposing camps. In this judgment, the CJEU clarified that Article 24(4) does not have a reflexive effect.[42] This conclusion can be extrapolated to the entire Article 24.

In addition, in its judgment in *BSH Hausgeräte* (C-339/22), the CJEU further clarified its *GAT* ruling stating that a court of the Member State of domicile of the defendant which is seised, pursuant to Article 4(1) of the Regulation, of an action alleging infringement of a patent granted in another Member State, still has jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent, whereas the courts of that other Member State have exclusive jurisdiction to rule on that validity.

In conclusion, the rules establishing exclusive jurisdiction of the Regulation generally operate well. Nevertheless, a future review of the Regulation could reconsider the wording of Article 24(4) that aimed at codifying the *GAT* jurisprudence in the light of the recent developments in *BSH Hausgeräte*.

4. RECOGNITION AND ENFORCEMENT

The Regulation abolished the need for a declaration of enforceability (*exequatur*) in order to have a foreign judgment enforced, a shift justified on the basis of mutual trust in the administration of justice among Member States. The new system works rather well in practice and has had a positive effect on the reduction of costs and the workload of the courts[43]. There are some national variations related especially to the interpretation of the refusal grounds, but this does not affect the overall good functioning of the system of recognition and enforcement. The Court has interpreted these refusal grounds in a consistent manner throughout the years and the few cases lodged under the Regulation do not alter this situation. All in all, while no particular issues related to the (new) system for recognition and enforcement were reported, a number of technical issues may warrant further reflection in a possible future review process.

Application of the refusal grounds

Article 45 of the Regulation lists a number of grounds that can lead to the refusal of recognition and enforcement. These grounds range from breach of public policy in the Member State addressed, to proper service of process to the defaulting defendant and irreconcilability with other judgments.

The concept of public policy has been the object of referrals to the Court on several occasions. While the Court leaves the interpretation of this concept to national courts, it can review the limits of that application (*Diageo Brands*, C-681/13). For instance, in *H Limited* (C-568/20), the Court reiterated its established case-law that public policy should be narrowly interpreted and could be resorted to 'only if recognition of the judgment given in that Member State were to constitute a manifest infringement of a rule of law regarded as essential in the legal order of the State in which recognition is sought or of a right recognised as being fundamental within that legal order'. In a more recent case (*Real Madrid Club de Fútbol* (C-633/22)), the Court considered that a manifest infringement of a fundamental right under the Charter of Fundamental Rights of the EU may constitute a breach of public policy which justifies the refusal of enforcement. At the same time, the Court recognised in the same

[42] The questions referred by the Swedish court concern the interpretation and scope of Article 24(4) of the Regulation in a patent infringement dispute in which the defendant claims the invalidity of the patents in question in the countries in which they are filed or registered.

[43] Indeed, while the Study confirmed these findings in many Member States, some respondents also highlighted a more limited impact due mainly to the persistence of refusal grounds.

judgment that the principle of mutual trust requires all Member States to consider that other Member States comply with EU law, in particular with the fundamental rights enshrined therein.

At the national level, public policy is rarely invoked to deny recognition and enforcement and, when it is, it is rarely successful[44]. This shows that, in general, national courts follow the case-law of the Court and apply a restrictive interpretation of this concept.

Article 45(1), points (c) and (d) contain two grounds of refusal that refer to an irreconcilable judgment between the same parties in the Member State addressed (point (c)), or to an earlier judgment between the same parties and on the same cause of action given in another Member State or in a third State (point (d)). The Court in *London Steam-Ship Owners' Mutual Insurance* (C-700/20) raised questions as to the significance of the observance of the *lis pendens* rules of Articles 29-30 in the context of invoking the refusal ground of irreconcilable judgments[45].

Indeed, except for the case where the court of origin has exclusive jurisdiction, the Regulation does not contain any mechanism of control of the *lis pendens* rules applicable by virtue of Articles 29-30[46]. Contrary to these provisions, which favour the court first seised, point (d) of Article 45(1) favours the earlier judgment, even where the proceedings started after those that led to the judgment to be recognised and enforced. On the other hand, point (c) of Article 45(1) does not contain any time requirement, but its scope of application is wider than that of the *lis pendens* rules.

As a result, while the refusal ground related to public policy does not seem to pose practical difficulties, a possible future review of the Regulation could further look at the consistency between points (c) and (d) of Article 45(1) and the *lis pendens* rules.

5. RELATIONSHIP WITH OTHER INSTRUMENTS (ARTICLES 67 – 74)

The Regulation has not substantially altered the rules governing its relationship with other EU or international instruments aside from the new entries aimed at enabling the implementation of the so-called 'patent package' in Articles 71a-71d, and the clarification of the relationship between the Regulation and the Lugano convention[47], the New York convention[48] and bilateral conventions and agreements between the third State and a Member State concluded before 1 March 2002, in Article 73.

The application of these rules across the Member States is very uneven. Since the United Paten Court became operational only on 1 June 2023, Articles 71a-71d have not yet influenced court practice in any of the Member States or at the EU judicial level. By contrast, an extensive application of Article 71 by the national courts is observed in most Member States. The list of international conventions that triggered the application of Article 71 in

[44] The JUDGTRUST project shows that this ground of refusal is rarely invoked in some Member States (ET, FR, IT, NL). Even where it is invoked more often courts rarely apply it to refuse recognition and enforcement (BG, PL).

[45] The case at hand related to the specific situation of the judgment by the court second seised being a judgment entered in the terms of an arbitral award.

[46] This became clear in *Liberato* judgment, a case decided in 2019 by the Court under the Brussels I Regulation. In this judgment the Court stated that even where the *lis pendens* rule was breached, the courts in the Member State of the court first seised cannot refuse recognition solely for this reason. Likewise, such a breach is not manifestly contrary to the public policy of the Member State where recognition is sought.

[47] Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007, OJ L 339, 21.12.2007, p. 1.

[48] Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted 10 June 1958, entered into force on 7 June 1959) 330 UNTS 38 (New York Convention).

various Member States is quite broad, with the CMR[49] and other conventions in the field of transport being most often referred to.

In its ruling in *TNT Express Netherland* (C-533/08), the Court ruled that the provision of the Brussels I Regulation identical to the current Article 71 aims to coordinate the Regulation with specialised international conventions. Furthermore, the Court set out that such coordination is to be enacted without undermining the fundamental principles underlying the Regulation, specifically the free movement of judgments in civil and commercial matters, predictability as to jurisdiction, sound administration of justice, minimisation of the risk of concurrent proceedings and mutual trust in the administration of justice in the European Union. In this judgment, the Court established the so-called '*TNT* test' that the national courts are expected to apply in situations where rules of the Regulation and those of a specialised convention, falling within the scope of Article 71 of that Regulation, apply, in order to ensure that rules of the specialised conventions only apply where they do not negatively affect the fundamental principles underpinning the Brussels regime. The CJEU has repeatedly reiterated these principles, most recently in *Gjensidige* (C-90/22).

The referral order of the Lithuanian Supreme Court in case *Gjensidige* (C-90/22) illustrates well the difficulties that the national courts face when applying Article 71 of the Regulation. These difficulties are primarily attributed to the vagueness of the TNT test and are seen as jeopardizing the uniform application of Article 71 across the Member States, especially since similar challenges have been reported by other Member States

In conclusion, overall, the Regulation provisions governing the relationship between the Regulation and other EU instruments and international conventions, where applied, appear to operate well and bring the necessary clarity on the place of the Regulation within the system of EU and international instruments that also govern matters of international jurisdiction or recognition and enforcement of judgments. Nevertheless, a future review could look into the possibility to further clarify Article 71 in light of the interpretation provided by the CJEU.

6. HORIZONTAL ISSUES

6.1. Collective redress

The Regulation does not provide specific rules applicable to mass actions, typically actions where a group of plaintiffs seeks damages from one or several defendants, referred to as collective redress as defined in the European Commission 2013 Recommendation[50]. The representative actions for the protection of the collective interests of consumers as set out by Representative Actions Directive (EU) 2020/1828[51] fall under the definition of collective redress present in the latter Recommendation. A number of questions have been raised as to whether the application of the ordinary rules on jurisdiction in matters related to tort or consumer contracts are fit for purpose in order to effectively deal with collective redress claims.

[49] The Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol signed at Geneva on 5 July 1978.

[50] See Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law (2013/396/EU), OJ L 201 of 26.7.2013.

[51] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (Text with EEA relevance), OJ L 409, 4.12.2020, p. 1.

The CJEU dealt with this type of cases on several occasions: In *Henkel* (C-167/00), the Court concluded that Article 5(3) of the Brussels Convention (Article 7(2) of the Regulation) applies to actions brought by an organisation representing consumers' interests. However, the Court was also of the opinion that the special protection afforded to individual consumers in Section 4 of the Regulation does not apply to such organisations. In *Schrems* (C-498/16) the Court held that where the claims have been assigned to a consumer plaintiff by other consumers, domiciled in the same Member State or elsewhere (in another Member State or even outside the EU) the plaintiff cannot invoke jurisdiction at his domicile for these assigned claims on the basis of Article 18 of the Regulation.

In two further decisions in collective redress cases the Court provided additional clarifications on the application of Article 7(2) in such situations, namely that the location of the harmful event has to be assessed for each claim irrespective of any subsequent assignment or consolidation (*CDC Hydrogen Peroxide SA*, C-352/13) or that the place where the damage occurs in the case of vehicles equipped with rigged software is in the Member State where the defective goods were purchased (*VKI v Volkswagen*, C-343/19). The question of interpretation of Article 7(2) in this context arose also in a recent case, still pending at the time this report was being finalised (*Stichting Right to Consumer Justice v Apple*, C-34/32). In this case several questions on the interpretation of the place where the harmful event occurred or where the damages occurred were referred to the Court in the context of a claim for damages for an alleged infringement of EU competition law by an online platform which is in principle accessible worldwide. In his opinion issued on 27 March 2025, Advocate General Sánchez-Bordona concluded that for both places a key connecting factor is the domicile of the user. Importantly, the Advocate General was of the opinion that Article 7(2) should not be interpreted differently if the action is brought by an entity which is qualified under national law to bring representative actions. Finally, the Advocate General considered that a national procedural rule allowing a court to consolidate similar actions pending within the same Member State is compatible with Article 7(2).

The questions raised in these cases were all related to the jurisdiction of courts, namely the current difficult application of Article 7(2) in collective claims because of the impossibility to consolidate proceedings in one court or the absence of the possibility to consolidate proceedings at the domicile of one of the plaintiffs (*forum actoris*) in collective consumer claims, where the consumers are domiciled in the same Member State or in different Member States[52].

It seems that the Regulation may create unnecessary burdens for the plaintiffs in collective redress claims because in most cases they would have to turn to more than one court in order to litigate. This, in turn, can lead to irreconcilable judgments. While the related claims rule in Article 30 of the Regulation can provide solutions to this situation, the plaintiffs still have to lodge the application in different courts before a possible consolidation in the court first seised. This creates additional burden for the plaintiffs, in particular if they are weaker parties.

As a result, a possible future review of the Regulation could further look into this matter, in particular on whether the Regulation regulates in a satisfactory manner jurisdiction in collective (consumer) claims.

6.2. The impact of the digitalisation on the Regulation

Digital transformation started well before the adoption of the Regulation but has accelerated in an unprecedented manner, also in view of the COVID-19 crisis. An unparalleled shift of

[52] The Study identified the same issue of the very limited possibilities for consolidation.

commercial activities has occurred from predominantly offline to online, including the use of social media, smart devices, cryptocurrencies, and blockchain technologies as well as an explosion in demand for remote and platform work which has accelerated the digital transformation of workplaces in the European Union and beyond. At the same time, the COVID-19 crisis has also underlined the importance of the digitalisation of judicial procedures in ensuring access to justice.

6.2.1. Digitalisation of 'content'

The multiplication of 'digital' relationships that are intrinsically aterritorial and an ever-increasing use of digital technologies that are ubiquitous in nature, unsurprisingly posed multiple challenges for the application of the Regulation that lays down jurisdiction rules traditionally based on geographical connecting factors.

The referrals to the CJEU seeking guidance as to the application of the Regulation to 'digital content' illustrate well these main challenges. National courts encounter difficulties when determining whether the agreement on prorogation of jurisdiction was validly concluded online (*Tilman*, C-358/21), the place of performance concerning the delivery of digital goods or the provision of online services (*VariusSystems*, C-526/23), where damage is caused by an application that can be downloaded worldwide (*Apple*, C-34/24), just to name a few.

The expected increase in the use of blockchain technologies, the increased digitalisation of the setting-up of companies, the deployment of Artificial Intelligence in multiple sectors and the creations of metaverses will certainly pose new questions and challenges as well. For example, the pseudonymity (or anonymity) of the parties involved in the transactions or the often-unknown number of participants in a blockchain network could raise difficulties for the application of the very basic rule of the defendant's domicile.

However, for the time being, the difficulties encountered by the national courts when applying the Regulation in a digital context are not so different from those arising in a 'non-digital' context. For example, the number of referrals seeking guidance on the establishment of the place of performance of an online contract for the purposes of Article 7 of the Regulation is not bigger than that concerning offline contracts. Moreover, just like for the application of the Regulation in the non-digital area, the CJEU has provided useful guidance on the application of the Regulation rules to the digital content.

In conclusion, at this stage, neither the questions referred to the CJEU or the decisions of the latter, nor the scarce data collected at the national level[53] allows to draw firm conclusions as to the suitability of the current rules of the Regulation in an ever-increasing digital environment.

6.2.2. Digitalisation of judicial procedures

As far as the digitalisation of judicial procedures is concerned, the Commission has been actively working on the digitalisation of justice systems with a particular focus on digital cross-border cooperation for civil and commercial matters to ensure uninterrupted access to justice and smooth and efficient judicial cooperation, and to reduce procedural delays, administrative burden and costs. This effort that has culminated in the adoption of the Digitalisation package[54] at the end of 2023 that changed the communication channel for

[53] The collection of data on the impact of the digitalisation of content on the application of the Regulation, done as part of the Study, yielded scarce results at the Union and at national level. It is unclear whether this is explained by a lack of information on these cases or by a lack of litigation.

[54] Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation and Directive (EU) 2023/2843 of the

competent judicial authorities for 24 legal acts (among others the Regulation) to digital and established a digital communication channel (European electronic access point (EEAP)) between natural or legal persons and the competent authorities for certain limited communication instances in civil and commercial matters, including the proceedings for recognition, a declaration of enforceability or refusal of recognition and the procedures related to the issuance, rectification and withdrawal of certificate under the Regulation. These efforts go hand in hand with increased national efforts by Member States in this area, as reflected in the annual EU Justice Scoreboard[55] and in the Council's European e-Justice Strategy 2024 - 2028[56].

In order to meet the objectives of the Digitalisation package, the Commission is obliged to adopt a number of implementing acts. For the Regulation, the implementing act must be adopted by 17 January 2029, and it will mainly concern the establishment of a decentralised IT system for communication between competent judicial authorities and the integration of the EEAP for several communication processes, such as proceedings for refusal of recognition according to Article 45 of the Regulation as well as the procedures related to the issuance, rectification and withdrawal of certificates. After implementation, these new rules will become applicable in Member States by early 2031 and will simplify and speed up procedures in civil and commercial matters with cross-border implications.

In addition to digitalising the existing procedures by changing the communication channel with the Digitalisation Package, a future review of the Regulation could also look into further ways to modernise the functioning of the Regulation. Such a modernisation of the Regulation could take into account the benefits of digitalisation and consider the shortening of different deadlines or improvements to the communication between the courts, for example in case of parallel proceedings. Full digitalisation of judicial procedures in cases where the Regulation applies could be also explored.

In conclusion, at this point the Commission does not have sufficient data showing the unsuitability of the rules of the Regulation on international jurisdiction for digital scenarios and transactions, but developments should continue to be closely monitored. By contrast, a review of the Regulation could investigate possible ways to revise and simplify the procedures under the Regulation as part of the digital reform of civil justice systems spearheaded by the Digitalisation package.

7. CONCLUDING REMARKS

During more than ten years of its application, the Regulation operated well and generally achieved its main objectives – to improve legal certainty as to the courts having jurisdiction in cross-border disputes and to simplify the mechanism for recognition and enforcement of judgments.

Nevertheless, in an area that was not fully addressed in the recast of the Regulation, namely **the extension of the rules of jurisdiction to cover defendants not domiciled in a Member**

European Parliament and of the Council of 13 December 2023 amending Directives 2011/99/EU and 2014/41/EU of the European Parliament and of the Council, Council Directive 2003/8/EC and Council Framework Decisions 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, as regards digitalisation of judicial cooperation.

[55] Communication of 20 March 2024 from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions (COM (2023) 309 final): The Annual EU Justice Scoreboard 2023.

[56] https://data.consilium.europa.eu/doc/document/ST-15509-2023-INIT/en/pdf

State, further analysis is needed in order to decide whether such an extension should be the object of a legislative intervention.

In addition, a number of concepts could be considered for further clarification or simplification in order to improve their application in practice. This is the case for several provisions dealing with the scope of application, such as **the exclusion of arbitration**, as well as the notion of '**court or tribunal**' or the one related to **provisional, including protective, measures.**

Likewise, the possibility to further simplify and enhance the effectiveness of the provisions on jurisdiction, in particular those in **Article 7(1) and 7(2),** as well as those related to consumer contracts, could be explored. A similar reflection could consider whether **the rules on recognition and enforcement** could be further streamlined and simplified.

Further analysis is also needed in order to decide whether the necessary procedural tools to cover certain type of claims, such as those commonly referred to as **collective redress**, could be further enhanced through legislative intervention.

Finally, the possibility to **improve the coordination between the Regulation and international instruments** and **the ways to modernise and simplify the procedures** under the Regulation as part of the **digital reform of civil justice systems** could be looked at.

The Commission **will therefore initiate a formal review** of the Regulation in order to consider and potentially prepare a proposal to amend or recast the Regulation in accordance with the Better Regulation rules should this review conclude that changes are necessary and appropriate.