Commission Report and Staff Working Document on Brussels I recast

Today the European Commission published its eagerly awaited Commission Report on the application of the Brussels Ia Regulation (also referred to as Brussels I-bis), No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). The Report is accompanied by a Staff Working Document, detailing a number of selected topics addressed in the Report. The documents rely in particular on the extensive Evaluation Study that was published in January 2023 as well as the findings of the JUDGTRUST project and the resulting book.

The Report states that it is 'generally agreed that the Regulation is a highly successful instrument' and that the enhancements, including the abolition of the *exequatur,* have strengthened judicial cooperation in civil and commercial matters. Its overall 'clear and simple' rules are 'highly appreciated amongst practitioners. The Report also emphasizes the essential role of the CJEU case law in interpreting and applying the rules. While several complex issues require clarification, 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', according to the Commission.

The Report addresses the **scope** of application laid down in Art. 1 (in particular the exclusion of arbitration) as well as a number of issues in applying Arts. 2 and 3, including **definitions** (in particular the term 'judgment' in relation to provision and protective measures, and definition of 'court' referring to the *Pula Parking* judgment, see here).

As regards the **scope of the jurisdiction rules,** the much debated issue of the *(non) application to third-country defendants* and possible extension is addressed. Topics pointed out in relation to the **special, alternative jurisdiction rules** in Arts. 7-9 include the increasingly broad interpretation of 'matters relating to a contract', determining the place of performance of contractual obligations (Art.

7, para 1), and as regards torts (Art. 7, para 2) the often problematic determination of the place of damage of pure financial loss (similar to Rome II Regulation, see also here) and the application of the mosaic principle in cases regarding the violation of privacy rights. As to the latter, reference is also made to the (negative) implication in SLAPP cases and the Anti-SLAPP directive, which was adopted in 2024. A number of issues are pointed out in applying the **consumer protective rules** in Arts. 17-19, including the notion of 'consumer', the phrase 'directing of commercial activity', the exclusion of transport contracts as well as their non-applicability in collective redress actions, where cases are brought by a representative organisation. A few minor (formulation) issues in the application of Art 24 on exclusive jurisdiction are pointed out.

As regards the rules on **recognition and enforcement**, it is concluded that the system of the recast Regulation, which abolished the declaration of enforceability (*exequatur*) works generally well in practice and has had a positive effect on the costs and workload of courts. The Report refers to a number of CJEU rulings on the application of the **public policy exception**, including in the cases *Diageo Brands, H Limited* and most recently, the *Real Madrid*. The CJEU upheld the restrictive application of the public policy exception, though created room for its application in the latter case in which the violation of a fundamental right under the EU Charter of Fundamental Rights (freedom of press) was at stake.

Lastly, the Report reflects on the **relationship with other instruments** (Arts. 67-74), referencing in particular the Lugano Convention, the New York Convention, bilateral conventions of Member States with third states, and the establishment of the "United" (this should be "Unified") Patent Court.

A number of important horizontal issues that are pointed out are that of the potential problematic application in **collective redress cases**, as is also clear from a number of rulings of the CJEU, and the **impact of digitalisation**, including the increase of digital content and blockchain technologies, and the digitalisation of judicial procedures.

In conclusion, the Commission will 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'. Highlighted topics in this context are:

- (once again) the **extension of the rules of jurisdiction to cover defendants not domiciled in a Member State**
- provisions on the s**cope and definitions**, in particular the *exclusion of arbitration*, the notion of '*court or tribunal*' and '*provisional, including protective, measures*'
- simplifying and enhancing the effectiveness of the provisions on jurisdiction, in particular **Arts. 7(1) on contracts and 7(2) on torts**, as well as those on **consumer contracts**
- further streamlining and simplifying the rules on **recognition and enforcement**
- necessary procedural tools in relation to **collective redress**
- **coordination** between the Regulation and international instruments, and
- ways to **modernise and simplify procedures** as part of the **digital reform of civil justice systems**

To be continued!

Conflictoflaws will organise an online roundtable on designated topics of the report, following the succesful roundtable on Rome II – Stay tuned