Advocate General Emiliou's Opinion on Case C-799/24: Res Judicata Effect Applies Despite Breach of Art 31(2) Brussels Ia

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On 23 April 2026, Advocate General *Emiliou* published his opinion on Case C-799/24 – *Babcock Montajes S.A. v Kanadevia Inova Steinmüller GmbH*. It adds another piece to the puzzle that is the CJEU's broad interpretation of the term 'judgment' in the Brussels Ia Regulation. At the same time, the case highlights the persisting problems with procedural coordination under the regulation.

I. Facts of the case

The facts of the case as well as the procedural history have already been summarised in detail by *Lino Bernard* and *Marta Requejo Isidro* respectively, here and here.

To summarize:

A German and a Spanish company concluded a contract with an exclusive choice-of-court agreement in favour of a German court. Despite this agreement, the Spanish company initiated proceedings before a Spanish court in Madrid, seeking payment allegedly owed under the contract in connection with a bank guarantee invoked by the German company. Shortly thereafter, the German company brought proceedings before the designated German court in Cologne, seeking a declaration that the Spanish company was under an obligation to reimburse the German company and/or to pay damages.

The Madrid court affirmed its international jurisdiction without addressing the

choice-of-court agreement, but declined territorial competence and referred the case to the court in San Sebastián (Spain). Although the German company did not challenge the Madrid court's decision, it subsequently contested the international jurisdiction before the San Sebastián court. This objection was rejected in an interim decision, with the court relying on the prior determination of the Madrid court.

In parallel, the German court seized by the German company dismissed the action as inadmissible, holding that it was bound, pursuant to Art. 36(1) of the Brussels Ia Regulation, to recognise the decision of the San Sebastián court, even though the choice-of-court agreement had been disregarded. On appeal, however, the German appellate court overturned this decision, finding that it retained international jurisdiction despite the Spanish court's ruling. This was due to the appellate court's assertion that the interim decision did not constitute a 'judgment' within the meaning of the Brussels Ia Regulation. The Spanish company appealed to the German Federal Court of Justice, which referred the following questions to the Court of Justice of the European Union:

1. Is the term 'judgment' in Article 36(1) 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 ('the Brussels I Regulation') to be interpreted to the effect that the court of a Member State on which an agreement as referred to in Article 25 of the Brussels I Regulation confers exclusive jurisdiction (Article 31(2) of the Brussels I Regulation) must recognise a judgment by which a non-designated court of a Member State finds that the courts of that Member State have international jurisdiction if the judgment in question is an interim judgment, in other words, is not a decision which terminates a dispute?
2. If the answer to Question 1 is, in principle, in the affirmative: Does recognition of the interim judgment also depend on whether the interim judgment affirming the international jurisdiction of the courts of the Member State is binding on the non-designated court itself and/or whether the affirmation of international jurisdiction may be varied in the context of an appeal?

II. Opinion of Advocate General Emiliou

AG *Emiliou* addressed the questions jointly, understanding them as asking 'whether an interim decision adopted by a court of a Member State, in which that court (only) declares itself to have international jurisdiction, but which does not yet make any determination on the merits of the claim, is covered by the concept of "judgment" within the meaning of Art. 36(1) of Regulation No 1215/2012 and must therefore be recognised in accordance with that provision, even if that decision allegedly contradicts an exclusive choice-of-court agreement designating the courts of another Member State.' (para 27).

He begins by emphasising that an infringement of a choice-of-court agreement cannot justify refusal of recognition (paras 38–56). This is based on the prohibition of a *révision au fond* (para 39), as also confirmed by the *Gjensidige* judgement (C?90/22) (para 42).

Turning to the central issue – whether an interim decision by which a court of a Member State declares itself to have jurisdiction, allegedly in breach of a choice-of-court agreement, constitutes a 'judgment' within the meaning of Art. 2(a) of the Brussels Ia Regulation – AG *Emiliou* relies on the Court's case law, in particular *Maersk* (Joined Cases C-345/22 to C-347/22) and *Gothaer* (C-456/11), to show that procedural decisions are not excluded from the concept of a 'judgment' (para 67–73). While acknowledging that these cases do not directly address the present issue (para 69), he argues that there is no convincing reason to distinguish between a decision declining jurisdiction (as in *Gothaer*) and one confirming jurisdiction (as in the present case) (para 79).

The AG then highlights the importance of the concept of 'judgment' in the context of *lis pendens* (para 74). He notes that the proper functioning of the obligation to decline jurisdiction under Art. 29(3) would be uncertain if a purely jurisdictional decision were not regarded as a 'judgment' capable of recognition (para 76).

AG *Emiliou* emphasises that, although safeguarding the practical effectiveness of choice-of-court agreements is a legitimate concern, the protection afforded by Art. 31(2) does not justify excluding decisions containing only jurisdictional findings from the concept of a 'judgment' within the meaning of the Regulation (paras 86–88). Refusing recognition of such an interim decision would effectively permit parallel proceedings and thereby create a risk of conflicting judgments –

undermining the very objectives of the *lis pendens* rules (para 89). In such circumstances, Art. 29(3) should take precedence over Art. 31(2) once it becomes clear that parallel proceedings cannot be avoided through the mechanisms of Art. 31(2) (para 90).

Finally, AG *Emiliou* argues that the obligation to decline jurisdiction under Art. 29(3) may arise at different stages of the proceedings, depending on whether the defendant is still able to contest jurisdiction. The court second seised should only decline jurisdiction once it can be safely assumed that the court first seised will proceed to examine the case on the merits (para 96). Referring to the wording of Art. 38(a), he concludes that the obligation to recognise a judgment containing only a jurisdictional determination may arise irrespective of whether that judgment is final. By contrast, the obligation to decline jurisdiction under Art. 29(3) arises only once the jurisdiction of the court first seised has been established in such a way that it can no longer be contested (para 98).

In response to the second question referred, *Emiliou* further suggests that a jurisdictional determination may produce *res judicata* effects which cannot subsequently be set aside by the courts with priority (paras 99–101).

To summarise the Opinion of AG *Emiliou*: an interim decision, even if given in breach of a choice-of-court agreement, constitutes a 'judgment' within the meaning of Art. 2(a) of the Regulation and must be recognised. While the obligation of recognition arises irrespective of whether the decision is final, the obligation of the court designated in the choice-of-court agreement to decline jurisdiction under Art. 29(3) arises only once the jurisdiction of the court first seised can no longer be contested in the ongoing proceedings.

III. Comment

The present proceedings will likely make a further contribution to the CJEU's emerging, controversial line of case law on what constitutes a 'judgment' capable of recognition within the meaning of Art. 36 of the Brussels Ia Regulation. Prominent examples include *H Limited* (C-568/20), *London Steam-Ship* (C-700/20) and *Gothaer* (C-456/11), all of which are referenced in the Opinion (Fn. 32, 34, 39).

To date, the Court has consistently adopted a broad interpretation of this concept, notwithstanding substantial criticism from scholars. The Opinion of AG *Emiliou*

continues this approach by interpreting 'judgment' within the meaning of the Regulation as encompassing interim decisions, even where they are given in breach of Art. 31(2).

Even though (German) scholarship remains cautious with regard to the recognition of such decisions, the reasoning of AG *Emiliou* is largely convincing, albeit with some caveats.

The main reservation concerns his argument that the obligation to decline jurisdiction under Art. 29(3) needs to be reinforced by treating jurisdictional decisions as recognisable judgments (paras 76–78). This step does not appear necessary. As he himself acknowledges (para 78), the same line of reasoning could lead to the opposite conclusion, namely that Art. 29(3) already provides a sufficient mechanism, making the recognition of an interim judgment in such circumstances superfluous.

However, the Opinion remains firmly in line with the Court's existing case law, with the judgment in *Gothaer* (see especially Nr. 79). It is convincing in emphasising that, while the Regulation seeks to protect choice-of-court agreements, the prevention of parallel proceedings – and thus of conflicting judgments – carries greater weight (paras 89–90). This is further underpinned by the emphasis on mutual trust and the free circulation of judgments (paras 38–40, 82, 85, 87).

It is, however, somewhat surprising that AG *Emiliou* initially relies on Art. 29(3) as a key argument in favour of recognising the interim judgment, yet ultimately maintains a substantive distinction between the obligation to recognise such a judgment under Art. 36(1) and the obligation to decline jurisdiction under Art. 29(3). In the present case, this distinction does not appear to affect the outcome. It remains to be seen in which situations it might lead to different results.

Ultimately, however, the case reveals a more fundamental issue. As Lino Bernard has aptly observed, it is, in essence, concerned with procedural coordination under the Brussels Ia Regulation. Since a violation of the *lis pendens* rules does not constitute a ground for refusal of recognition (*Liberato* – C-386/17; see also AG *Emiliou*'s Opinion, Nr. 53), the question whether an interim decision is capable of recognition becomes particularly significant in this context. By contrast, if the *lis pendens* rules were enforced at the level of Art. 45(1), the issue

of recognisability would be far less consequential, as recognition could be refused on that basis.

In this regard, it is remarkable that AG *Emiliou*'s decision *prima facie* strengthens (see para 76) the *lis pendens* rules at the stage of recognition. It may provide a workable interim solution for the principle of priority under Art. 29(1) and (3). But at the same time, as the present case illustrates, it sacrifices the protection of choice-of-court agreements under Art. 31(2). This could conceivably create new opportunities to misuse the *lis pendens* rules and encourage a *race to the courts*, particularly for claimants with the ability to convince the court to issue an early interim decision.

Accordingly, the case once again highlights the need to elevate the entire *lis pendens* regime to a ground for refusal of recognition. Encouragingly, the Commission's Report on the application of the Brussels Ia Regulation suggests that the recast may address this issue.

Independent of any reform of the Regulation, it remains to be seen whether the Court will follow AG *Emiliou*'s broad understanding of 'judgment' and continue its line of extending the interpretation of that concept within the meaning of the Regulation.