

PROROGATION OF JURISDICTION AND LIS PENDENS

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DEVELOPMENT OF EU REGULATION

- 1968 Brussels Convention
- Regulation (EC) No 44/2001 (Brussels I)
- Regulation (EU) No 1215/2012 (Brussels Ia) - apply from 10 January 2015

SCOPE OF PROROGATION

Brussels Convention	Brussels I	Brussels Ia
<p>Article 17</p> <p>If the Parties, one or more of whom is domiciled in a Contracting State, have, by agreement in writing or by an oral agreement evidenced in writing, agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction.</p>	<p>Article 23</p> <p>1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise.</p>	<p>Article 25</p> <p>1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise.</p>

VALIDITY OF PROROGATION

Brussels Convention	Brussels I	Brussels Ia
No special rules	<p>Article 23</p> <p>Such an agreement conferring jurisdiction shall be either:</p> <ul style="list-style-type: none">(a) in writing or evidenced in writing; or(b) in a form which accords with practices which the parties have established between themselves; or(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned. <p>2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to "writing".</p>	<p>Article 25</p> <p>The agreement conferring jurisdiction shall be either:</p> <ul style="list-style-type: none">(a) in writing or evidenced in writing;(b) in a form which accords with practices which the parties have established between themselves; or(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned. <p>2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.</p>

FORMAL REQUIREMENTS

- **C-322/14, El Majdoub v CarsOnTheWeb**

'the method of accepting the general terms and conditions of a contract for sale by 'click-wrapping' which contains an agreement conferring jurisdiction, constitutes a communication by electronic means which provides a durable record of the agreement, where that method makes it possible to print and save the text of those terms and conditions before the conclusion of the contract,

but! consumer contracts

JURISDICTION CLAUSE AND CHAIN OF CONTRACTS

- **C-543/10, Refcomp SpA v Axa**

'a jurisdiction clause agreed in the contract concluded between the manufacturer of goods and the buyer thereof cannot be relied on against a sub-buyer who, in the course of a succession of contracts transferring ownership concluded between parties established in different Member States, purchased the goods and wishes to bring an action for damages against the manufacturer'

LIS PENDENS

Brussels Convention	Brussels I	Brussels Ia
<p>Article 21</p> <p>Same cause of action between the same parties brought in the courts of different Contracting States</p>	<p>Article 27</p> <p>1. Same cause of action between the same parties brought in the courts of different Member States</p>	<p>Article 29</p> <p>1. Same cause of action between the same parties brought in the courts of different Member States</p>
<p>Article 22</p> <p>Related actions brought in the courts of different Contracting States</p> <p>Actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.</p>	<p>Article 28</p> <p>1. Related actions are pending in the courts of different Member States</p> <p>3. Actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.</p>	<p>Article 30</p> <p>1. Related actions are pending in the courts of different Member States</p> <p>3. Actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.</p>

NEW RULES IN BRUSSELS IA

Torpedo actions

Article 31

2. Where a court of a Member State on which an agreement confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement.

NEW RULES IN BRUSSELS IA

Proceedings pending before the courts of third States

Article 33, 34

proceedings pending before a court of a third State at the time when a court in a Member State is seised of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State (of an action which is related to the action in the court of the third State), the court of the Member State may stay the proceedings if:

- (a) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and
- (b) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

TIME LIMIT OF JURISDICTION CONTEST

- **C-1/13, Cartier parfums v Ziegler France SA**

the jurisdiction of the court first seised must be regarded as being established, if that court has not declined jurisdiction of its own motion and none of the parties has contested its jurisdiction prior to or up to the time at which a position is adopted which is regarded in national procedural law as being the first defence on the substance submitted before that court

CRIMINAL CASE – CIVIL CASE – COURT SEISED

- **C-523/14, Aannemingsbedrijf Aertssen NV v VSB Machineverhuur BV**

proceedings are brought, when a complaint seeking to join a civil action to proceedings has been lodged with an investigating magistrate, even though the judicial investigation of the case at issue has not yet been closed

CRITICAL REMARKS

- Jurisdiction clause lack of any cross-border element?
- length of the preliminary ruling procedure – lack of 'Kompetenz-kompetenz'
court

