

# Briefing

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## Recast Brussels I Regulation – key updates on jurisdiction, recognition and enforcement of civil and commercial judgments within the EU (including certain Romanian law considerations)

Brussels I Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) entered in force on 10 January 2015 and has replaced the former Brussels I Regulation (EC) No 44/2001 on the matter, provided that legal proceedings commenced before 10 January 2015 will continue to be subject to the former Regulation. As a general note, the recast Regulation aims to streamline the free movement of judgments within the EU and does bring certain improvements to the existing regime – as further detailed below.

### 1. Enforcement is smoother as *exequatur* no longer needed

Under the recast Regulation, a judgment which is enforceable in the Member State where it has been given is automatically enforceable anywhere in the EU and the additional procedure for a declaration of enforceability – the so called *exequatur* required under the former Regulation – has now been eliminated. In Romania, a creditor may commence the enforcement of a EU judgment against its debtor by directly submitting the request to a bailiff (*executor judecatoresc*), together with a copy of the judgment which satisfies the conditions necessary to establish its authenticity and a standard certificate (provided in Annex I of the recast Regulation) issued by the court of origin. The Romanian bailiff may require certified Romanian language translations thereof.

### 2. Choice-of-court agreement not dependent on domicile of the parties within EU

A key change brought by the recast Regulation is that parties can now agree to prorogate jurisdiction in favor of EU Member States courts regardless of their domicile being within the EU or not. The validity of such an agreement is subject to the law of the Member State to the courts of which the parties have decided to grant jurisdiction over their dispute, including the conflict-of-laws rules of that Member State. This might trigger a lack of uniformity in treating the validity of the jurisdiction agreement within the EU, as the issue escapes the Rome I Regulation and might be decided differently under each national law. From a the Romanian private international law perspective, in the absence of an express designation by the parties, the law applicable to a choice-of-court agreement assigning jurisdiction to Romanian courts would be the one of the state with which the contract presents the closest connections or – in case such a criteria in not available – the law of the state where the agreement has been concluded.

The recast Regulation also sets forth the independence and severability of the agreement conferring jurisdiction as part of a contract and the mere invalidity of the contract does not automatically enable the invalidity of the choice-of-court agreement or clause.

### 3. The end of "torpedo actions"?

An important feature of the recast Regulation is that the exclusive jurisdiction deriving from parties' agreement now prevails as the recast Regulation provides that, whenever a court of a Member State has been seized pursuant to a choice-of-court agreement, any court of another Member State shall stay its proceedings until the former establishes its jurisdiction, irrespective that the latter might be the one firstly seized. An end is put to the undesirable but yet quite frequent situation in which the first-seized jurisdiction rule would render ineffective an agreement conferring exclusive jurisdiction to the court of another Member State than the one of the firstly seized (the so-called "torpedo actions"). However, the issue might still remain in case of a choice-of-court agreement in favour of a non-EU court but the EU court is first seized.



#### 4. Parallel proceedings with a third State – now regulated

The recast Regulation also deals now with parallel proceedings, simultaneously pending before a court of a Member State and a court of a third State. The basic rule is that the court of the Member State may stay the proceedings if it expects that the court of the third State will give a judgment capable of recognition or enforcement and the stay is necessary for the proper administration of justice. However, the proceedings may be continued at any time if the action is required for the same rationale (for instance, the proceedings in the court of the third State are stayed, discontinued or unlikely to be concluded within a reasonable period of time). The court of the Member State would have to dismiss the proceedings if the procedure in the third State finalizes with a judgment capable of recognition or enforcement.

The rules of procedure are identical, irrespective that the actions might be the same or just related, and are applicable at the request of one of the parties or, where possible under national law (Romanian law being one of such national laws), by the court's own motion.

#### 5. Arbitration matters entirely excluded from the scope of the recast Regulation

Arbitration (including any action or ancillary proceedings relating to any aspects of an arbitration procedure, as well as any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award) remains excluded from the scope of the recast Regulation.

If a EU court finds that an arbitration agreement is not valid and renders a judgment on the substance of the matter, this should not preclude enforcement of the judgment on the matter pursuant to the recast Regulation. In case of a conflict between an arbitral award and a judgment rendered in another EU Member State, although the matter is not expressly sorted out, it seems that the recast Regulation grants preference to the arbitral award as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958, New York) takes precedence over the recast Regulation.

#### 6. Anti-suit injunctions back on the table?

Based on the former Regulation, the CJEU decided that anti-suit injunctions in support of arbitration were incompatible with the Brussels Regime (see the decision in case C-185/07 *Allianz SpA v West Tankers*). The holding has been heavily criticized by the world of private international law and arbitration for allegedly extending the scope of the Brussels I Regulation to arbitration in a way that undermines its effectiveness.

The new wording of the recast Regulation – although not expressly dealing with the issue of anti-suit injunctions – might determine that CJEU rethink its position, as ancillary proceedings relating to the conduct of an arbitration, whether decided as a principal issue or as an incidental question, are expressly excluded from its application. This is also the opinion Advocate General Wathelet recently issued in an ongoing case before the CJEU (see the Opinion of Advocate General Wathelet, delivered on 4 December 2014 in Case C-536/13 '*Gazprom*' OAO, para. 92-141). It will be interesting to see whether the CJEU will validate this line of reasoning in its final decision on this matter and revert to the status quo before the *West Tankers* case.

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