EAPIL
The European Association of Private International Law

EXECUTIVE SUMMARY POSITION PAPER
in response to the public consultation on

THE BRUSSELS I BIS REGULATION REVIEW

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The European Association of Private International Law (EAPIL) is an independent and non-partisan organisation established in 2019 as a non-profit association under the law of Luxembourg with the aim of promoting the study and development of private international law. It does so by fostering the cooperation of academics and practitioners in European countries and the exchange of information on the sources of the discipline, its scholarship and practice. EAPIL has currently more than 700 members, mostly academics and practitioners, based in more than 70 countries.

The following Executive Summary Position Paper contributes to the European Commission's Public Consultation on the Review of Regulation (EU) No 1215/2012 (Brussels Ibis Regulation). It builds particularly on the Academic Position Paper by Burkhard Hess et al., The Reform of the Brussels Ibis Regulation (22 May 2024), developed in cooperation with the EAPIL Working Group on the Reform of the Brussels Ibis Regulation. That study submitted 32 proposals, subsequently refined following extensive academic consultation. By the following Executive Summary Position Paper, EAPIL respectfully draws the Commission's attention to selected priorities, also taking account of certain more recent legislative and judicial developments.

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A. INTRODUCTION

1 The European Association for Private International Law (EAPIL) welcomes the European Commission's initiative to review Regulation (EU) No 1215/2012 ('Brussels Ibis Regulation'). EAPIL's following contribution builds particularly on the **Academic Position Paper** by **Burkhard Hess *et al.*, *The Reform of the Brussels Ibis Regulation* (22 May 2024)**, developed in cooperation with the EAPIL Working Group on the Reform of the Brussels Ibis Regulation. That study submitted 32 proposals, subsequently refined following extensive academic consultation.

2 EAPIL respectfully draws the Commission's attention to the following **selected priorities**, also taking account of certain more recent legislative and judicial developments.

1. EXTENDING JURISDICTION TO DEFENDANTS DOMICILED IN THIRD STATES

3 **EAPIL recommends extending Articles 7(1) and 7(5) and introducing an express *forum necessitatis* to defendants domiciled in third States.**[1]

4 Where the place of contractual performance is situated within the EU, or a dispute arises from the operations of a branch, agency or other establishment situated within the EU, the corresponding EU forum should be available irrespective of the defendant's domicile inside or outside the EU. Divergent national rules for third-state domiciled defendants cannot substitute satisfactorily a uniform and fully symmetrical EU rule.[2]

5 Article 7(2), concerning non-contractual liability, requires separate examination. The existing uncertainty surrounding the localisation of damage, particularly in internet-related disputes, should be addressed before introducing a third-State extension. Other heads of jurisdiction, such as e.g. Article 8(1), might require separate examination on their own merits.

6 Jurisdiction based merely on *doing business* within the EUs Internal Market should not be introduced, given the difficulty of defining that connecting factor with sufficient precision.

7 An express *forum necessitatis* for proceedings against defendants domiciled in third States would permit EU Member State courts to exercise jurisdiction exceptionally where proceedings cannot

[1] Hess et al., pp. 16–21, Proposals 11–14.
[2] Additionally, Article 7(1) should be simplified. On this priority see below at no. 5.

reasonably be instituted or conducted before the courts of an otherwise appropriate third State and denial of jurisdiction would effectively deprive the claimant of access to justice.

2. ESTABLISHING A COHERENT APPROACH TO THIRD-STATE JUDGMENTS

8 **EAPIL recommends striving for a comprehensive regime for the recognition of judgments from third states, complementing the HCCH 2019 Judgments Convention.[3]**

9 At present, the Regulation does not establish a comprehensive regime for recognising and enforcing judgments originating outside the EU. This creates a significant asymmetry: judgments rendered in Member States may circulate freely under Brussels Ibis even where jurisdiction over a third-State defendant was founded on divergent national rules, whereas incoming third-State judgments remain subject to different national recognition regimes, unless an applicable international instrument provides otherwise. Therefore, the EU should strive for a coherent approach to third-state judgments, complementing the HCCH 2019 Judgments Convention. At least, the EU should establish a coherent approach to third states in Free Trade Agreements (FTAs) and comparable instruments of close cooperation with the EU.

10 In all cases, the 'Brussels regime' on recognition and enforcement should reestablish a clear distinction between judgments originating in Member States, to which mutual trust appears adequate, and judgments merely recognised or declared enforceable there. In particular, the principle that an exequatur decision should not itself circulate as an independently recognisable judgment – *exequatur sur exequatur ne vaut* – requires clarification following *H Limited*.[4]

11 In general, the EU should strive for a comprehensive regime vis-à-vis third states, for jurisdiction as well as for recognition and enforcement. In particular, and following Art. 79 Sentence 2, the Brussels Ibis Regulation should determine the international jurisdiction of Member State courts in all matters falling within its material scope of application, irrespective of the defendant's domicile.[5]

[3] Hess et al., pp. 22–25, Proposals 15–16.
[4] C-568/20, 7 April.
[5] At least, Article 26 should be included in the list of provisions in Article 6(1) of the Regulation that apply irrespective of the defendant's domicile.

3. SIMPLIFYING CONTRACTUAL JURISDICTION UNDER ARTICLE 7(1)

12 The complexity of Article 7(1), particularly the residual rule in Article 7(1)(a), remains a longstanding source of legal uncertainty. Under the approach originating from *Tessili*,[6] identifying the place of performance may require the court first to determine the relevant contractual obligation, then the law applicable to it and, finally, the place of performance under that law. Such a complex inquiry at the jurisdictional stage is cumbersome and difficult to reconcile with the objectives of predictability and procedural economy.

13 **EAPIL recommends replacing the residual Tessili mechanism with autonomous connecting factors modelled on Article 7(1)(b).**[7]

14 The existing autonomous connecting factors are being constantly refined.[8] New autonomous connecting factors should be developed for contractual categories not currently covered. Where no sufficiently identifiable place of characteristic performance exists (in a Member State), reliance on the special contractual forum should be appropriately restricted.

15 **EAPIL also recommends addressing the increasingly broad interpretation of *matters relating to a contract*, in particular to persons outside the contractual relationship**.[9]

16 Voluntary assumption of obligations and reasonable foreseeability should remain central considerations, while the legitimate position of successors and assignees must be preserved.[10]

4. MODERNISING JURISDICTION FOR ONLINE TORTS AND PERSONALITY-RIGHTS INFRINGEMENTS

17 The application of Article 7(2) to internet-related infringements of personality rights has generated considerable complexity, particularly through the coexistence[11] of jurisdiction at the place of the event giving rise to the damage, the victim's centre of interests and the so-called mosaic principle.[12]

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6 Case 12/76, 6 October 1976.
7 Hess et al., pp. 26–28, Proposals 17–18.
8 E.g. C-526/23, 28 November 2024 – *VariusSystems*.
9 C-337/17, 4 October 2018 – *Feniks*; C-274/16, C-447/16, C-448/16, 7 March 2018 – *flightright*.
10 E.g. C-551/24, 9 October 2025 – *Deutsche Lufthansa AG*.
11 C-509/09, C-161/10, 25 October 2011 – *eDate and Martinez.*
12 C-68/93, 7 March 1995 - *Shevill*.

18 **EAPIL recommends examining a distinct provision in Article 7 for online infringements of personality rights, with a view to increasing foreseeability and reducing excessive fragmentation.**[13]

19 The victim's centre of interests may provide an appropriate connecting factor for adjudicating the entirety of the alleged harm. However, that forum should depend on an objectively ascertainable relationship between the relevant online publication, the injured person and the forum.

20 The geographical reach of injunctions, including orders for removal, rectification or geo-blocking, also requires clarification,[14] possibly in a Recital to the new provision. Territorial limitation, supported by geo-blocking, appears preferable to worldwide injunctions.[15]

21 The recent judgment in *Idziski*[16] adds further aspects to the debate and should be considered in the legislative process. The Court distinguished television broadcasts from online dissemination and, based on this distinction, it rejected centre-of-interests jurisdiction over the entirety of alleged personality-rights damage resulting from television broadcasts across several Member States. In respect to online content, it held that a natural person who could not be identified even indirectly from the content could not invoke that forum merely through membership of an identifiable group. Conversely, an association primarily protecting and identifiable group's interests could invoke its own centre of interests in the circumstances described.

22 Any steps need to be balanced against the objectives of Directive (EU) 2024/1069.

5. STRENGTHENING THE PROTECTION OF CONSUMERS

23 The protective jurisdictional regime established by Articles 17–19 generally functions well, but certain limitations warrant reconsideration.

24 **EAPIL recommends extending the protective jurisdictional rules to non-contractual claims arising from commercial activities directed towards the consumer's Member State.**[17]

[13] Hess et al., pp. 28–30, Proposals 19–20.

[14] Compare C-18/18, 3 October 2019 – *Glawischnig-Piesczek*: injunction of worldwide reach; Opinion AG *Szpunar*, 4 June 2019: territorial limitation plus geo-blocking.

[15] See now, in regard to a work published on a website that is in the public domain in certain Member States and still protected by copyright in another Member State, C-788/24, 9 July 2026 – *Anne Frank*.

[16] C-232/25, 18 June 2026.

[17] Hess et al., pp. 35–37, Proposal 22.

25 The present distinction between contractual and tortious liability may deprive consumers of the protective forum in disputes concerning product liability, fraud and other harmful commercial practices. Such an extension should require a sufficiently close connection between the directed commercial activity and the alleged damage.

6. IMPROVING CROSS-BORDER COLLECTIVE REDRESS

26 Directive (EU) 2020/1828 has strengthened representative actions for the protection of collective consumer interests and touches upon selected points of cross-border issues, but does not regulate them comprehensively.

27 **EAPIL recommends addressing cross-border issues of collective redress within the Brussels Ibis Regulation, rather than immediately introducing another comprehensive procedural instrument.**[18]

28 In particular, Article 7(2) should clarify that, in proceedings brought by qualified entities under Directive 2020/1828, the provision does not determine domestic territorial venue.[19] This would facilitate the concentration of claims concerning harm within a Member State before a competent national court without creating a general forum at the qualified entity's seat.

29 A ground for refusal of recognition of a judgment in case of violation of the lis pendens rule in Article 29 should be introduced in the context of collective redress.

30 If related actions in the sense of Article 30 are both collective proceedings, the court second seized should be obliged to stay and decline jurisdiction respectively, rather than enjoying discretion.

31 Article 32 should expressly provide that a court is seised when the qualified entity lodges the document instituting the representative proceedings, irrespective of subsequent declarations by individual consumers to participate or withdraw.

32 Additionally, it should be clarified that an approval of the substance of a settlement by a court produces a judgment in the sense of Article 2(a).

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[18] Hess et al., pp. 2–3 and 10–15, Proposals 1 and 7–10.

[19] In this direction see also now C-34/24, 2 December 2025 – *Stichting Right to Consumer Justice and Stichting App Stores Claims v Apple* (Grand Chamber).

7. STRENGTHENING THE EFFECTIVENESS OF CHOICE-OF-COURT AGREEMENTS

33 Articles 25 and 31 have substantially improved the effectiveness of exclusive choice-of-court agreements, especially by giving priority to proceedings before the designated court. Nevertheless, procedural delays and disagreements concerning the applicability and validity of jurisdiction clauses may continue to undermine party autonomy.

34 **EAPIL recommends improving the operation of Article 31(2), particularly by requiring non-designated courts to act promptly once the court designated by an exclusive choice-of-court agreement has been seised.**[20]

35 EAPIL proposes a binding time limit for staying proceedings, supported by an effective remedy where the requirement is not respected. EAPIL also proposes clarifying the limited preliminary examination permitted before the non-designated court ('prima facie standard'), including whether the clause prima facie applies to the dispute and satisfies the relevant formal requirements.

36 Consideration should additionally be given to situations in which a party invokes a clause but fails to bring proceedings before the designated court.

37 The reform should preserve the distinction between the designated court's authority to determine its own jurisdiction and a limited preliminary examination necessary to prevent manifest procedural abuse.

38 Recent case law has further developed the interpretation of Article 25. For example, in *Inkreal*,[21] the Court applied Article 25 to a choice of court agreement between two parties in the same Member State, designating the court of another Member State. The judgment caused a debate whether this cross-border element alone, agreed upon by the parties, should suffice to bring the choice of court agreement within the scope of Article 25. In *Lastre*,[22] the Court held that objections concerning the imprecision or asymmetry of a jurisdiction agreement must be examined under autonomous criteria derived from Article 25, rather than the national-law test of substantive invalidity. However, limiting the optional part in asymmetric choice of court agreements to

[20] Hess et al., pp. 31–34, Proposal 21, comprising several procedural recommendations concerning Article 31(2).
[21] C-566/22, 8 February 2024.
[22] C-537/23, 27 February 2025.

Member State or Lugano Courts might need to be reconsidered. In *E.B. v K.P.*,[23] the Court clarified when an assignee of a contractual claim may invoke a jurisdiction agreement against the original debtor without that debtor's renewed consent, notably where applicable national law transfers the rights attached to the assigned claim and the original parties have not excluded such reliance. These decisions (and others) reinforce legal certainty for the respective issues, which is particularly important in the context of choice of court agreements, but may need critical review in respect to details and, as the case may be, clarifications or modifications, possibly to be laid down in the Recitals.

8. IMPROVING COORDINATION AND CIRCULATION OF PROVISIONAL AND PROTECTIVE MEASURES

39 Provisional and protective measures are essential for effective judicial protection, particularly in commercial disputes involving assets situated in several jurisdictions. In this respect, the Brussels Ibis framework continues to distinguish between measures ordered by courts having jurisdiction as to the substance and measures granted by other courts under Article 35, however without providing for a hierarchy or a coordination otherwise.

40 **EAPIL recommends improving the coordination between courts granting provisional measures and courts having jurisdiction over the merits.**[24]

41 EAPIL proposes drawing upon the communication and coordination mechanisms of Article 15(2) and (3) of Brussels IIter.[25] Such an approach could reduce contradictory orders and encourage appropriate judicial cooperation.

42 The digitalisation of judicial cooperation under Regulation (EU) 2023/2844 offers further opportunities to improve secure communication between courts and competent authorities.

9. SIMPLIFYING RECOGNITION AND ENFORCEMENT WHILE PRESERVING EFFECTIVE SAFEGUARDS

43 The abolition of exequatur constitutes one of the principal achievements of Brussels Ibis. The framework should be preserved, but experience demonstrates that technical and procedural obstacles remain.

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[23] C-682/23, 23 October 2025.
[24] Hess et al., pp. 38–39, Proposal 25.
[25] Regulation (EU) 2019/1111.

44 **EAPIL particularly recommends targeted improvements to Articles 43, 45, 54 and 76 and to the certificates annexed to the Regulation.[26]**

45 First, the requirement of prior service of the certificate under Article 43 should be deleted, in order to avoid unnecessary delays and the frustration of enforcement through the dissipation of assets.

46 Secondly, the relationship between the refusal grounds for irreconcilable judgments under Article 45(1)(c) and (d) and the rules on lis pendens requires clarification. The existing rules concerning priority of proceedings and priority of judgments do not always produce consistent results.

47 Thirdly, Article 54 should be improved by identifying the authorities competent to adapt unfamiliar orders and measures. Article 76(1) should require Member States to notify the relevant authorities and their respective competences.

48 Fourthly, a carefully defined mechanism should permit enforcement authorities to specify or concretise the operative part of a foreign judgment where necessary for implementation, without modifying its substance. Certificates should contain sufficient information for determining interest, costs and other amounts recoverable.

49 The judgment in *Real Madrid*[27] is particularly significant for the limits of mutual trust. The Court held that enforcement of a judgment awarding damages for reputational injury must be refused where enforcement would manifestly infringe freedom of the press under Article 11 of the Charter and consequently public policy in the Member State addressed. The case illustrates that effective circulation and protection of fundamental rights are complementary requirements. Reform must not undermine the narrowly defined but indispensable public-policy safeguard.

50 Finally, consideration should be given to simplifying the relationship with Regulation (EC) No 805/2004 on the European Enforcement Order. Any possible repeal must take account of differences in debtor safeguards and grounds for resisting enforcement rather than merely eliminating a parallel instrument.

[26] Hess et al., pp. 40–48, Proposals 26–32.
[27] C-633/22, 4 October 2024 – *Real Madrid Club de Fútbol v Société Éditrice du Monde* (Grand Chamber).

10. ENSURING COHERENCE WITH INSOLVENCY AND ARBITRATION LAW

51 The Regulation should preserve its general character while maintaining coherent boundaries with neighbouring European and international instruments:

52 **EAPIL recommends that the delimitation between Brussels Ibis and the European Insolvency Regulation (EIR) should be clarified.**[28]

53 The Recitals of Brussels Ibis should underline that insolvency-related proceedings must be dealt with under Article 6 EIR, regardless of whether they qualify as contractual claims.

54 In order to further clarify the characterisation of "actions deriving directly from insolvency proceedings and closely linked with them" in the sense of Article 6 EIR, the Recitals of the EIR might be rephrased additionally. They should express that for such a characterisation the decisive rule of the controversy must be characterised as 'insolvency law', i.e. covered by the *lex fori concursus*, as selected by Article 7 EIR, and that the opening of insolvency proceedings is a necessary prerequisite for the proceedings in question.[29]

55 The new Directive (EU) 2026/799 of 30 March 2026, harmonising certain aspects of insolvency law, including avoidance actions, reinforces the importance of coordination. It does not itself replace the jurisdictional rules of the European Insolvency Regulation or eliminate the distinction between ordinary civil proceedings and insolvency-derived proceedings.

56 Finally, the effects of opening an insolvency proceeding in one Member State on pending non-insolvency proceedings in another Member State (or third state or before an arbitral tribunal), e.g. on a regular payment claim, might need readjustment,[30] in light of the function of Art. 6 EIR and Art. 18 EIR.

57 **EAPIL holds that the relationship between Brussels Ibis and arbitration requires renewed examination.**[31]

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28 Hess et al., pp. 6–7, Proposal 5.
29 Compare C-337/17, 4 October 2018 – *Feniks*, in relation to an *actio pauliana*.
30 C-292/25, 11 June 2026 – *shopping24*.
31 Hess et al., pp. 8–9, Proposal 6.

58 The arbitration exception must remain effective and the obligations arising under the New York Convention must be preserved. However, the possible incompatibility of arbitral awards, judgments confirming awards and ordinary court judgments remains insufficiently coordinated.

59 The judgment in *London Steam-Ship Owners*[32] demonstrates the limitations of resolving such conflicts solely through Article 45. Any priority or coordination mechanism should take account of abusive proceedings and should not establish an unconditional preference for either arbitration or litigation.

B. CONCLUSION

60 EAPIL once more welcomes the European Commission's initiative to reform the Brussels Ibis Regulation. EAPIL appreciates the European Commission's Public Consultations in this context. EAPIL encourages the Commission to pursue an evidence-based, coherent and proportionate reform of the Brussels Ibis Regulation, considering, inter alia, the above listed priorities and underlying academic studies.

[32] C-700/20, 20 June 2022.