

MARTA REQUEJO ISIDRO (Ed.). *Brussels I Bis. A Commentary on Regulation (EU) No 1215/2012. Elgar Commentaries in Private International Law series*, 2022, 1024 pp.
ISBN: 978 1 78990 816 9

DR. APOSTOLOS ANTHIMOS
Attorney at law, Thessaloniki, Greece

DOI: 10.20318/cdt.2023.7590

1. *Brussels Ibis Regulation- A commentary*, is the third commentary published by Elgar in the Elgar Commentaries in Private International Law series. Under the scientific direction of Gilles Cuniberti, Professor of Comparative and Private International Law, University of Luxembourg, the volumes in this series provide comprehensive commentary and analysis on major directives, regulations and conventions across the spectrum of Private International Law (PIL). The volumes published so far in addition to the one under review have also been edited by prestigious professors of European private law, and procedural international law: Sabine Corneloup, Pietro Franzina and Ilaria Viarengo, Fernando Gascón and Elena D'Alessandro, and Gilles Cuniberti himself. A commentary on Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast) will be available in summer 2023.

2. The conception underlying this vast commentary to the Brussels Ibis Regulation is explained in the foreword; so are the difficulties experienced along the implementation of the project. The adventure began in spring 2019, when the publisher house approached Marta Requejo, then a Senior Research Fellow at MPI Luxembourg, and invited her to be in charge. The subject (so the foreword) fitted squarely with the topics of interest of the Department of European and Comparative Procedural law of the Institute: it was only natural, then, to make of it a common endeavor of the scientific staff. And, indeed, it is worth recalling

that most of the authors had already participated in the extraordinary MPI Luxembourg study for the Commission entitled *An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law*. Besides, many of them have also taken part -or are part-, in the huge *Comparative Procedural Law and Justice (CPLJ)* project, still underway. The Brussels Ibis commentary could not but be a European book, not only because of its subject matter, but thanks to the origins of the contributors and their academic backgrounds, and to the Europeanist vocation of the MPI Luxembourg, where they all belong.

3. The making of the book took longer than expected. From March 2020, Europe and the world found themselves immersed in the covid crisis, the consequences of which were felt in all areas of life. Scholars were not spared. Beyond health problems, it took some time to get used to new working arrangements and ways of communication within academic institutions. If this did not impede the progress of the book, it certainly slowed it down. To some extent, the delay led to positive outcomes in that it made it possible to mention in the volume pending preliminary references which later proved to be of the utmost importance, such as C-568/20 - *H Limited*. Decisions of the ECJ, like C-296/20 *Commerzbank*, were handed down during these strange times without hearings and practically without contact between the parties and the Court, and are addressed in the book. It also made it possible to incorporate reflections

on Brexit, or take into account, for the purpose of comparison, the final text of the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, and the first comments on it. However, just like in any work of this magnitude, the adjournment of the publication also generated unease among the contributors as to when the book would be achieved, and the fruit of the hard work would reach its addressee - the community of academics and legal practitioners. This may account for the uncommon dedication, ‘From the editor of this book to the authors of this book’: a tribute to their patience and their work.

4. Each provision of the Brussels Ibis Regulation is the subject of a separate commentary or chapter in the book under review. All chapters follow the same basic formal structure, in a deliberate choice made to mirror the logic of the instrument itself, and to ease navigation through the work. The assignment of chapters to contributors was carried out following first (but not only) their own preferences, in order to profit in as much as possible from their individual expertise in relation to specific subject matters. It is therefore only logical that Burkhard Hess, with his solid and vast background in International Law, Comparative and European Procedural Law, authors the Introduction. Martina Mantovani, well-versed in notaries (see her well-known article ‘Notaries and their debt-collection writs under the Brussels Ia Regulation. A difficult characterisation’, JPIL, 2019, pp. 303 ff), comments on Article 3. Matteo Gargantini, currently assistant professor of Business Law at the University of Genoa and former staff of Consob, explores Article 7, paragraph 2, from his special acquaintance with financial markets. Marlene Brosch, who has worked on party autonomy in family matters (she is author of *Rechtswahl und Gerichtsstandsvereinbarung im internationalen Familien- und Erbrecht der EU*, Tübingen, Mohr Siebeck Publishers, 2021) deals with Articles 15 and 16, and with Article 25 together with Marcel Kahl. Carlos Santaló Goris, whose doctoral thesis is devoted to the European Account Preservation Order, addresses Article 35 (provisional measures). Stephanie Law, who combines her common law background with a profound understanding of European Law, offers her vision of the rules of *lis pendens* and related action as applied to third States. Vincent Richard, who obtained his PhD

with the award-winning thesis *Le jugement par défaut dans l’espace judiciaire européen*, 2019, is co-author of the commentary to Article 45, with Janek Novak. Cristina Mariottini’s scrutiny of Article 71, on the relationship of the Brussels Ibis Regulation with other instruments, corresponds naturally to the knowledge she acquired while working at the Hague Conference.

5. Each of the comments witnesses an enormous individual research effort by its author, as well as that of the editor. The editorial job, sometimes misunderstood or undervalued, has served here to create internal connections among chapters and as a guarantee of content-consistency, always within the respect of the scientific opinion of the contributors.

6. The history, context, and interpretation of each provision as applied in cross-border disputes are the topics of each chapter. The insights, even brief, on the origin and historical evolution of the provisions, are not purely ornamental. Together with the precious Reports accompanying the successive versions of the Brussels Convention (whose 50th anniversary was celebrated in 2018; that of its entry into force will do so next year), this ‘trip to the past’ allows explaining current solutions and critically assessing their suitability to new circumstances.

7. The approach to each rule within the system makes it possible to overcome the formal fragmentation of the structure ‘one article, one chapter’ (see as example, Cristian Oro, “Other provisions of the Brussels Ibis Regulation that guarantee the protective nature of Section”, marg. 20.18 ff). To this aim serves as well the assignment to the same author of closely related provisions: by way of example, Philippos Siaplaouras comments on Articles 8 and 65, the latter referring explicitly to the former; Inga Järvekülg takes up Articles 10 to 14, on jurisdiction on matters relating to insurance; Articles 27 and 28 (examinations as to jurisdiction and admissibility) are addressed by Felix Koechel. Section 2 of Chapter III is analysed en bloc by Giovanni Chiaponni, while Enrique Vallines examines Articles 46 to 51 (Refusal of enforcement), and Marlene Brosch, who comments on Article 2 with Martina Mantovani, is sole author of the annotation to Articles 58 to 60 (Authentic Instruments and Court Settlements).

8. The case law of the ECJ occupies a central place in this work; national case law is definitely much less present. The reason seems to be two-fold: on the one hand, and essentially, because it would have been impossible to provide a balanced view of national practices, given the different traditions of the Member States regarding free access to local judgments. On the other hand, the vast majority of the national decisions are not translated into English, so (from the contestable assumption that it is a pivot language which everyone understands), they are practically out of reach.

9. The Opinions of the Advocates General are also reflected in the work, however without losing sight of the fact that their understanding of the rules are not binding on the Court of Justice, but rather a starting point for her to develop its own arguments and solutions. Inclusion of the analysis by the AGs is nevertheless noteworthy, in light of the different perceptions in the Member States regarding the value to be given to the writings of these ECJ Members.

10. From the point of view of the doctrinal references on which each commentary is based, a clear attempt has been made to offer plural visions, looking for support from different sources and, with them, searching as well for divergent points of view. Regrettably, albeit usual in this type of works, scholar writings in languages other than the most common in legal literature (English, French, German, Spanish or Italian; Greek has been incorporated, to some extent) are missing.

11. The commentary collects separately the EU and national case law and legal acts, and is accompanied by a terminological index. It has been decided to present the literature used for each provision at the end of the corresponding chapter, so as to make it easier for the reader to find the references.

12. In a simple review like this one there is no room for a singularized analysis of each separate contribution. As it could not be otherwise, there are more and less dense chapters, in form and substance. Those relating to international judicial jurisdiction in consumer matters, by Stephanie Law, have been of particular interest to me, although (or perhaps, precisely, for this

reason) the content escapes a bit from the usual comments on international jurisdiction to offer a more transversal perspective (vid for instance the section 'Identifying the consumer', marg. 17.39 ff). The contribution to Articles 26 to 28, by Felix Koechel, stands out due to the German *savoir-faire* of the author, but also by his very personal taste for the detail. Edith Wagner's contribution on Article 7, paragraph 5, transpires the personal curiosity of the author for the litigation at stake, beyond international jurisdiction. Marcel Kahl's Article 24, as well as all contributions by Enrique Vallines, are sober, didactic and to the point. Even more are Vincent Richard and Janek Novak on Article 45.

While offering a thorough in-depth analysis of every single provision, this commentary provides most valuable guidance for lawyers, judges and academics both in Europe and beyond (see at the back of the book the endorsements by Professors Fernando Gascón Inchausti, University Complutense of Madrid; E.L. Teitz, Roger Williams University School of Law; and Franco Ferrari, NUY). It is the mandatory reference book for any lawyer facing with private legal litigation with a cross-border component; by contrast, it should be noted that it may not be the first step to approach the Brussels Ibis regulation for bachelor students.

13. The book addresses past, current and emerging issues of cross-border litigation in civil and commercial matters, and compiles the case law of ECJ up to the date of printing. This entails that, like all commentaries, it was born already outdated: life goes on after delivery to the publisher house, cross-border litigation continues, requests for preliminary rulings get to Luxembourg non-stop. What is more: the Brussels Ibis Regulation is undergoing review. It is here posited that whatever the outcome, it will unlikely detract from the importance or utility of this work. Firstly, because, although amendments to the legal text cannot be excluded at this stage, they will hardly imply the total abandonment of the existing rules: as of today, some of them have not even had the opportunity to be interpreted by the ECJ. Secondly, because to the extent that the changes respond to dissatisfaction with current solutions, expressed through interpretation requests addressed to the ECJ, the commentary as it is will offer elements to understand said discontent.