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PRIVATE INTERNATIONAL LAW AND INTERNATIONAL CIVIL PROCEDURE

Notes on the European Union's Brussels-I "Recast" Regulation

An American Perspective

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Since 2001, the "Brussels-I" Regulation[1] has governed the jurisdiction of EU national courts in civil and commercial matters and the recognition and enforcement of such judgments *within* the European Union, i.e. when the defendant – with few exceptions[2] – was an EU domiciliary.[3] Experience with Brussels-I disclosed some shortcomings over the years; the EU Commission therefore presented a proposal for a "recast" of the Brussels-I in 2010.[4] The proposal was intended to be more than a series of revisions and amendments. Rather, its purpose was to reformulate, to "recast", existing law in the context of contemporary conditions and needs. The proposal underwent much review, amendment and change. The result was the promulgation of Regulation No. 1215/2012, to enter into force on January 10, 2015.[5]

The Recast Regulation is much more modest than the proposal leading to it. It contains a number of improvements over current law, some of them important, while continuing to leave a number of areas unanswered or not addressed, particularly with respect to non-EU parties. Despite its more limited scope, the new Regulation does streamline the inter-EU judgment recognition process, both by addressing some further jurisdictional issues affecting the rendering court and by eliminating the *exequatur*-requirement on the recognition side. The following observations comment on some of these aspects.

To an American observer, the evolving EU jurisdiction-and-judgment recognition law also invites comparison with the American "Full Faith and Credit-"mandate of the federal Constitution with respect to interstate (sister-state) judgments. Some comparative remarks illustrate some of the differences and similarities.

Proposal vs. Recast Regulation: Differences in Scope

At the initiative of the United States, the Hague Conference attempted to draft a worldwide convention on judgment recognition beginning in 1999. The attempt ultimately failed, in part because agreement could not be reached on acceptable (i.e., non-exorbitant) bases of jurisdiction required for an obligation to recognize a judgment.[6] Only the choice-of-court work was salvaged; it became a separate convention, but to

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This contribution also appears in Hungary as a tribute to Professor *László Kecskes* (University of Pécs) on his 60th birthday.

1 [2001] O.J. L 12/1.

2 Art. 4(1), referring to Arts. 22 and 23 (instances of member state jurisdiction, even though the defendant is not an EU domiciliary).

3 See Art. 3(2).

4 COM/2010/0748 final – COD 2010/0383.

5 Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and enforcement of judgments in civil and commercial matters, [2012] O.J. L 351/1. The Recast Regulation, like the present Regulation, does not apply to Denmark, but the latter is free to extend its application to it under Art. 3 of the Agreement of 2005 between Denmark and the EU ([2005] O.J. L 299/62; [2006] O.J. L 120/22): Recital (41) of the Regulation, supra. The Recast Regulation does not affect the application of the 2007 Lugano Convention: Art. 73(1).

6 With respect to the problem of accommodating different jurisdictional approaches, see also Hague Conference on Private International Law, Ongoing Work on International Litigation and Possible Continuation of the Judgments Project, Preliminary Document No. 5, at no. 32 et seq. (March 2012).

this day has not entered into force (for lack of sufficient ratifications).

The EU Commission's Proposal for a recast of Brussels-I sought to extend the Regulation's jurisdiction rules to non-EU defendants. Since doing so would entail eliminating the member states' freedom to apply exorbitant rules of national jurisdiction law to non-EU defendants, the Proposal envisioned the introduction of two EU-level exorbitant rules as replacements: asset-based jurisdiction (akin to §§ 99 and 23 of the Austrian and German jurisdiction laws, respectively) and "jurisdiction by necessity" in aid of "EU companies investing in countries with immature legal systems,"[7] when "no other court of a Member State has jurisdiction."[8] From the EU perspective, substituting uniform EU rules for differing national exorbitant rules would have made sense.[9] But, as detailed elsewhere,[10] these new exorbitant bases would have introduced new difficulties for the recognition of judgments based on them in some non-EU countries, for instance the United States. Additionally, they would further complicate any future efforts to achieve a multilateral convention on judgment recognition, at least so long as the latter is tied to agreement on acceptable jurisdictional bases.

The Regulation, as adopted, did not follow the Commission's Proposal. In particular, the extension to non-EU defendants (the envisioned "worldwide" coverage) was dropped. The Regulation retains, with minor exceptions, the scope of prior (still existing) law, with its principal focus on EU defendants.[11] With respect to them, it has made some improvements, but a number of questions still remain. The following addresses a few of these issues.

Choice-of-Court Clauses

The Recast Regulation clarifies existing law with respect to choice-of-court clauses[12] in several respects. Art. 25(1), providing for the prorogation of a member state's courts, drops the distinction between parties domiciled in the EU and non-domiciliaries (currently Art. 23(1) and (3)). The current distinction both unnecessarily duplicates the presumption of exclusive jurisdiction in the chosen court (in paragraph 1 of the provision of both Regulations) and, in the case of a prorogation by non-domiciliaries, deprives any member state court not chosen of any jurisdiction without apparent reason. The possibility that a party sues in a court other than the chosen court (a case of derogation) seems adequately solved by the *lis pendens* provision of Art. 31(2) of the Recast Regulation: the court improperly seized must stay its proceedings until such time as the chosen court has determined that it does not have jurisdiction. More on this follows below.

The principal benefit of Art. 31(2) is the solution of the problem of "torpedo" actions.[13] Under existing law, "any court other than the court first seized shall" stay its proceedings until the latter's jurisdiction is established (Art. 27(1) of the current Regulation). While it is true that the chosen court has exclusive jurisdiction (unless the parties agreed otherwise), current law allows a party to work a delay by first suing in another court, thereby requiring a stay in the chosen court until the lack of jurisdiction of the court "first seized" has been established.[14] Art. 31(2) of the Recast avoids this result by giving precedence to the chosen court,[15] to be discussed further below. The provision further clarifies (by express reference to Art. 26) that it does not apply, i.e. that a court other than the chosen court *does* have jurisdiction and may proceed, when the defendant entered a (general) appearance in that court. Under present law, the result is the same but requires reading Art. 24 into Art. 23.[16]

All of the above assumes that the choice-of-court clause in the contract is valid. This raises two questions, neither of them answered in the existing Regulation: first, to what extent does the validity of the clause depend on the validity of the substantive provisions of the contract and, second, what law determines the validity of the clause? As to the first, the Recast is clear and its solution appropriate: the choice-of-court clause is an agreement independent from the other terms of the contract; its validity cannot be contested by contesting the contract's substantive validity: Art. 25(5).

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7 Proposal, n. 4, supra, Explanatory Memorandum at 5.

8 Proposal, n. 4, supra, Arts. 25 and 26. For discussion, see *Cafari Panico*, Forum Necessitatis: Judicial Discretion in the Exercise of Jurisdiction, in: *Pocar, Viarendo, Villata* (eds.), Recasting Brussels I, 127 (2012).

9 See *Hausmann*, The Scope of Application of the Brussels I Regulation, in: *Pocar et al*., n. 8, supra, 3, 26.

10 *Hay*, Favoring Local Interests – Some *Justizkonflikt*-Issues in American Perspective, in: *Kronke* and *Thorn* (eds.), Grenzen überwinden – Prinzipien bewahren – Festschrift für *von Hoffmann* 634, 635-639 (2011).

11 The current provisions of Arts. 2-4 have been rearranged and Annex I with its list of proscribed exorbitant jurisdictional bases, to which Art. 4(2) refers, has been dropped. Instead, the new Arts. 5(2) (member state defendants) and 6(2) (third country defendants) refer to Art. 76(1)(a) which charges member states to inform the Commission of the basis of jurisdiction under national law, with Art. 5(2), then proscribing their use as against EU defendants, who may be sued only in accordance with Arts. 5(1) and 7-26. Art. 76(1)(a) in turn refers to Arts. 5(2) and 6(2). The result, as to exorbitant jurisdiction, is the same as under current law. The way of getting there is hardly an example of artful drafting.

As things stand, under both current and new law, judgments based on exorbitant bases of national exorbitant rules of jurisdiction, of course, also face obstacles to recognition in the United States (n. 10, supra) and, no doubt, in other third countries. That may be small comfort to a judgment debtor because such judgments are entitled to recognition in other EU countries (where the debtor may have assets): Recital (27), Arts. 36(1), 39(1) of the Recast. Similarly, the introduction of *forum necessitates* jurisdiction, as originally proposed (n. 7, supra), would have resulted in judgments enforceable within the EU, even though they might not have been recognized outside.

12 It is estimated that some 70% of EU enterprises selling products or providing services in the EU utilize choice-of-court clauses in their international agreements. Commission, Staff Working Paper, Impact Assessment [of the proposed Recast Regulation], SEC(2010) 1547 final, 2.3.1.3, p. 30.

13 For comprehensive discussion, see *Simons*, unalex Kommentar Brüssel I-VO, intro. to Arts. 27-30, anno. 25 et seq. (2012). See also *Kindler*, Torpedo Actions and the Interface Between Brussels I and International Commercial Arbitration, in: *Pocar et al.*, n. 8, supra, 57.

14 ECJ 9 September 2003 – C-116/02 – *Gasser GmbH v. MISRAT srl*, unalex EU-69.

15 For validity of the prorogation clause see text following n. 17, infra.

16 *But see also* Art. 26(2), discussed at n. 30, infra, and Art. 31(4), id., both protective of weaker parties.

The question regarding the law applicable to the determination of validity is more difficult. Art. 25(1) provides that the "substantive validity [of the prorogation agreement is to be determined] under the law of the [prorogated] Member State."[17] The provision does not define "law;" the introductory Recital (20) does: it is the law of the prorogated member state "including its conflict-of-laws rules." This makes no sense. All EU Regulations dealing with the determination of the applicable law expressly exclude renvoi.[18] Particularly relevant, in the present context, is the "Rome I" Regulation on the Law Applicable to Contractual Obligations: its Art. 3 permits the parties to choose the applicable law and, by reference to Art. 10 (in Art. 3(5)), provides that the validity of the choice ("… of any term of the contract …") "shall be determined by the law which would govern under this Regulation if the … term were valid," i.e. by the chosen law. Art. 20 excludes renvoi. The Brussels-I Recast Regulation properly treats the choice-of-court clause as an independent agreement, as discussed above, but does not determine its validity in accordance with the provisions of Rome-I. Rather, it refers to the law of the chosen forum, including its conflicts. The chosen forum, by definition a "Member State" (Art. 25(1)),[19] will apply the Rome-I Regulation to determine the applicable law (which often will be, but need not be, its own). Why not say so in the first place? In the interest of consistency and uniformity, it would have been preferable to the present version to determine the validity of the prorogation agreement by the law generally applicable to the main contract or, if deemed more appropriate, by the law separately applicable to the prorogation agreement (under Rome I), or by the law chosen by the parties (Art. 10 of Rome I).[20] Renvoi would not even be relevant with respect to prorogation clauses in favor of a third-country court: the Rome-I Regulation is of "universal application" (its Art. 3), so it would also determine the law applicable to the prorogation clause[21] and would do so without resort to renvoi.

Lis pendens

Parallel litigation of (essentially) the *same* claim seeks the advantage of an early favorable judgment that can be interposed against a suit pending elsewhere.[22] Such a "race to judgment" can be vexatious as well as costly. The same applies to attempts to block litigation elsewhere through anti-suit injunctions. Parallel litigation of *related* claims may not be vexatious, but it is also often unnecessarily costly, both for litigants and courts.

Many legal systems, but not all,[23] deal with parallel litigation by requiring the second court to defer, by stay and ultimate dismissal, to the court seized first. The underlying assumption is that both courts are otherwise "equal" in their claim to have jurisdiction in the matter, but fairness to the parties and judi-

17 Additionally, The Recast Regulation itself, as does current law, limits the parties' freedom of choice in favor of the weaker party in insurance, consumer, and individual employment contracts (Art. 15, 19, and 23, respectively). See also nn. 26, 29, infra.

18 Regulation (EC) No. 593/2008 ("Rome I" – Contractual Obligations), [2008] O.J. L 177/6, Art. 20; Regulation No. 864/2007 ("Rome II" – Non-Contractual Obligations), [2008] O.J. 199/40, Art. 24; Regulation (EU) No. 1259/2010 (Divorce and Legal Separation), [2010] O.J. L 343/10, Art. 11; Protocol on Law Applicable to Maintenance Obligations, 2009] O.J. L 331/19, Art. 12.

19 Neither Brussels-I nor the Recast Regulation addresses prorogation of a third-country court. See *Kohler,* Agreements Conferring Jurisdiction on Courts of Third States, in: *Pocar et al.,* n. 8, supra, 199, 201. The European Court's reference to the law of the forum, including its conflicts law, for the determination of the validity of a forum-selection clause addressed the case in which the forum was an EU court whose jurisdiction had been derogated in favor of a third-state court. ECJ 9 November 2000, C-387/98, *Coreck v. Martime GmbH,* [2000] ECR I-9336, para. 19.

20 The European Parliament's proposed version was essentially similar: Document 2010/0383(COD) (June 28, 2011); see also *Dickinson*, The Proposal for a Regulation of the European Parliament and of the Council on Jurisdiction and the Recognition and Enforcement in Civil and Commercial Matters (Recast) ("Brussels I bis" Regulation), Sydney Law School, Legal Studies Research Paper No. 11/58, at 21 (2011), available at http://ssrn.com/abstract=1930712.

21 The question has been raised how the provision would work in the case of a clause selecting alternative fora ("floating clauses") (both presumed to be exclusive under Art. 25(1)) when the issue of the stipulation's validity arises in one of them or, for that matter, when it arises in a third state where suit was brought in violation of the clause. See http://www.allenovery.com/publications/en-gb/Pages/Reform-of-the-Brussels-Regulation-are-we-nearly-there-yet.aspx. These cases do not seem to raise a problem different from the one discussed: all courts (or any one of them) would apply the applicable-law provisions of Rome-I, if member state courts. If the court seised is not a member state court neither Brussels-I nor Rome-I determines how it should decide. In both hypothetical questions the issue of jurisdiction itself (i.e., which court goes ahead) may raise *lis pendens*-problems, discussed infra. On "floating clauses" generally, see *Rasmussen-Bonne*, Alternative Rechts- und Forumswahlklauseln (1999).

22 A recent decision of the European Court of Justice facilitates parallel litigation in tort by holding that the specific-jurisdiction provision of Art. 5(3) of Brussels-I may be invoked to seek declaratory relief that no tort was committed. The pendency of such an action will then block an action on a tort claim elsewhere, e.g., at the alleged tortfeasor's domicile. ECJ 25 October 2012 – C-133/11 – *Folien Fischer AG et al. v. Ritrama SpA*, [2013] GRUR 98. Advocate General *Jääskinen* had recommended against this result. Conclusions at nos. 57 et seq., 73. For comment, see *Sujecki*, Deliktsstatut für negative Feststellungsklagen ("Torpedoklagen"), [2012] EuZW 950.

23 There is no established *lis pendens*-concept in American (state) procedural law. A rough equivalent, the "first-filed"-rule, is followed in federal practice. See at n. 27, infra. Some state decisions broaden the common-law "plea in abatement" to give relief in cases of parallel litigation (in the court's discretion): e.g., *Glick v. Randle*, 2012 Ill.App.4h LEXIS 110497U, *P13 (Ill. App. 4 Dist. 2012). When granted, this remedy then has the same effect as the federal "first-filed"-rule. In international cases, the prevailing view in federal courts is that comity permits, but does not require, dismissal in favor of the foreign court. See *Royal & Sun Alliance Ins. Co. of Can. v. Century Int'l Arms, Inc.,* 466 F.3d 88, 96 (2d Cir. 2006); *Belize Telecom, Ltd. v. Gov't of Belize, 528 F.3d 1298, 1305* (11th Cir. 2008). See *Parrish,* Duplicative Foreign Litigation, 78 Geo. Wash. L. Rev. 237, 248 et seq. (2010).

An *anti-suit injunction* is another way in which an American court might seek to protect its jurisdiction. See *Laker Airways v. Sabena*, 731 F.2d 909 (D.C.Cir. 1984), discussed further in *GE v. Deutz*, 270 F.3d 144, 160 (3rd Cir. 2001). Most decision agree that such an injunction should be used sparingly. For an oft-cited test, see *China Trade & Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33 (2nd Cir. 1987), followed in *Kahara Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 500 F.3 111 (2nd Cir 2007), cert. denied 111 U.S. 500 (2008), and *Lam Yeen Leng v. Pinnacle Performance, Ltd.*, 474 Fed. Appx. 810 (2nd Cir. 2012). See also *Fox*, The Position of the United States on Forum Selection and Arbitration Clauses, Forum Non Conveniens, and Antisuit Injunctions, 35 Tul. Mar. L. J. 401 (2011). – Anti-suit injunctions are not permitted in inter-EU litigation: ECJ 10 February 2009 – C-185/07 – *Allianz SpA et al. v. West Tankers, Inc.*, [2009] ECR I-663. See also *Kronke*, Acceptable Transnational Anti-suit Injunctions, in: *Geimer* und *Schütze*, Recht ohne Grenzen – Festschrift für *Kaissis* 549 (2012).

cial economy argue against parallel litigation. When one court somehow has a superior claim to entertain the case, the matter is different. This is the case if one court has exclusive jurisdiction (for instance, *in rem*), an easy case,[24] or when it is so designated by the parties (prorogation).[25] The failure of existing EU law to recognize the superior claim of the chosen court allowed the "torpedo." As discussed, the Recast will remedy this situation by giving priority to the prorogated court.[26]

Existing law (Arts. 27-28) on parallel litigation – mandating a stay, followed by dismissal in the case of same claims and allowing a stay in cases of related claims – is limited to parallel litigation in different EU member states. Third-country parallel litigation is not addressed. Arts. 33-34 of the Recast Regulation remedy this lacuna for cases in which third-country litigation parallels EU litigation based, primarily, on Arts. 4 and 7 (general jurisdiction over the defendant at his or her EU domicile and specific jurisdiction at the place of tort and the like). The provisions do not address parallel litigation in cases in which a third-country court is the prorogated court. This lacuna in the relationship between prorogation and *lis pendens* is also not addressed by Art. 31(2), discussed above: the first-seized EU court therefore may proceed, the "torpedo-" problem may continue (but see below).

When Arts. 33 (same claim) and 34 (related claim) do apply, the Recast gives the (second-seized) EU court discretion ("may") to stay and dismiss, adding the sensible additional qualification that a potential judgment by the third-country court would be capable of recognition and enforcement in that EU forum (under its national law). The discretionary nature of the provisions is underlined by the further qualification that the EU court in question be satisfied that the stay "is necessary for the proper administration of justice." Introductory Recital (24) lists considerations for such an assessment: the connections of the case to the third state, how far the third-state proceedings have progressed, and whether the third state has exclusive jurisdiction of the kind that an EU court would have in these circumstances. Prorogated jurisdiction, in the EU setting, is presumed to be exclusive (Art. 25(1)): does this round-about recital of discretionary ("may") considerations close the lacuna left by Art. 31(2), discussed above?

Lastly, a problem that arises in connection with any attempts to deal with *lis pendens*: when is a court "seized"? Both existing law (Art. 30) and the Recast (Art. 32) contain almost identical rules defining seizing as the time of filing, followed by service, or the other way around. Neither addresses the possibility of a preemptive filing, designed to prevent filing in another court. At most, Recital (24), applicable to parallel third-country actions and discussed above, calls for consideration of the connection of the case with that state and of its progress there. The practice of some American federal courts – to define "first filing" in terms of the "effective" first filing (in the sense of a good-faith start of litigation) – does not help much. If restricted to a few exceptional types of cases, as it is,[27] the bulk of cases would still allow preemptive first filings. If unrestricted, the review of the first filing for its genuineness would once again be costly and, because of the time required, bring about the very delay that was sought to be achieved. *Lis pendens* rules probably can never solve the problem altogether. The rules of the Recast Regulation thus follow traditional patterns for inter-EU parallel litigation, represent a welcome step in dealing with the pendency of litigation in third-countries, but should have addressed more directly the tension between *lis pendens* and the prorogation of a third-country court.[28]

Weaker Party Protection

The Recast Regulation retains the provisions of current law protecting insurance policy holders, consumers, and parties to individual employment contracts ("weaker parties," Arts. 10-16, 17-19, and 20-23, respectively). In general, while weaker parties may sue the other party at that party's domicile (see also below), these rules also let the weaker party sue at his or her own domicile (insurance, consumer transactions) or the employee's place of employment. The weaker party, in turn, may be sued only at his or her domicile and may not be deprived of that protection by means of derogation.[29] Art. 26(2) is new and provides desirable additional protection for weaker parties in cases in which they might have entered a general appearance by requiring courts to inform such a party *ex officio* of his or her right to challenge the court's jurisdiction on the basis of the special weaker-party protective provisions.[30]

An employee-protective provision is the new Art. 21(2), allowing an employee to sue an employer not domiciled in the EU in the courts of the member state where he or she habitually carries or carried out his or her work. This addition brings weaker-party protection in line with Arts. 11(2) and 17(2): in insurance and consumer-contract disputes with a non-EU party, the latter is deemed domiciled in the state of its EU branch or other establishment "for disputes arising out of the operation of [such a] branch." The quoted language makes the provision quite narrow: there is no jurisdiction at the branch's location unless the branch was involved in the transaction between the weaker party and the EU party.[31] How-

[24] See Art. 22 of existing law. The provision lists additional instances of exclusive jurisdiction.

[25] Art. 23 of existing law. Its para. 1 presumes the parties' choice to be exclusive.

[26] N. 15, supra. *But see* Art. 31(4), infra, protecting weaker-parties against prorogations not authorized by the Regulation: text at n. 29, infra.

[27] See *Employers Ins. v. Fox Entertainment Group, Inc.*, 522 F.3d 271, 275-76 (2d Cir. 2008); *Tate-Small et al. v. Saks*, Inc. et al., 2012 U.S. Dist. LEXIS 76081 (S.D.N.Y. 2012).

[28] The question of whether the Recast Regulation effectively deals with "torpedo" actions in the context of arbitration agreements has also been raised. See *Freshfields Bruckhaus Deringer*, Briefing: Arbitration in the EU Following the revised Brussels I Regulation, January 2013, available at http://www.freshfields.com/uploadedFiles/SiteWide/Knowledge/Arbitrtion%20in%20the%20EU%20following%20the%20revised%20Brussels%20I%20Regulation.pdf. See also *Kindler*, n. 13, supra.

[29] Current law: Arts. 13(2), 17(2), 21(2); Recast Regulation: Arts. 15(2), 19(2), 22(2).

[30] In addition, Art. 31(4) provides additional protection for weaker parties: 31(2), supra, does not apply when the prorogation of another court is invalid under Arts. 15, 19, or 23.

[31] This is a far narrower approach to jurisdiction than that adopted by the

ever, the provision does provide a "deep pocket" defendant when the branch is involved but its assets may be insufficient.

The EU Council's Press Release announcing the adoption of the Recast Regulation also stated that "no national rules of jurisdiction may be applied any longer by member states to consumers and employees domiciled outside the EU,"[32] as those rules can be so applied under current law.[33] Recital (14) of the Recast Regulation can be read the same way. Its first paragraph restates current law: third-country defendants are subject to the jurisdictional rules of the national law of the member states. The second paragraph then adds: "However, in order to ensure the protection of consumers and employees …, certain rules of jurisdiction in this Regulation shall apply *regardless of the defendant's domicile*" (emphasis added). Should this be read as extending the EU *stronger* party's amenability to suit by a consumer-plaintiff at his or her non-EU domicile?

Such a reading would correspond with the intended thrust of the Commission's original (but not adopted) proposal: to make the Regulations jurisdictional provisions universal, to drop national exorbitant jurisdictional rules, and to substitute two EU-level rules in their stead. However, as previously mentioned, the far-reaching Commission proposal was not adopted, and a literal reading of the provisions of the Recast Regulation supports neither the Council's Press Release nor the third-country consumer-friendly reading of the Recast's Recital (14):[34] Art. 6(1) of the Recast Regulation (jurisdiction over third-country defendants is determined by national law) is (only) "subject to Art. 18(1)." The latter allows the consumer *plaintiff* to sue at his or her domicile. "Consumer" is not defined in Art. 18(1) and *might* be read to extend to consumers with domicile outside the EU. While the EU can hardly confer jurisdiction on non-EU courts, the provision and the Recital might nonetheless (and at least) mean that judgments rendered by a non-EU court at the consumer's domicile would be regarded as judgments rendered by a court with proper jurisdiction (from the EU perspective). This reading of "consumer," however, seems too broad because Art. 17(1)(c), in the context of defining consumer transactions covered by this Section of the Regulation, seems to contemplate *EU consumers*. Nor does any of the foregoing have anything to do with the consumer as *defendant*. Art. 18(2) provides that actions may be brought against the consumer "only in the courts of the *Member State in which the consumer is domiciled*" (emphasis added); for employees, the parallel provision is Art. 22(1). The exceptions of Art. 6(1) (on third-country defendants generally, supra), may apply to the "stronger" party in litigation; they make no special provision for third-country consumers or employees as defendants. These parties can still be sued, say, in France under Art. 14 Code civil because the plaintiff is a French citizen or in Germany under § 23 German BGB because the defendant has assets there.

The Recast thus contains some additional weaker-party protection (particularly in Art. 26(2)); on balance, however, the additions seem minimal. In particular, the position of third-country weaker-party defendants seems to continue unaddressed. For them, one avenue remains: to be the first to sue and to do so in their own country (assuming jurisdiction there under that country's law) in the hope of gaining the benefit in the EU of the (discretionary) new *lis pendens* provisions applicable to third countries, discussed earlier.[35]

Recognition and Enforcement

Unlike common-law recognition practice, for instance in America,[36] civil law (and EU) recognition does not take the form of a new local judgment. Civil law countries traditionally declare a foreign judgment, enforceable in the state of rendition,[37] to be enforceable in their state. The declaration of enforceability (*exequatur*) is not a new (local) judgment, itself entitled to recognition elsewhere, but simply makes the foreign judgment enforceable locally. The issue of the "recognition of a recognition judgment" thus does not arise in this context. However, it could arise if a third state judgment is recognized in an EU state by means of a judgment.[38] Under

United States Supreme Court in its recent (and very nuanced) decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, __ U.S. __, 131 S. Ct. 2846 (2011). Despite the obvious local economic involvement of the foreign enterprise, the Regulation's provision does not create general jurisdiction over it, but merely clarifies that the specific jurisdiction over the branch extends to its owner, a result that, from an American perspective, would have been supportable without a special provision to that effect.

32 Council of the European Union, Press Release 483 of 6 December 2012, 16599/12.

33 Art. 4 of the current Regulation specifically permits EU plaintiffs to invoke national exorbitant rules of jurisdiction (listed in Annex I) to be relied upon against third-country defendants. The resulting judgment – as the judgment of a court of an EU member state – is entitled to recognition through the EU. See n. 38, infra, and *Hausmann*, unalex Kommentar Brüssel I-VO, Art. 4 anno. 2 (2012).

34 See also the comment by *von Hein*, available at http://conflictoflaws.net/2012/brussels-i-recast-set-in-stone/comment-page-1.

35 Even this course may be of little avail: The *lis pendens* provisions applicable in the case of third-country proceedings envision that a potential judgment of the foreign court would be "capable of recognition" by the second (EU) court. Arts. 33(1)(a), 34(1)(b). Will this be the case, especially when the third country court, e.g. an American court, based jurisdiction on a ground in turn regarded as exorbitant by the standards of the recognizing EU court?

A unilateral approach, such as the provision of an EU *forum necessitatis* in aid of *EU consumers* (as originally proposed by the Commission) may have solved some problems: *Weber*, Universal Jurisdiction and Third States in the Reform of the Brussels I Regulation, 75 Rabels Zeitschrift 619, 642 (2011); *Hausmann*, n. 9, supra. It would not have solved the problem addressed above and, moreover, would have created new recognition problems of its own. N. 10, supra. It thus remains true that "the rules on third State *lis pendens* are incomplete … [because] not backed by a common set of rules on the recognition of third State judgments." *Weber*, loc. cit., at 643.

36 *Hay*, *Borchers*, *Symeonides*, Conflict of Laws § 24.5 et seq. (5th ed. 2010).

37 Art. 42(1)(b) of the Recast Regulation = Arts. 38(1), 53(1), and 54 of current law.

38 See *Hay*, Recognition of a Recognition Judgment Within the European Union – "Double *Exequatur*" and the Public Policy Barrier, [2009] EuLF I-61 (= *Hay et al.* (eds.), Liber Amicorum *Tibor Várady* (2009) 143), for the suggestion that the objection against "double exequatur" should not apply (at least) in the case of an EU country in which a non-EU judgment was recognized and enforced by means of a new judgment rather than by a declaration of enforceability. The Recast Regulation does not change current law because third-country judgments do not benefit from the abolition of the exequatur. The issue, however, remains with respect to a common law country like Ireland which enforces third-country judgments by a judgment of its own: see

present law, recognition is an issue by itself only in exceptional cases (Art. 33(2-3)).[39] Instead, it is an issue in connection with an application for issuance or a refusal of an *exequatur*, and even then only on appeal (Arts. 41, 45). In practice, most exequatur proceedings seem to have gone fairly smoothly and without too much delay; nevertheless, they do take time and involve expense.[40] It therefore had been a goal for some time to abolish the general *exequatur* requirement.[41] The Recast Regulation brings this about in Art. 39. As a consequence, the judgment of a member state (subject to authentication and certification that it is enforceable where rendered) is to have the same effect as a judgment of the second (enforcing) state (Art. 41(1)).[42]

Two things might be noted initially. First, abolition of the *exequatur* streamlines the recognition process, but (as discussed further below) does not change it much substantively. Under existing law, *exequatur* must be granted by the court of first instance. Its grant can be challenged only on appeal (existing Arts. 41-43). Under the Recast Regulation, the judgment debtor may apply for "refusal of enforcement" of the judgment (Art. 46)[43] on the non-recognition grounds of Art. 45, which replicate the existing Arts. 34 and 35.

Second, American Full-Faith-and-Credit law requires the second state to give the judgment the same effect as it has in the state that rendered it.[44] In essence, EU law is the same. While cast in terms of the effect the second state accords its own judgments (41(1)), Art. 41(2) restricts non-recognition (and thereby non-enforcement) to the grounds specifically listed in the Regulation (Arts. 34-35 of Brussels-I = Art. 45 of the Recast Regulation). However, "the procedure for the enforcement of judgments … shall be governed by the law of" the enforcing state (Art. 41(1). Existing law is the same (Art. 40(1)).[45] At the same time, neither the jurisdiction of the rendering court (except, e.g., in weaker-party and exclusive jurisdiction cases) nor the substance of the foreign judgment may be reviewed (Arts. 35(3), 45(2) of existing law = Arts. 45(3), 52 of the Recast). Neither Regulation defines "procedure." May a provision of national law, because styled "procedural," be an obstacle to recognition? May the denial of a remedy, such as a set-off, have the effect of enlarging the obligation of the judgment debtor? In other words, cannot the qualification of something as "procedural" in fact touch upon a substantive right entitled to recognition, in which case the qualification of substance vs. procedure should not be left to national law alone?[46]

Objections to the abolition of the *exequatur* pointed to it as a safety valve against enforcement of unpalatable foreign judgments.[47] That objection seemed not well taken. *Exequatur* was a bureaucratic hurdle, a leftover from older, truly international practice, but not a screening mechanism. As discussed, screening took place on the appellate level and then on the narrow non-recognition grounds of Arts. 34-35 of the existing Regulation. Apart from the specific grounds of Art. 34(3-4) (irreconcilable judgments), violation of public policy of the recognizing state and lack of notice in time to defend in the case of default judgments (Art. 34(1-2),[48] respectively) were the real safeguards. The Commission's proposal had envisioned dropping the public policy ground and – instead - sought to insert a new ground for non-recognition: failure to observe "fundamental principles underlying the right to a fair

Cowley and *Doyle*, Enforcement of Foreign Judgments in Ireland (2012), at www.dilloneustace.ie. Both present law (Art. 33(1)) and the Recast Regulation (Art. 36(1) provide that "a judgment given in a Member State shall be recognized in the other Member States," and Recital (27) of the Recast specifies that this mandate applies "even if [the judgment] is given against a person not domiciled in a Member State." The Recital does not require that the judgment be on an original claim (as distinguished on a foreign country judgment] nor that the creditor of the member state judgment be an EU creditor. See also *Hausmann*, n. 33, supra, loc cit. The question of the recognition of a recognition judgment thus continues unaddressed. See also *Carbone*, What About the Recognition of Third States' Foreign Judgments?, in: *Pocar et al.*, n. 8, supra, 299 at 308-09.

39 "Any interested party" may seek a decision that a judgment be recognized as well as raise the issue of recognition as an incidental question. The corresponding provisions of the Recast are Arts. 36(2-3)). See also n. 43, infra.

40 It has been estimated that some 10,000 applications for *exequatur* are filed each year; translation costs alone (apart from legal fees and the like) may run to hundreds of Euro (at an estimated 30 per page). Commission, Staff Working Paper, n. 12, supra, 2.1.1.3, at p. 3.

41 Earlier, more limited, Regulations already abolished the *exequatur*: Regulation (EC) No. 805/2004, [2004] O.J. L 143/15 (Enforcement of Uncontested Claims), Arts. 20-21; Regulation (EC) No. 1896/2006, [2006] O.J. L 399/1 (European Payment Order), Art. 21; Regulation (EC) No. 861/2007, [2007] O.J. L 199/1 (Small Claims), Art. 21; Regulation (EC) No. 4/2009, [2009] O.J. L 7/1, Art. 17 (Maintenance Obligations).

42 For discussion (dating to the Commission's proposal), see particularly *Cuniberti and Rueda*, Abolition of Exequatur, 75 Rabels Zeitschrift 286 (2011), and *Oberhammer*, The Abolition of Exequatur, 30 IPRax 197 (2010). See also *Kramer*, Abolition of Exequatur Under the Brussels I Regulation: Effecting and Protecting Rights in the European Judicial Area, 2011 Nederlands Internationaal Privaatrecht 633 (2011).

43 Art. 45(1) of the Recast Regulation replicates Art. 33(2) of existing law, permitting "*any*" interested party to seek non-recognition, while Art. 46 treats non-recognition as part of an objection to enforcement.

Art. 36(2) of the Recast Regulation allows "*any interested* party" to seek "a decision that there are no grounds for refusal of recognition." In effect, this permits the judgment creditor, among others, to seek declaratory relief in advance of a potential proceeding under Arts. 45 and 46. Current law is phrased differently: "any interested party who raises the recognition of a judgment as the *principal issue in a dispute* may … apply for a decision …" (emphasis added). The effect of both formulations is the same.

44 28 U.S.C. § 1738.

45 The general proposition is the same in American judgment-recognition law: "Enforcement measures do not travel with the … judgment." *Baker v. General Motors Corp.*, 522 U.S. 222, 235, 118 S. Ct. 657, 665 (1998).

46 For brief mention of the qualification issue in an American context, see *Hay*, *Weintraub*, *Borchers*, Conflict of Laws – Cases and Materials 193 (13th ed. 2009). A claim that a rule applied, or decision taken, by the rendering court involved a matter of substance would be reviewable in the context of the public policy defense (discussed below), however rare such cases may be. See *Baumgartner*, Changes in the European Union's Regime of Recognizing and Enforcing Foreign Judgments and Transnational Litigation in the United States, 18 Sw. J. Int'l L. 567, 585 (2012).

47 See also *Cuniberti* and *Rueda*, n. 42, supra, at 293 et seq., 313 et seq.; *Dickinson*, n. 20, supra, at 8-9.

48 On lack of notice in an ex parte proceeding, compare ECJ 21 May 1980 – *Denilauler v. SNC Couchet Frères*, [1980] ECR 1553, with *In re Dr. Jürgen Toft*, 453 B.R. 186 (Bkrtcy S.D.N.Y. 2011) (no recognition of German "Mail Interception Order," entered without notice to the debtor, under the public policy exception of the U.S. Bankruptcy Code, 11 U.S.C. § 1506).

trial."[49] The Recast Regulation adopted neither proposal, but continues existing law unchanged in its Art. 45(1)(a-d). Yet Recital (38) asserts that "the Regulation respects fundamental rights and observes the principles recognized in the Charter of Fundamental Rights of the European Union, in particular to an effective remedy and to a fair trial [as] guaranteed in Article 47 of the Charter." Where?

The Treaty on European Union (Art. 6(3)) establishes the EU's Charter of Fundamental Rights and the principles of the European Convention on Human Rights as part of the fundamental (primary) law of the Union. Recital (38), above, thus is a reminder but adds nothing new: the Regulation must be interpreted and applied in accordance with these fundamental rights. This applies both to the jurisdictional rules (for instance, in connection with claims against a third party under Art. 8(2) of the Recast Regulation) and, in the present context, to judgment recognition. Since the additional language proposed by the Commission (see above) was dropped from the grounds for non-recognition, the general public policy exception must safeguard these fundamental rights (Art. 45(1)(a)), as it does under current law (Art. 34(1)).[50] "Public policy," traditionally understood as permitting the protection of fundamental policies and values of *national* law, now must take account of EU law, including European human rights law, and, if necessary, give them precedence over rules and principles of national law.[51] It performs its traditional role when a third-country judgment (e.g., an American judgment) is sought to be enforced in an EU state. It has the double function in the inter-EU context.[52]

National laws differ, of course, – as to substance, procedure, and how to distinguish between the two.[53] They may also differ in how they assess their rules in light of European human rights law. For instance, does removing or limiting the availability of legal aid for certain civil cases constitute a violation of Art. 6(1) of the European Convention on Human Rights, by creating an obstacle to legal redress,[54] and then justify (even require) non-recognition of an EU member state judgment in a case in which legal aid was not provided?

Differences Differences in national laws alone do not rise to the level of a public policy violation.[55] They must affect fundamental values. The exception must therefore be employed most sparingly, as the European Court has made clear.[56] The Recast Regulation expresses and is founded on the member states' "mutual trust in the administration of justice in the Union" (Recital (26)). Similar thoughts and sentiments prompted an American court to favor an "'international concept of due process' to distinguish it from the complex concept that has emerged from American [domestic] case law."[57] All this sounds good and makes sense – in principle. But application of these precepts in practice is far more difficult: does the fact that a state has enshrined a policy in its constitution therefore allow invocation of the public policy exception to judgment recognition? What if the national policy thereby also results in a restriction of a substantive right under EU law?[58] The

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[49] Commission Proposal, n. 14, supra, Art. 46.

[50] For extensive discussion of the procedural *ordre public* under the current Regulation, see *Teixeira de Sousa/Hausmann*, unalex Kommentar Brüssel I-VO, Art. 34 anno. 24 et seq. (2012).

[51] Id. at anno. 25 et seq. See ECJ 28 March 2000 – C-7/98 – *Krombach v. André Bambersi*, [2000] ECR I-1935.

[52] *Petrelli*, Note [on the Recast Proposal] for the European Parliament's Committee on Legal Affairs, 879553EN, at 18 (2011), available at: http://www.europarl.europa.eu/studies.

[53] See text at n. 46, supra.

[54] See Equality and Human Rights Commission, Human Rights Review 2012: How Fair is Britain?, at 252 (Great Britain 2012). See also INTERIGHTS, Right to a Fair Trial Under the European Convention on Human Rights (Article 6) – INTERIGHTS Manual for Lawyers chapter 3 (2007); *Grabenwarter*, Fundamental Judicial and Procedural Rights, in *Ehlers* (ed.), European Fundamental Rights and Freedoms 160-69, nos. 32-52 (2007); *Ölçer*, The European Court of Human Rights: The Fair Trial Analysis Under Article 6 of the European Convention on Human Rights, [2013] Human Rights Review 371. See also *Gundel*, Judicial and Procedural Fundamental Rights [to be protected through national courts], in *Ehlers* (ed.), this n., supra, 490, 509 no. 47 et seq.; *Schilling*, Das Exequatur und die EMRK, [2011] IPRax 31; *Dickinson*, n. 20, supra, at 8-9; European Charter of Fundamental Rights Art. 47 para. 3 and its specific reference to legal aid. See further, as secondary EU law, EC Council Directive No. 2002/8/EC, [2003] O.J. L 26/41, Art. 3, calling for the availability of legal aid in civil matters.

[55] A sweeping statement like that by New York's highest court in 1898 no longer has currency today: "[By] public policy … we mean the law of the state whether found in [its] Constitution, the statutes or judicial records." *People v. Hawkins,* 157 N.Y. 1, 12 (1898). Instead, the same court's statement made twenty years later (by later U.S. Supreme Court Justice Cardozo), is now a classic and finds support virtually everywhere: to violate public policy, the foreign law must "violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal." *Loucks v. Standard Oil Co. of New York*, 224 N.Y. 99, 111, 120 N.E. 198, 202 (1918). For a legislative expression of the foregoing in the context of European law, see Art. 25 of Regulation (EC) No. 220/2003, [2003] O.J. L 338/1 ("Brussels II-*bis*"), concerning differences in applicable law in divorce recognition.

[56] See ECJ 11 May 2000 – C-38/98 – *Régie nationale des usines Renault v. Maxicar SpA*, [2000] ECR I-2973, para. 30 et seq. See also *Teixeira de Sousa/Hausmann*, n. 50, supra, anno. 25.

[57] *Lloyd's v. Ashenden*, 233 F.3d 478, 480 (7th Cir. 2000). The "international concept of due process" was found satisfied in *Hubei Geshoub Sanlian Industrial Co., Ltd. v. Robinson Helicopter Company, Inc.*, 2009 WL 3398931 (C.D. Cal.); not satisfied in: *Osorio v. Dole Food Company*, 665 F.Supp.2d 1307 (S.D.Fla. 2009), aff'd sub nom. *Osorio v. Dow Chemical Co.* 635 F.3d 1277 (11th Cir. 2011), cert. denied, 132 S.Ct. 1045 (2012).

[58] The *Sayn-Wittgenstein* decision, though quite supportable on its particular facts, illustrates the point. Austria invoked its constitutional abolition of titles of nobility to withdraw the claimant's right, previously granted to her, to use the title of nobility as part of her surname, as permitted by the law of Germany where the title was acquired as a result of adoption. See German Basic Law (*Grundgesetz*) Art. 123(1) and its reference to Art. 109 of the Weimar Constitution. Arguably, the denial restricted, or at least had an effect on, her freedom of movement and freedom to supply services (she conducted a business under her name in Germany). The Court considered Austria's public policy, as expressed in its Constitution, sufficient reason and justification for any resulting restriction on an EU law-based right. ECJ 22 December 2010 – C-208/09 – *Ilonka Sayn-Wittgenstein v. Landeshauptmann von Wien* at paras. 34-35. Both Austrian and German rules of private international law designate the law of nationality as governing a person's name (as part of a person's right of personality): Austrian Conflicts Statute (*IPRG*) § 9(1); German Conflicts Statute (*EGBGB*) Art. 10(1). The claimant was an Austrian citizen, though resident in Germany. Austria's policy of "equality of citizens" is echoed by Art. 20 of the European Charter of Fundamental Freedoms, so that Austria's restriction also did not violate human rights law (an issue not raised in the case). What if the issue of the proper surname had not been the recognition of a right based on German law, but had been part of a German judgment (e.g., resulting from a *Feststellungsklage*, § 256 ZPO) sought to be recognized in Austria? What if the claimant had been a German citizen?

American idea of an "international concept of due process" met its limit when a foreign-country judgment did not comport with American federal constitutional rights – the question was no longer one of basic or systemic "fairness:"[59] the forum standard became absolute.[60] In contrast, policies of the individual states in the United States, whether enshrined in state constitutional, statutory, or case law, regularly must yield to the national Full Faith and Credit mandate.

In the European Union, review on public policy grounds is severally limited with respect to the first court's jurisdiction. It is far broader when it comes to judgment recognition generally – despite reminders that resort to the public policy defense should only be exceptional. This is so because this defense must respond to policies of different origins (national, EU, international) and strengths. The extent to which the public policy exception has been and is being litigated in national cases[61] – compared to next to none in American interstate cases – bears witness to this conclusion. Moreover, in order to make the more difficult public policy determination, a court in the EU will also need to engage in some review of the foreign judgment, a limited *revision au fond*, – a review which the Recast Regulation proscribes, at least in principle (Art. 52).[62]

Conclusions

The Recast Regulation improves on existing law in a number of ways, including in areas beyond the scope of these limited comments.[63] The *lis pendens* provisions reviewed above should help to counteract "torpedo" actions and for the first time address litigation pending in third-countries. However, lacunae remain – with respect to *lis pendens* and elsewhere. In some areas, the cut-back from the Commission's original proposal is noticeable, for instance as it concerns third-country consumer protection.

The new Regulation now approaches more than before an overarching judgment recognition ("full faith and credit") mandate, especially as the result of the most welcome abolition of the *exequatur*. With respect to the first judgment's *conclusiveness* in the second state, both the current and the recast Regulations in fact go beyond what American interstate recognition practice provides. Under both, subject to exceptions,[64] the recognizing court cannot review the rendering court's jurisdiction in cases of default judgments, as it can in the United States,[65] and defenses under the law of the recognizing state are not available, as they are under an alternative statutory recognition mechanism in the United States.[66] On the other hand, the American states of course present a much more homogeneous interstate legal system, with far fewer differences in local laws and policies than do the members of European Union. An avenue for the vindication of these differences – in derogation of the unifying force of the current and recast Brussels-I Regulations – is the public policy-exception to the recognition mandate.[67] Thus, while the abolition of the *exequatur* streamlines and strengthens the judgment recognition process further, enhanced success will depend in some measure on how the case law addresses and defines the multi-faceted public policy-exception, for which, one would hope, that more of an EU-level meaning or definition of limits will evolve. The elaboration and definition of procedural due process standards, in line with the Commission's original proposal of a *separate* "fair trial" ground for non-recognition,[68] would be a helpful development in this regard.

A broader, more "universal" approach to jurisdiction and judgment-recognition was not yet possible, as it had not been at the time of the last Hague Conference effort. Nevertheless, the Recast Regulation is an important step forward. Perhaps it, and further revisions, can serve as a basis for future bilateral or even multilateral accords with third countries.

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59 The *Ashenden* court, n. 57, supra, at 477, called for a "system" analysis, a "wholesale" approach. Followed in *Tropp v. Corp. of Lloyds*, 2008 U.S. Dist. LEXIS 30635, at *53 et seq. (S.D.N.Y. 2008) aff'd 385 Fed.Appx. 36 (2nd Cir. 2010).

60 I.e., a "retail approach," in contrast to the previous note. The best example is the federal "SPEECH Act" of 2010, 28 U.S.C. § 4102, proscribing recognition of foreign judgments in defamation cases that are inconsistent with American First Amendment (to the federal Constitution) free speech rights, or that are rendered against providers of interactive computer services protected under the U.S. Communications Act. For brief discussion, see *Hay*, n. 10, supra, 642-46; *Hay,* Reviewing Foreign judgments in American Practice, in: *Geimer* and *Schütze, n.* 23, supra, 367, 373-78 (2012). See also *Rosen*, Exporting the Constitution, 53 Emory L. J. 172 (2004).

61 See the instructive lists provided by *Teixeira de Sousa/Hausmann*, n. 50, supra, [Art. 34] at nos. 21-23-30, 34a. See also *De Cristofaro*, The Abolition of Exequatur Proceedings: Speeding Up the Free Movement of Judgments While Preserving the Rights of Defense, in: *Pocar*, n. 8, supra, 353.

62 Id. at anno. 20 (p. 791); *Althammer*, id., Art. 45 anno. 17 (p. 916); *Joubert/Weller*, id., Art. 36 anno. 10. In the United States, assertion of national standards as against foreign-country judgments (see, e.g., n. 60, supra) will also mean more *revision au fond. Hay*, n. 60, supra, at 379-81. However, interstate practice will not be affected.

63 Examples include the welcome explanation of the scope of provisional and protective measures (Recital (25)) as well as the further delineation of the scope of the Regulation vis-à-vis arbitration (Recital 12)).

64 See Art. 35 (1 and 3), Brussels I; Art. 45(1)(e), Recast Regulation. See also Art. 31(4) of the Recast Regulation, text at n. 30, supra.

65 *Hay et al.*, n. 36, supra, § 24.14.

66 When recognition of a sister-state judgment is obtained by suit on it (resulting in a new judgment of the recognizing court), the Full Faith and Credit mandate requires the recognizing court to give the judgment the effect it has in the state of rendition. N. 44, supra. Alternatively, an uniform state law – in force in 47 states – provides an optional registration mechanism which, of course, results in quicker recognition than a suit would. However, § 2 of the uniform act exacts a price for this advantage: "A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a [court] *of this state* … " (emphasis added). Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act), 13 Uniform Laws Annotated (1986). In federal courts, a "judgment for money or property" rendered by one federal court may be registered in another. 28 U.S.C.A. § 1963. See *Hay et al.*, n. 36, supra, § 24.13.

67 See also *Petrelli,* n. 52, supra, at 1.4.3 (p. 20); *Pfeiffer*, Recast of the Brussels I Regulation: The Abolition of Exequatur, in *Pocar*, n. 8, supra, 311, 315.

68 N. 49, supra.