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Edited by
FAUSTO POCAR
ILARIA VIARENGO
FRANCESCA C. VILLATA

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FAUSTO POCAR ILARIA VIARENGO FRANCESCA G. VIELLA



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FOREWORD

The Proposal of the European Commission recasting the Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters identifies a number of deficiencies in the Regulation's operation and submits a number of amendments to improve its operation, with a view to facilitating cross-border litigation and removing the remaining obstacles to the free movement of judgments. In short, the Proposal extends the application of the rules on jurisdiction of the Brussels I Regulation to third-country defendants, further harmonises the subsidiary jurisdiction rules through the creation of a *forum necessitatis*, gives relevance to a discretionary *lis pendens* rule for disputes before the courts in third countries, improves the effectiveness of choice-of-court agreements, outlines the interface between the Regulation and arbitration, develops the current system of coordination of legal proceedings before the courts of different Member States, and, with some exceptions, abolishes the procedure for recognition and enforcement of judgments in another Member State (*exequatur*).

The authors of this volume, including experts who directly contributed to the European legislation resulting in the Brussels I Regulation and the parallel Lugano Convention and the Proposal for its recast, examine the solutions envisaged in the Proposal in detail. Their contributions comprise the papers presented at the Milan Conference held in November 2010 entitled, *Cooperazione Italo-Tedesca nella revisione del Regolamento Bruxelles I – Deutsch-Italienische Kooperation im Rahmen der Neufassung der Brüssel I-Verordnung*.

The purpose of the conference and this volume is to discuss the primary, debated questions, which led the Commission to publish its Proposal, and to offer a contribution to the clarification and solution of these questions. The editors hope that the submitted proposals and theses can spur further discussions and contribute to the ongoing debate within the EU institutions.

The conference was held thanks to the financial sponsorship of the *Ateneo Italo-Tedesco* within the *Programma Dialoghi Italo-Tedeschi*, as well as under the patronage of the *Associazione per gli scambi culturali tra giuristi italiani e tedeschi*, the *Italian-German Chamber of Commerce* and the *Chamber of Arbitration of Milan*. They deserve our deep gratitude. We also extend our gratitude to the law firms *Gebhard* and *Tosetto, Weigmann & Associati* for their invaluable support in the organization of the conference and the publication of its proceedings.

The editors are also indebted to all the participants for the prompt submission of their revised contributions, as well as to Dr. Maria La Vecchia, Dr. Aline Beltrame De Moura, Dr. Jacopo Re and Dr. Laura Paredi for their assistance in the organization of the conference, and to Dr. Cristina Mariottini and Adrienne Lester-Fitje, Esq. for their contributions to the editing of this volume.

Milan, March 2012

F.P. I.V. F.C.V.

TABLE OF ACRONYMS AND ABBREVIATIONS

All E.R.	All England Law Report
<i>Am. J. Comp. L.</i>	American Journal of Comparative Law
<i>Arb. Int.</i>	Arbitration International
<i>ASA Bull.</i>	ASA Bulletin
BayObLG	Bayerische Oberste Landesgericht
Bermuda LR	The Bermuda Law report
BCC	British Company Law Cases 1983
<i>BGE</i>	Bundesgerichtsentscheid
BGH	Bundesgerichtshof
<i>BGHZ</i>	Entscheidungen des Bundesgerichtshofs in Zivilsachen
Bus. L.R.	The Business Law Reports
<i>Cahiers arb.</i>	Cahiers de l'arbitrage/Paris Journal of International Arbitration
<i>Cahiers dr. eur.</i>	Cahiers de droit européen
<i>Cambridge L.J.</i>	Cambridge Law Journal
C.D.Cal.	Central District of California United States District Court
<i>CDT</i>	Cuadernos de Derecho Transnacional
Cir.	Circuit
C.L.C.	Commercial Law Cases
<i>Chunet</i>	Journal de droit international
<i>CMLR</i>	Common Market Law Review
Commission's Proposal of 14 December 2010	Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM(2010) 748 final of 14 December 2010

Committee on Legal Affairs, Rapporteur T. ZWIEFKA, Draft Report	Committee on Legal Affairs, Rapporteur T. ZWIEFKA, Draft Report on the proposal for a regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (COM(2010)0748-C7-0433/2010-2010/03-83(COD)), 28 June 2011, PE467.046v01-00
<i>Corr. giur.</i>	Il Corriere giuridico
CTMR	Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark
<i>DCI</i>	Diritto del commercio internazionale
<i>EBLR</i>	European Business Law Review
EC	European Community
ECHR	European Convention of Human Rights
<i>ECHR</i>	European Court of Human Rights. Reports of Judgments and Decisions
ECJ	Court of Justice of the European Union/Court of Justice of the European Community/ Court of Justice of the European Economic Community
<i>ECR</i>	European Court Reports
ECtHR	European Court of Human Rights
<i>Elsa Malta L.R.</i>	Elsa Malta Law Review
EP	European Parliament
EPC	Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973 as revised by the Act revising Article 63 EPC of 17 December 1991 and the Act revising the EPC of 29 November 2000
<i>ERCL</i>	European Review of Contract Law
EU	European Union
<i>EuLF</i>	European Law Forum

European Parliament Resolution of 7 September 2010	European Parliament Resolution of 7 September 2010 on the implementation and review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judg- ments in civil and commercial matters (2009/2140(INI)), P7_TA(2010)0304
<i>EuZW</i>	<i>EuZW</i> - Europäische Zeitschrift für Wirtschaftsrecht
EWHC	High Court of England and Wales
<i>FamRZ</i>	<i>Zeitschrift für das gesamte Familien- recht mit Betreuungsrecht, Erbrecht, Verfahrensrecht, Öffentlichem Recht</i>
FLR F.R.D.	Family Law Reports 1980- Federal Rules Decisions
<i>Gaz. Pal.</i> <i>Giur. it.</i> <i>GPR</i>	La Gazette du Palais Giurisprudenza italiana <i>GPR</i> - Zeitschrift für Gemeinschafts- privatrecht
Green Paper on the review of Council Regulation (EC) No 44/2001	Green Paper on the review of Council Regulation (EC) No 44/2001 on juris- diction and the recognition and en- forcement of judgments in civil and commercial matters, COM(2009) 175 final of 21 April 2009
GVG	Gerichtsverfassungsgesetz
<i>Harv. Int. L.J.</i> HESS B./PFEIFFER T./SCHLOSSER P., <i>Heidelberg Report</i>	Harvard International Law Journal Study JLS/C4/2005/03. Report on the Application of Regulation Brussels I in the Member States presented by Prof. Dr. Burkhard Hess Prof. Dr. Thomas Pfeiffer and Prof. Dr. Peter Schlosser (Munich). Final Version September 2007
HESS B./PFEIFFER T./SCHLOSSER P., <i>Heidelberg Report</i> (2008)	HESS B./PFEIFFER T./SCHLOSSER P., <i>The Brussels I-Regulation (EC) No 44/2001, The Heidelberg Report on the Application of Regulation Brussels I in 25 Member States</i> , Munich 2008
<i>ICLQ</i>	International and Comparative Law Quarterly

<i>IIC</i>	IIC - International Review of Industrial Property and Copyright Law
<i>IIP</i>	Italian Intellectual Property
<i>I.L.Pr.</i>	International Litigation Procedure
<i>Int. Arb. L.R.</i>	International Arbitration Law Review
<i>Int. Fam. L.</i>	International Family Law
<i>Int'l Lis</i>	Int'l Lis
<i>IPRax</i>	Praxis des internationalen Privat- und Verfahrensrechts
<i>IPRspr</i>	Die Deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts
<i>I.R.</i>	Irish Reports
JENARD Report	Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Signed at Brussels, 27 September 1968) by Mr Paul Jenard, Director in the Belgian Ministry of Foreign Affairs and External Trade, <i>O.J.E.C.</i> C 59 of 5 March 1979
JENARD/MÖLLER Report	Report by Paul Jenard and Gustaf Möller to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16 September 1988, <i>O.J.E.C.</i> C 189 of 28 July 1998
<i>JETL</i>	Journal of European Tort Law
<i>J. Int. Arb.</i>	Journal of International Arbitration
<i>JPIL</i>	Journal of Private International Law
<i>JZ</i>	JuristenZeitung
<i>LMCLQ</i>	Lloyd's Maritime and Commercial Law Quarterly
<i>LQR</i>	Law Quarterly Review
<i>Maastricht J. Eur. Comp. L.</i>	Maastricht Journal of European and Comparative Law
<i>Maryland L.R.</i>	Maryland Law Review
<i>MEP</i>	Member of the European Parliament
<i>Mich. L.R.</i>	Michigan Law Review
<i>NILR</i>	Netherlands International Law Review

NUYTS A., <i>Study on Residual Jurisdiction</i>	NUYTS A., <i>Study on Residual Jurisdiction (Review of the Member States' Rules concerning the "Residual Jurisdiction" of their courts in Civil and Commercial Matters pursuant to the Brussels I and II Regulations). General Report</i> (Final Version Dated 3 September 2007), available at: http://ec.europa.eu/civiljustice/news/docs/study_residual_jurisdiction_en.pdf
NYGH/POCAR Report	Report on the preliminary draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters, drawn up by Peter Nygh and Fausto Pocar, Hague Conference on Private International Law, Preliminary Document No 11 of August 2000, for the attention of the Nineteenth Session of June 2001, http://www.hcch.net/upload/wop/jdgmpl11.pdf
NIPR	Nederlands Internationaal Privaatrecht
NJ	Nederlandse Jurisprudentie
NJW	Neue Juristische Wochenschrift
NJW-RR	Rechtsprechungs-Report Zivilrecht
NLCC	Le Nuove leggi civili commentate
OGH	Oberster Gerichtshof
OLG	Oberlandesgerichte
O.J.E.C.	Official Journal of the European Community
O.J.E.U.	Official Journal of the European Union
POCAR Report	Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007. Explanatory Report by Professor Fausto Pocar (Holder of the Chair of International Law at the University of Milan), <i>O.J.E.U.</i> C 319 of 23 December 2009
Q.B.D.	Queen's Bench Division
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht

<i>Recueil des Cours</i>	Recueil des Cours de l'Académie de la Haye de droit international
<i>Rép. Defrénois</i>	Répertoire Defrénois
Report on the application of Council Regulation (EC) No 44/2001	Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM(2009) 174 final of 21 April 2009
<i>Rev. crit. dr. int. pr.</i>	Revue critique de droit international privé
<i>Riv. arb.</i>	Rivista dell'arbitrato
<i>Riv. dir. int. priv. proc.</i>	Rivista di diritto internazionale privato e processuale
<i>Riv. dir. proc.</i>	Rivista di diritto processuale
<i>RIW</i>	Recht der internationalen Wirtschaft
<i>Rn.</i>	Randnummer
<i>RTDE</i>	Revue trimestrielle de droit européen
<i>SchiedsVZ</i>	Zeitschrift für Schiedsverfahren
SCHLOSSER Report	Report on the Convention on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice (Signed at Luxembourg, 9 October 1978) by Professor Dr Peter Schlosser of the Chair of German, international and foreign civil procedure, of the general theory of procedure and of civil law at the University of Munich, <i>O.J.E.C.</i> C 59 of 5 March 1979
S.D.N.Y.	Southern District of New York
<i>Sem. Jur.</i>	La Semaine Juridique
s.u.	Sezioni Unite of the Italian Corte di Cassazione
TEU	Treaty on the European Union
<i>Tex. Int. L.J.</i>	Texas International Law Journal

TFEU	Treaty on the Functioning of the European Union
<i>Trust L. Int.</i>	Trust Law International
<i>Tul. L.R.</i>	Tulane Law Review
UKHL	United Kingdom House of Lords
UNTS	United Nations Treaty Series
<i>U. Pa. L.R.</i>	University of Pennsylvania Law Review
U.S. S. Ct.	U.S. Supreme Court
VIRGÓS/SCHMIT Report	Report on the Convention on Insolvency Proceedings by Miguel Virgos, Professor, Universidad Autonoma of Madrid and Etienne Schmit, Magistrate, Deputy Public Prosecutor, Luxembourg, doc. 6500/1/96, Brussels, 3 May 1996
<i>VuR</i>	Verbraucher und Recht
WL	Westlaw
WLR	Weekly Law Reports
<i>WuW</i>	Wirtschaft und Wettbewerb
<i>YPIL</i>	Yearbook of Private International Law
ZB	Zivilsenat des Bundesgerichtshofs
<i>ZVglRWiss</i>	Zeitschrift für Vergleichende Rechtswissenschaft - ZVglRWiss
<i>ZZP-Int</i>	ZZP Int Zeitschrift für Zivilprozess International Jahrbuch des Internationalen Zivil prozessrechts
<i>ZZZ</i>	Schweizerische Zeitschrift für Zivilprozess- und Zwangsvollstreckungsrecht

TABLE OF BRUSSELS I PROVISIONS

REGULATION (EC) No 44/2001		COMMISSION'S PROPOSAL OF 14 DECEMBER 2010	
Recital 2	12	Recital 3	
Recital 7	5, 12	Recital 10	
----		Recital 11	44, 59, 66, 79, 84
Recital 11	93	Recital 12	296
Recital 12	93	Recital 13	174
Recital 17	201	----	
----		Recital 19	193, 201
----		Recital 20	44, 46, 59, 79, 80, 81, 82, 201
----		Recital 21	201
----		Recital 23	328, 341, 342, 349, 351, 379
----		Recital 24	379
Recital 19	289	Recital 26	
Article 1	3,4, 354	Article 1	
Article 1(1)	3, 4, 6, 9, 10, 12, 17	Article 1(1)	
Article 1(2)	3, 5, 11, 12	Article 1(2)	
Article 1(2)(a) to (d)	13, 14, 15, 16, 17, 18, 19, 20, 21, 43, 44, 50, 52, 58, 59, 64, 65, 82	Article 1(2)(a) to (d)	11, 17, 43, 44
----		Article 1(2)(e)	29
Article 1(3)		Article 1(3)	17

Article 2	81, 93, 106, 107, 108, 150, 162, 163, 165, 173, 187, 288, 290, 332, 333	Article 3	173, 220, 221, 232
Article 3	187	Article 4	186, 220, 221, 232
Article 3(2)	186	----	
----		Article 4(2)	173, 197, 220, 291, 292
Article 4	23, 26, 82, 119, 125, 186, 187, 290, 291, 292	----	
Article 4(1)	22, 288, 290	----	
Article 4(2)	22, 125	----	
Article 5	23, 26, 106, 107, 108, 173, 174, 175, 179, 180	Article 5	176, , 220, 221, 232
Article 5(1)	23, 30, 31, 60, 81, 94, 95, 164, 178, 256, 333	Article 5(1)	92
Article 5(2)	14, 29, 30, 31, 178	----	
Article 5(3)	23, 60, 96, 97, 98, 108, 150, 163, 166, 173, 174, 178, 179, 180, 256, 343, 345, 346, 348	Article 5(2)	92, 96, 106, 107
----		Article 5(3)	173, 175, 176, 177, 176
Article 6	23, 26, 165, 333	Article 6	220, 221, 232
Article 6(1)	99, 100, 101, 102, 151, 152, 164, 165, 166, 170, 172, 333	Article 6(1)	92
Article 7	143, 180	Article 7	220, 221, 232
Article 8	23, 102, 232	Article 8	
Article 9	23, 102, 232	Article 9	
Article 10	23, 102, 232	Article 10	

Article 11	23, 102, 108, 232	Article 11	
Article 12	23, 102, 232	Article 12	
Article 13	23, 102, 232, 334	Article 13	
Article 13(2)	334	Article 13(2)	
Article 14	23, 102, 143, 232	Article 14	
Article 15	23, 102, 164, 232	Article 15	
Article 15(1)(c)	99, 102, 103	Article 15(1)(c)	
Article 16	23, 102, 103, 164, 232	Article 16	
Article 17	23, 102, 232, 334	Article 17	
Article 17(2)	334	Article 17(2)	
Article 18	23, 102, 232	Article 18	
Article 19	23, 102, 232	Article 19	
Article 20	23, 102, 232	Article 20	
Article 21	23, 102, 232	Article 21	
Article 22	23, 26, 178, 191, 197, 200, 232, 290, 293, 304	Article 22	
Article 22(1)	175, 177	Article 22(1)	
Article 22(4)	150, 151, 152		
Article 23	105, 178, 183, 186, 187, 188, 189, 190, 192, 194, 195, 199, 200, 201, 202, 203, 217, 222, 227, 229, 290, 293, 334	Article 23	92, 174, 187
Article 23(1) to (2)	204	Article 23(1) to (2)	105, 229, 230
Article 23(3)	205	----	

Article 23(4) to (5)	189	Article 23(3) to (4)	
Article 24	183, 184, 186, 187, 188	Article 24	174
Article 24	195, 334	Article 24(1)	
----		Article 24(2)	197, 334
----		Article 25	107, 124, 125, 174, 180, 197, 291
----		Article 26	124, 125, 127, 145, 197, 205, 206, 216, 291
Article 25		Article 27	197
Article 26	197, 335	Article 28	197
Article 27	105, 140, 192, 239, 240, 258, 269, 270, 274, 282, 293	Article 29	44, 243, 274
Article 27(1)		Article 29(1)	63, 69, 221
----		Article 29(2)	63, 69, 193, 243, 245, 246, 247, 248, 252, 262, 263
Article 27(2)		Article 29(3)	63
----		Article 29(4)	43, 44, 45, 47, 49, 52, 59, 61, 62, 63, 64, 66, 68, 69, 79, 82, 83, 84, 85, 86, 87, 106, 244, 245
----		Article 31	264, 279, 281, 282, 283, 284
Article 29	248	Article 32	193, 195, 201
----		Article 32(2)	63, 64, 106, 194, 195, 205, 221, 227, 231, 244, 252
Article 30	240, 267, 268	Article 33	43
Article 30		Article 33(1)	64, 80, 244